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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 246

CHARLES CORYELL, ET AL., PETITIONERS,

vs.

JOHN S. PHIPPS AND GEORGE J. PILKINGTON

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 20, 1942.

CERTIORARI GRANTED OCTOBER 12, 1942.

INDEX VOLUME.

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TRANSCRIPT OF RECORD

UNITED STATES

CIRCUIT COURT OF APPEALS

FIFTH CIRCUIT.

No. 10185

CHARLES CORYELL, ET AL.,

Appellants,

versus

JOHN S. PHIPPS and GEORGE J. PILKINGTON,

Appellees.

Appeal from the District Court of the United States for the Southern District of Florida.

(ORIGINAL RECORD RECEIVED DEC. 17 41.)

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Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States.

OCTOBER TERM, 1942

No. 246

CHARLES CORYELL, ET AL., PETITIONERS,

vs.

JOHN S. PHIPPS AND GEORGE J. PILKINGTON

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CIRCUIT COURT OF APPEALS

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versus

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Appellees.

Appeal from the District Court of the United States for the Southern District of Florida.

(ORIGINAL RECORD RECEIVED DEC. 17 41.)

UNITED STATES CIRCUIT COURT OF APPEALS
FIFTH CIRCUIT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

TRANSCRIPT OF RECORD.

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION.

CHARLES CORYELL, JULIEN J. MARKS, J. FRANK GUYTON, J. M. FRERE, FRANK VOGT, WILLIAM A. and DOROTHY M. CASSIDY, LEON SIGMAN, ALBERTIS C. TAYLOR (deceased, cause of action assigned to The Union Savings and Trust Company of Warren, Ohio, as trustee), RALPH H. ORTHWEIN (deceased, Gertrude Brandt Orthwein Cave, as executrix of the estate of Ralph H. Orthwein, deceased, substituted in his stead); N. L. NOTEMAN, CHARLES A. SARGEANT, J. S. STEVENS, W. H. H. CHILDS (deceased, Walter R. Kuhn and Catherine O. Grau, as executors of the estate of W. H. H. Childs, deceased, substituted in his stead), L. K. CONE (deceased, Mrs. L. K. Cone, as executrix of the estate of L. K. Cone, deceased, substituted in his stead), WENDELL ANDREAS, E. R. NEWLAND, H. S. THOMAS, JOHN LOCHRIE (deceased, Cathleen Lochrie, D. T. Price, Robert B. Lochrie, Cathleen Booz and Minnie Dickey, as executors of the last will and testament of John Lochrie, deceased, substituted in his stead; HENRY BOGAARDS, JOHN PATTON, GLEASON WOOD, SOPHIA HILLENBRAND and FLETCHER TRUST COMPANY, executors of the Estate of George M.

Hillenbrand, deceased, R. GUASTAVINO, C. T. LASSEN, H. C. SALTONSTALL, W. S. LEEDS, ROSE T. LUDVIGH, executrix of the Estate of Clifford G. Ludvigh, deceased, WILLIAM P. GUERARD STEWART RAYNOR, (deceased, Edna M. Raynor, as executrix of the Estate of Stewart Raynor, deceased, substituted in his stead), GEORGE A. DOBYNE, J. WESLEY PAPE, McCOY BROTHERS INDIAN RIVER NAVIGATION COMPANY, WILLIAM STEVENS, THEOPHILUS DE MOTT, J. H. BAUER, (added by amendment) H. A. HOLLINGER (added by amendment) HARRY B. RAMPE (added by amendment), E. R. PILLARS,

Libellants-Appellants,

versus No. 122, In Admiralty.

GEORGE J. PILKINGTON and JOHN S. PHIPPS,

Respondents-Appellees.

Bigham, Englar, Jones and Houston, New York City, and Batchelor and Dyer, Miami, Florida, Proctors for Libellants.

Burlingham, Veeder, Clark and Hupper, New York City, New York, Alley and Burns, West Palm Beach, Florida, and Loftin, Calkins, Anderson and Scott, Miami, Florida, Proctors for Respondent, John S. Phipps.

Botts and Field, Miami, Florida, Proctors for Respondent George J. Pilkington.

BE IT REMEMBERED, That in the District Court of the United States in and for the Southern District of Florida in Admiralty, in the above styled cause therein pending, the following Decrees, Orders and Proceedings were had, viz:

On the 29th day of February, 1936, libelants filed their libel, with ten interrogatories annexed thereto, in a cause of negligence, civil and maritime, which is in words and figures as follows:

LIBEL AND INTERROGATORIES ANNEXED THERETO.

(Title Omitted.)

First: Your libelants named below are individuals and owners of the vessels and other property set opposite their names below and of the value specified, which were destroyed by fire at Fort Lauderdale, Florida, on or about June 24, 1935, as hereinafter described:

Charles Coryell, 212 Davidson Blvd., Bay City, Mich.	Yacht "Mahelaudor" $16,000.00
	Fishing boat 3,500.00
	Four canoes and small boats with four out-board motors 600.00
Julian J. Marks, Gross Pointe Park, Michigan..	Yacht "Circe" 2,500.00
J. Frank Guyton, Memphis, Tenn.	Yacht "Fra Mar II" 5,000.00
J. M. Frere, P. O. Box 577, Wilmington, Delaware	Yacht "Lady of the Wye" 14,667.00
Frank Vogt, 42 Coolidge Road, Maplewood, N. J.	Yacht "Bonetta" 3,000.00
William A. and Dorothy M. Cassidy, c/o Frolic Theatre, Midland, Michigan	Yacht "Miown" 3,000.00
Leon Sigman, Chicago, Illinois	Yacht "Lee Hann" 1,500.00
Albertis C. Taylor, 195 Oak Knoll Ave., N. E., Warren, Ohio	Yacht "V 20165" 2,300.00
Ralph H. Orthwein, Cass Lake, Minn.	Yacht "Amberjack" 750.00
N. L. Noteman, 10 E. 40th St., Room #4202, New York, N. Y.	Yacht "Valentine" 8,000.00
Charles A. Sargeant, 407-12 Schmidt Bldg., Cincinnati Ohio	Yacht "Sargeantic" 42,000.00

Charles A. Sargeant, 407-12 Schmidt Bldg., Cincinnati Ohio	Yacht "Sea Dog"	12,000.00
E. R. Pillars, 505 N. Union St., Fostoria, Ohio	Yacht "Lieutenant"	6,000.00
J. S. Stevens, 1137 Cleveland Ave., Park Hills, Covington, Ky.	Yacht "Oasis"	12,000.00
J. S. Stevens, 1137 Cleveland Ave., Park Hills, Covington, Ky.	Yacht "Desert"	2,500.00
C. Stuart Somerville, c/o Frederic S. Doremus, Guardian Life Insurance Co., 50 Union Sq., N. Y. C.	Yacht "Sea Drift"	3,500.00
W. H. H. Childs, 49 Beverly Road, Great Neck, L. I., New York	Yacht "Catchie"	10,000.00
Anna Kramer, 345 Hillcrest Ave., Trenton, N. J.	Yacht "My Pal Ida K"	1,180.00
Zackary Miller, 87 Gordon St., Perth Amboy, N. J.	Yacht "V 23487"	600.00
L. K. Cone, 525 N. E. 30th St., Miami, Florida	Yacht "Kaco Tene"	5,000.00
Wendel Andreas, 55 Palm Island, Miami Beach, Fla	Yacht "Acushla II"	7,500.00
E. R. Newland, 1401 South Main St., South Bend, Indiana	Yacht "Ernco"	1,200.00
H. S. Thomas, c/o Alice Nolan, Beach Road, Clifton Park Lagoon, Lakewood, Ohio	Yacht "Riposo"	3,500.00

John Lochrie, c/o Reitz Coal Co., Drawer B, Windber, Pa.	Yacht "Agnes"	5,000.00
Henry Bogaards, c/o American Hotel, 21 Arizona Avenue, Long Beach, N. Y.	Yacht "Autogo IV"	2,000.00
John Patton, 14200 Avenue O, Chicago, Illinois	Yacht "Patsy"	9,000.00
	Sea Skiff	1,500.00
Gleason Wood, 40 Camacon Road, Rosecliff, North Weymouth, Mass.	Yacht "Scimitar VI"	2,500.00
Sophia Hillenbrand and Fletcher Trust Company, executors of the Estate of George M. Hillenbrand, deceased, Indianapolis, Indiana	Yacht "George M"	5,000.00
R. Guastavino, 500 Fifth Avenue, New York, N. Y.	Yacht "Sancho"	2,200.00
C. T. Lassen, Cedar Lake, Indiana	Yacht "Lassen"	7,500.00
H. C. Saltonstall, 1105 S. E. 4th St., Fort Lauderdale, Florida	Yacht "Vagabondia II"	1,400.00
W. S. Leeds, 9 South Lake Trail, Palm Beach, Fla.	Yacht "Margo"	10,000.00
Rose T. Ludvigh, Executrix of the Estate of Clifford G. Ludvigh, deceased	Yacht "Rosecliff II"	10,000.00
William P. Guerard, 3507 St. Gaudens Road, Miami, Fla.	Yacht "Mikar"	5,000.00

Stewart Raynor, 3100 North Bay Road, Miami Beach, Fla.	Yacht "Vagabond"	10,000.00
George A. Dobyne, Ingelton-on-Miles, Easton, Md.	Yacht "Evelyn R"	10,000.00
J. Wesley Pape, Fort Lauderdale, Florida	Yacht "San Cristobal"	5,000.00

McCoy Brothers Indian River Navigation Company is a corporation duly organized and existing under the laws of the State of Florida and was the owner of the motor vessel "Blue Lagoon" of the value of $15,000.00 and of personal property stored on board of the value of $1,000.00, which were destroyed by fire at Fort Lauderdale, Florida, on or about June 24, 1935, as hereinafter described.

Your libelant, William Stevens, of 90 John Street, New York, N. Y., is assignee of the rights of Joseph M. Cudahy, as owner of the yacht "Mystic" of the value of $15,000.00, which was destroyed by fire at Fort Lauderdale, Florida, on or about June 24, 1935, as hereinafter described.

Your libelant, Theophilus DeMott, of 99 John Street, New York, N. Y., is assignee of the rights of Helen Freitus, as owner of a houseboat of the value of $3,500.00, which was destroyed by fire at Fort Lauderdale, Florida, on or about June 24, 1935, as hereinafter described.

Second: At all the times hereinafter mentioned, the respondent, George J. Pilkington, resided, and now resides, within this district, at Fort Lauderdale, Florida, and operated at Fort Lauderdale, Florida, a yacht basin known as the Pilkington Yacht Basin, containing a large shed for the purpose of storing yachts and other vessels afloat.

Third: At all the times hereinafter mentioned, the respondent John S. Phipps was the owner of the yacht "Iolanthe" and also operated or controlled the yacht "Seminole", which yacht was owned by, and registered in the name of the Seminole Boat Corporation, a corporation whose sole asset was the yacht "Seminole". The yacht "Seminole" was used solely for the pleasure and convenience of the respondent John S. Phipps and the members of his family. The said Seminole Boat Company had no

bank account or funds for the upkeep or payment of expenses of the said yacht or wages of the crew. At and prior to the time of the disaster hereinafter described, Captain William Baker, master, and Robert Schlappi, engineer, of the yacht "Seminole", Captain R. C. Abel, master of the yacht "Ioanthe", and John Thomas, J. F. Riley, Roy H. Hawkins, W. L. Weber, E. J. Anderson, and others, were the agents, servants and employees of the respondent John S. Phipps in connection with the storage, supervision, upkeep, repairs and control of the said yachts.

Fourth: Prior to June 24, 1935, the vessels named in paragraph First of this libel, together with the personal property on board thereof, were stored afloat in tidal navigable waters of the United States, to wit, the Pilkington Yacht Basin at Fort Lauderdale, Florida, by the respondent George J. Pilkington, pursuant to agreements made by the owners thereof with said respondent, and for valuable considerations, to him in hand paid, or agreed to be paid. By virtue of said agreements it was the duty of the said respondent Pilkington to store and care for the said vessels, to place them afloat under the shed of the aforesaid Pilkington Yacht Basin, to inspect them and other vessels so stored from time to time, to protect them and the property on board thereof from fire and other hazards, and to redeliver the same upon demand to the owners thereof in the same good order and condition as when received.

Fifth: On or about April 16, 1935, the said yacht "Seminole" arrived at the Pilkington Yacht Basin for storage. The said yacht was at the time in charge of Captain William Baker, as master, and Robert Schlappi, as engineer, both employees, agents and servants of the respondent, John S. Phipps. The said yacht "Seminole" was tendered by the said Captain Baker and accepted for storage and

placed in the shed of the Pilkington Yacht Basin, adjacent to the vessels of your libelants, by the respondent George J. Pilkington in a dangerous and unsafe condition, in that her tanks contained large quantities of gasoline, the gasoline pipes and valves of the yacht were improperly and defectively installed, the gasoline valves were not closed, and the electrical and lighting lines, switches and devices were improper, defective and improperly installed, and in other respects, all of which was apparent and readily ascertainable by inspection. The respondent George J. Pilkington made no inspection of the yacht "Seminole", or her gasoline tanks, or her engine room, or the interior of the yacht, and negligently placed the said yacht in the condition aforesaid in storage in the shed of the Pilkington Yacht Basin in proximity with the aforesaid vessels of your libelants, thereby creating serious danger of fire and conflagration, and placing the vessels and other property of your libelants in danger of destruction.

Sixth: On or about June 24, 1935, respondent John S. Phipps, owner of the yacht "Iolanthe", by virtue of his control of the yacht "Seminole", sent his employees, agents and servants, Captain R. C. Abel and John Thomas, to the Pilkington Yacht Basin with authority and instructions to board the yacht "Seminole", for the purpose of removing certain articles of personal property of the said respondent and examining certain decorative work in order to arrange for its duplication on the said respondent's yacht "Iolanthe", and for other purposes. The said R. C. Abel and John Thomas, with the consent of the respondent George J. Pilkington, boarded the yacht "Seminole", as authorized and directed by the respondent John S. Phipps. While on board said yacht "Seminole", the said R. C. Abel, in order to obtain light needed for the performance of their said mission, entered the engine room of the yacht and, although the presence of gasoline vapor

in the engine room was or should have been apparent, and although he was in fact warned thereof, negligently threw the electric light switch, which was an open knife switch. When said switch was thus thrown, it created a spark, which ignited an accumulation of gas vapor in the engine room and caused an explosion. The accumulation of gas vapor in the engine room was due to the improper and defective installation of the gasoline pipes and valves of the yacht for which said respondent John S. Phipps was responsible, and to the negligence of the respondent John S. Phipps, his agents and servants, in failing to close the gasoline valves on the yacht "Seminole", and in permitting large quantities of gasoline to remain in the tanks of the yacht which leaked through open valves and otherwise into the bilge of the yacht and created large quantities of gasoline vapor in the engine room. As a result of said explosion, Captain R. C. Abel was killed and said John Thomas was badly injured. The yacht "Seminole" and adjacent yachts and the shed of the storage basin were badly damaged by the explosion. Fire, which was caused by the explosion, broke out immediately. This fire, fed by the large quantities of gasoline present in the tanks of the yacht "Seminole", spread rapidly and burned fiercely. The fire spread so quickly through the storage shed that the shed and all the vessels under it were afire within a few minutes after the explosion. The vessels which were stored in the shed afloat, including those of libelants, were burned to the water's edge and together with the property on board thereof became total losses before effective steps could be taken to save them, thus rendering the redelivery thereof to the aforesaid owners by the respondent Pilkington in the same good order and condition as when received, impossible.

Seventh: The loss of the aforesaid vessels and other property and the consequent damages sustained by your libelants were not caused or contributed to by any fault on

the part of your libelants or persons for whom they were responsible, but were caused by fault and negligence on the part of the respondent George J. Pilkington and on the part of the respondent John S. Phipps in the following among other particulars, which will be pointed out at the trial of this action.

As to the Respondent George J. Pilkington.

1. In that said respondent failed in his duty to protect the said vessels and other property from danger of damage or destruction, and to return the same to the owners thereof in like good order and condition as when received.

2. In that said respondent failed to require that the tanks of all vessels accepted for storage should be drained of all gasoline, and, on the contrary, accepted for storage and placed in the storage shed with the vessels of your libelants the yacht "Seminole", whose tanks contained large quantities of gasoline, thereby placing the vessels and property of your libelants in serious danger of damage or destruction by fire.

3. In that the said respondent failed to inspect the yacht "Seminole" to determine whether the gasoline had been drained from her tanks before placing her in the shed of the Yacht Storage Basin.

4. In that the said respondent failed to inspect the yacht "Seminole" for fire hazards before placing her in storage with your libelants' vessels in the shed of the Yacht Storage Basin and nevertheless, although said yacht was in a dangerous and defective condition, placed her in the shed, together with the vessels of your libelants, although her tanks contained large quantities of gasoline, her gasoline pipes and valves were defective and improper and improperly installed, her gasoline valves were not

closed and her electrical and lighting lines, switches; and devices were improper, defective and improperly installed, all of which was apparent and readily ascertainable by inspection.

5. In that the said respondent failed to inspect the yacht "Seminole" from time to time after she had been placed in the storage shed and failed to discover the dangerous conditions existing.

6. In that the said respondent failed to remove the yacht "Seminole" from the shed of the Yacht Storage Basin before the disaster occurred.

7. In that the said respondent permitted the employees of the respondent, John S. Phipps, namely Captain R. C. Abel and John Thomas, to go upon and enter the yacht "Seminole" without proper supervision and without warning as to the dangerous conditions existing.

8. In that the said respondent did nothing to prevent the destruction of the vessels and property of your libelants by fire.

As To The Respondent, John S. Phipps.

1. In that the respondent, John S. Phipps, failed to maintain the yacht "Seminole" in proper safe and seaworthy condition.

2. In that he tendered the yacht "Seminole" for storage at the Pilkington Yacht Basin with other vessels without draining all gasoline from the tanks of the yacht.

3. In that he falsely represented to the operators of the Pilkington Yacht Basin that the tanks of the yacht

"Seminole" had been drained of all gasoline when she was tendered for storage at that yard.

4. In that he permitted the yacht "Seminole" to be stored in the shed of the Yacht Storage Basin with the vessels of your libelants, although it was known, or should have been known, to him or his employees that the tanks of the yacht "Seminole" contained large quantities of gasoline; that her gasoline pipes and valves were improper, defective and improperly installed; that her gasoline valves were not closed; that the electrical and lighting lines, switches and devices were improper, defective and improperly installed; and that the said yacht was in other respects in a dangerous and unsafe condition for storage with other vessels.

5. In that he failed to permit the operators of the Yacht Storage Basin to inspect the interior of the yacht "Seminole" and concealed the dangerous and defective conditions there existing.

6. In that he failed to disclose to the operators of the Yacht Storage Basin the dangerous and defective conditions existing on board the yacht "Seminole" and caused the yacht "Seminole" to be stored in the shed of the Yacht Storage Basin with the vessels, thereby placing the vessels and property of your libelants in danger of damage or destruction by fire and conflagration.

7. In that he sent his agents and servants, Captain R. C. Abel and John Thomas, aboard the yacht "Seminole" without disclosing to them or warning them of the dangers and defective conditions existing aboard that yacht and without proper supervision, instructions or warning.

8. In that his agents and servants, negligently, threw the open knife electric switch on the yacht "Seminole", in the presence of a quantity of gasoline fumes and vapor, thereby causing the explosion, fire and conflagration which destroyed the vessels and property of your libelants.

9. In that his agents and servants negligently caused an explosion on the yacht "Seminole", thereby causing the fire and conflagration which destroyed the yachts of your libelants.

10. In that he was negligent in other respects.

Eighth: By reason of the premises, your libelants have sustained damages by reason of the loss of the said vessels and other property and by reason of expenses in connection therewith, amounting to the sum of Three Hundred Thousand ($300,000.00) Dollars, as nearly as the same can now be estimated, no part of which has been paid, although payment has been duly demanded.

Ninth: All and singular the premises are true and within the Admiralty and Maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libelants pray that process in due form of law, according to the course and practice of this Honorable Court in causes of Admiralty and Maritime jurisdiction, issue against George J. Pilkington and John S. Phipps, the respondents herein, and that the said respondents be cited to appear and answer all and singular the matters aforesaid, and that this Honorable Court be pleased to decree to your libelants their damages, with interest and costs, and that your libelants may have such other and further relief as in law and justice they may be entitled to receive.

BATCHELOR & DYER,

Ingraham Building,
Miami, Flordia.

BIGHAM, ENGLAR, JONES & HOUSTON,
(Proctors for Libelants.)

99 John Street,
New York, N. Y.

State of Florida,
County of Dade, ss.

Benjamin F. McCoy, being duly sworn, deposes and says:

That he is President of McCoy Brothers Indian River Navigation Company, one of the libelants named in the foregoing libel; that he has read said libel and knows the contents thereof and that is it true to the best of his knowledge, information and belief; that the reason this verification is made by deponent and not by the said libelant is that the said libelant is a corporation.

BENJ. F. McCOY,
Pres.

Sworn to before me this 26th day of February, 1936.

MILDRED M. SMITH,
(Notary Seal) Notary Public, State of Florida at large.

My Commission expires: February 10, 1940.

Interrogatories Propounded To Be Answered Under Oath By The Respondent John S. Phipps.

1. Is it a fact that you

(a) Purchased the Yacht Seminole, then a coal burning steam vessel in the year 1923?

(b) Converted the Yacht Seminole into a motor yacht using gasoline for fuel in the year 1934?

(c) That from the time of purchase of said yacht you caused the same to be registered in your name as the owner thereof until February 16th, 1929?

(d) That shortly prior to February 16th, 1929 you caused the organization of a corporation of the State of Delaware named Seminole Boat Company for the purpose of holding record title of the Yacht Seminole; that on said date you caused the Yacht Seminole to be registered in the name of Seminole Boat Company as record owner and that such registration continued to and including June 24th, 1935?

(e) That between April 1st, 1935 and June 24th, 1935 inclusive you were a stockholder of Seminole Boat Company? State the number of shares of stock of that corporation outstanding and the number of shares standing in your name; the length of time you had held such shares and how they were acquired; the names of all the other shareholders and the number of shares standing in the name of each. If any shares were held by any corporation, state the extent of your interest in that corporation and in the shares of stock of Seminole Boat Company held by such corporation. If any individual held shares of the Seminole Boat Company for your account or if you had any interest in such shares, give particulars.

(f) That at and prior to June 24th, 1935 the Yacht Seminole was maintained solely for the pleasure and convenience of yourself and members of your family and was subject to your personal control.

(g) That at and prior to June 24, 1935 all expenses, including wages of Captain and crew, of the Yacht Seminole, were paid by you or for your account. State the full extent of your direct or indirect payment of such expenses and the method followed of paying and providing for such expenses.

(h) That the Yacht Seminole when in operation carried your personal yachting pennant.

(i): That the Yacht Seminole was registered with one or more yacht clubs, fishing clubs, or similar organizations as your vessel.

2. State the dimensions and capacity of each of the gasoline tanks of the Yacht Seminole; also the amount of gasoline in each of these tanks at the time the Yacht Seminole was left at the Pilkington Yacht Basin for storage on or about April 16, 1935.

3. State fully the pipe line layout and connections from gasoline tanks to carburetors on Yacht Seminole showing all valves and shutoffs; also filling lines and vents. State whether with such arrangements it was possible to draw off completely all gasoline and other liquids from the tanks. If not, state the quantity of liquid which would remain in each after the contents had been drawn down to the level of the fuel lines. State whether there has been any change made on the Yacht Seminole with respect to these matters since the original installation on conversion to gasoline yacht. If so, give particulars and dates of changes. Supply blueprint plan or diagram of the same.

4. State whether you had ever been in the engine room of the Seminole and how often; whether you had ever operated the gasoline engines of the Seminole; whether you were familiar with the layout of pipe lines and connections in the engine room.

5. Describe the electrical system of the Yacht Seminole giving details of batteries, make, type, capacity, voltage, et ceteria, layout of switches on switchboard in engine room, describing each and the circuit controlled thereby; state whether these switches had ever been operated by you and how often and the extent of your familiarity with the same.

6. Is it a fact

(a) That you either personally or through your agent or representative made arrangements with George J. Pilkington for storage of the Yacht Seminole at the Pilkington Yacht Basin at Fort Lauderdale, Florida. If through an agent or representative, state who that agent or representative was and the extent of his authority to represent you.

(b) That pursuant to such an arrangement so made or otherwise the Yacht Seminole was delivered to George J. Pilkington for storage with other yachts in the shed of the Pilkington Yacht Basin at Fort Lauderdale, Florida, on or about April 16, 1935.

(c) That the Yacht Seminole was so delivered by your direction.

(d) That the Yacht Seminole was so delivered by Captain William Baker and Engineer Robert Schlappi.

(e) That Captain William Baker and Engineer Robert Schlappi were employed by you or on your behalf in such or similar capacities on the Yacht Seminole. If not, by whom were they employed.

(f) That it was an established rule of the said George J. Pilkington that yachts should not be stored under the shed of the Yacht Basin unless all gasoline had been removed from their tanks.

7. Is it a fact

(a) That on June 24, 1935 you were the owner of the Yacht Iolanthe?

(b) That R. C. Abel was in your employ as Captain of that yacht, or otherwise. If otherwise, state in what capacity.

(c) That John Thomas had been employed by you, or by R. C. Abel, or J. F. Riley with authority on your behalf, to make certain ropework for the Yacht Iolanthe similar to work of this kind on the Yacht Seminole.

(d) That R. C. Abel was directed or authorized by you, or by J. F. Riley with authority on your behalf, to take the said John Thomas on board the Yacht Seminole to inspect the ropework on that vessel.

(e) That R. C. Abel was directed or authorized by you, or by J. F. Riley with authority on your behalf to go on board the Yacht Seminole for the purpose of removing certain fishing tackle or other personal property for your account and/or for other purposes. State the purposes.

(f) That J. F. Riley had authority from you to write and give to R. C. Abel and did so write and give to R. C. Abel, on or about June 24, 1935, a letter of authority reading substantially as follows:

"Capt. Pilkington,
Please let Capt. Abel take some equipment off the Seminole.

J. F. RILEY."

8. Is it a fact that J. F. Riley and/or Palm Beach Company had authority from you and on your behalf

(a) To oversee generally all arrangements with respect to the Yacht Seminole?

(b) To negotiate and make contracts for repairs and storage of the Yacht Seminole?

(c) To employ officers or crew.

(d) To approve and pay bills for expenses.

(e) To authorize or restrict the entry of persons on board said vessel.

State the extent and scope of the duties, functions and authority of each.

9. Did Seminole Boat Company on and prior to June 24, 1935.

(a) Have any funds or bank account: If so, state where bank account was kept, extent of funds, and sources of income.

(b) Keep any books of account. If so, where and by whom were they kept.

(c) Have a stock transfer agent. If so, who and where was this agent.

10. Were shares of stock of Seminole Boat Company bought, sold, or traded in at any time prior to June 24, 1935. If so, where and by whom.

(S.) BATCHELOR and DYER,
(Batchelor and Dyer)
(S.) BIGHAM, ENGLAR, JONES & HOUSTON,
(Bigham, Englar, Jones & Houston)
Proctors for Libelants.

On the 27th day of April, 1936, respondent, George J. Pilkington, filed his answer, which is in words and figures as follows:

ANSWER OF GEORGE J. PILKINGTON.

21 (Title Omitted.)

Comes now the respondent, George J. Pilkington, and for his answer to the libel filed against him in said cause, says:

I.

That the various yachts and boats mentioned in paragraph numbered first, were stored with respondent as in this answer set forth; that so far as this respondent knows, the ownership as stated in said paragraph is correct. As to the values of the vessels as therein stated this respondent is not in a position to affirm or deny and merely requires proof of the proper ownership, and value.

II.

This respondent admits the allegations numbered second in said libel.

III.

As to the allegations in the paragraph numbered third, this respondent does not know the true facts but is informed and believes the facts to be as set forth in said paragraph numbered third.

IV.

This respondent admits that the vessels named in paragraph first of the libel, together with the personal prop-

erty on board thereof, were stored afloat in the tidal, navigable waters of the United States within the limits of Pilkington's Yacht Basin at Fort Lauderdale, Florida, by this respondent, pursuant to agreements made with the various owners of said vessels.

That the true facts and circumstances with respect to the storage of said vessels were as follows:

Prior to June 24, 1935, respondent had accepted for storage afloat in the covered storage basin operated by him at Fort Lauderdale, Florida, from the various owners or operators thereof approximately 62 yachts and other vessels, most of them being constructed of wood and all of them having more or less wood used in their construction or fittings, and most of them being fitted with engines customarily requiring the use of gasoline for motive power. Said 62 vessels included those mentioned in the First Paragraph of said libel.

This respondent had no written contract of storage with the owners of any of said vessels, all of them being accepted under a verbal contract for dead storage in this respondent's warehouse sheds, afloat in the fresh tidal waters of New River, Florida.

That this respondent under his contract of storage as a warehouseman, did not contract nor agree to prepare said vessels for laying up or storage, but required the owners of said vessels to prepare the same for storage at their own pleasure, risk and expense.

That under his said verbal contract of storage, this respondent did not obligate himself to perform any service whatsoever with respect to said vessels while same were in storage, but the contract was limited in each instance to assigning to each vessel accepted for storage, a suitable

place in said warehouse or shed where the same could remain in dead storage afloat in said fresh tidal waters until the owners of the respective vessel should terminate said storage and remove said vessel.

That it was customary for the owner of the various vessels, before storing the same, to tie the same up to a bulkhead or landing platform adjacent to said storage shed and there prepare said vessel for storage, after which preparation being completed by the said owners or their agents or servants, the said vessel would be towed by manual power of the owners of said vessels, or their servants, or by the manual power of this respondent or his servants, to a suitable location in said storage shed, where they would be tied up and allowed to remain in said location, or some suitable substitute location in said shed, in dead storage until removed as aforesaid.

This respondent, under his contract of storage, was not required to inspect said vessels after the same had been prepared for storage by the owners as aforesaid. That it was the practice of this respondent, however, after each vessel had been prepared for storage by the owners, as aforesaid, either before or at the time when said vessel was placed under the shed in its storage berth, to go aboard said vessel and walk through all parts of said vessel which were open for inspection and examine said vessel to see whether or not, as to all open patent and usual matters said vessel had been, or on said inspection seemed to have been, properly prepared for storage. That this inspection or examination was sometimes made by this respondent in person, and some times by one of his experienced employees. That this respondent did not contract to perform any services with respect to said vessels, while the same were in storage, said contract and agreement with respect to said storage being confined to an agreement to keep said vessels in dead storage as afore-

said. However, notwithstanding the facts aforesaid, this respondent did offer, as a gratuitous service for which this respondent received no additional compensation, when desired by the owners of the various boats, to periodically go aboard any vessel, when requested to do so by the respective owners, and air out such vessels, turn over by hand the engines, and pump out their bilges where necessary. But said services, when performed, were as aforesaid, wholly gratuitous, merely to secure the good will and favorable opinion of the owners. But in such cases, this respondent did not receive any compensation in addition to that paid by an owner for whom such services were not performed.

That this respondent had a fixed and invariable rule, applicable to every boat which he stored, that the gasoline or other motors of said vessels must not be operated while said vessels were under the sheds.

That this respondent had no fixed or invariable rule with respect as to how said vessels should be prepared for storage except that this respondent did require that all gasoline tanks and outlets therefrom, through which gasoline might flow or be drained, should be tightly and securely closed. However, this respondent did recommend to all boat owners that all gasoline be removed from vessels before the same were put in storage.

That if vessels in being prepared for storage have the gasoline tanks and outlets properly prepared as required by respondent, it is not, in fact, unsafe or dangerous for gasoline to remain in the storage tanks of said vessels.

V.

Respondent admits that on or about April 16, 1935, the said yacht "Seminole" arrived at the Pilkington Yacht

Basin for storage. That the said yacht "Seminole" was at the time in charge of Captain William Baker as Master and Robert Schlappi as engineer, both employees, agents and servants of the respondent, John S. Phipps (as this respondent is informed and believes); that the said yacht "Seminole" was tendered by said Captain Baker and accepted for storage by this respondent, and this respondent alleges that the aforesaid vessel was placed in the shed of Pilkington's Boat Yard and accepted by him for storage. That said vessel was prepared for storage by said Captain Baker and said Robert Schlappi and the agents, servants, and employees of the respondent John S. Phipps; that this respondent had nothing to do whatsoever with the preparation of said vessel for storage; that said vessel "Seminole" had been stored at the yacht basin of this respondent on a number of previous occasions and respondent had advised the master of said vessel, William Baker on previous occasions that it was necessary for said yacht to be prepared for storage by draining the gasoline from storage tanks from said yacht or by securely closing all openings through which gasoline might have been drained, and said Baker and Schlappi were well aware of the proper and safe method for preparing said yacht for storage, and informed this respondent that said yacht had been properly prepared for storage; that said Baker and Schlappi upon leaving said vessel locked the engine room thereof, took the keys away and instructed this respondent that he was not to go into said engine room for any purpose whatsoever, and was not to turn over said engine or perform any service on said vessel; that after said vessel had been prepared for storage by said Baker and Schlappi, and this respondent had been informed by said Baker and Schlappi that the said vessel was in a safe and proper condition, said vessel was moved by manual power from the place where it had been tied up outside said shed while being prepared for said storage, to storage berth within said shed.

But this respondent alleges that without negligence on the part of this respondent and without his knowledge, actual or implied, a large quantity of gasoline was left in the storage tanks of said vessel and an outlet valve through which said gasoline could drain was not securely closed but was left open so that gasoline could and actually did drain from said storage tanks into the bilge of said vessel; and this respondent denies all negligence in connection with the storage of said vessel in said yacht basin.

VI.

This respondent admits the allegations of paragraph six of said libel but denies that he was in any way responsible for the negligence therein set forth or for the fire thereby caused.

VII.

As to the seventh paragraph of said libel this respondent denies "that said respondent failed in his duty to protect the said vessels and other property from danger of damage or destruction, and to return the same to the owners thereof in good order and condition as when received."

VIII.

This respondent denies "that said respondent failed to require that the tanks of all vessels accepted for storage should be drained of all gasoline, and, on the contrary, accepted for storage and placed in the storage shed with the vessels of your libelants the yacht 'Seminole', whose tanks contained large quantities of gasoline thereby placing the vessels and property of your libelants in serious danger of damage or destruction by fire."

IX.

This respondent denies "that the said respondent failed to inspect the yacht 'Seminole' to determine whether the gasoline had been drained from her tanks before placing her in the shed of the Yacht Storage Basin."

X.

This respondent denies "that the said respondent failed to inspect the yacht 'Seminole' for fire hazards before placing her in storage with your libelants' vessels in the shed of the Yacht Storage Basin and nevertheless, although said yacht was in a dangerous and defective condition, placed her in the shed, together with the vessels of your libelants, although her tanks contained large quantities of gasoline, her gasoline pipes and valves were defective and improper and improperly installed, her gasoline valves were not closed and her electrical and lighting lines, switches, and devices were improper, defective and improperly installed, all of which was apparent and readily ascertainable by inspection."

XI.

This respondent denies "that the said respondent failed to inspect the yacht 'Seminole' from time to time after she had been placed in the storage shed and failed to discover the dangerous conditions existing."

XII.

This respondent denies "that the said respondent failed to remove the yacht 'Seminole' from the shed of the Yacht Basin before the disaster occurred."

XIII.

This respondent denies "that the said respondent permitted the employees of the respondent, John S. Phipps, namely Captain R. C. Abel and John Thomas, to go upon and enter the yacht 'Seminole' without proper supervision and without warning as to the dangerous conditions existing."

XIV.

This respondent denies "that the said respondent did nothing to prevent the destructions of the vessels and property of your libelants by fire."

XV.

That except as herein set forth, the matters and things with reference to the storage, management, control and destruction of said vessels were as alleged in this respondent's petition for indemnity, which is filed in this cause concurrently with the filing of this answer.

BOTTS & FIELD,
W. G. MILLER,
Proctors for Respondent.

State of Florida,
County of Broward.

On this day personally appeared before me, the undersigned authority, George J. Pilkington, to me well known, who having been by me first duly sworn deposes and says:

That he is one of the respondents named in the libel in said cause; that he has read the foregoing and attached answer, knows the contents thereof, and that the same is true in substance and in fact except as to those matters

alleged on information and belief, and as to those, he verily believes them to be true.

GEORGE J. PILKINGTON.

Sworn To And Subscribed before me at Fort Lauderdale, Broward County, Florida, this 24 day of March, A. D. 1936.

FLOSSIE BYRD,
Notary Public, State of Florida.

(Seal)

My commission expires: April 25, 1939.

On the 27th day of April, 1936, respondent, George J. Pilkington, filed his Petition under the 56th Rule in Admiralty against John S. Phipps, which is in words and figures as follows:

PETITION UNDER 56th RULE IN ADMIRALTY OF GEORGE J. PILKINGTON AGAINST JOHN S. PHIPPS.

30. (Title Omitted.)

To: The Honorable The Judge of the United States District Court In and for the Southern District of Florida, Miami Division:

The Petition under the 56th Rule in Admiralty, of George J. Pilkington,

against

John S. Phipps, on Information and belief, respectfully alleges as follows:

I.

Your Petitioner, George J. Pilkington, is a resident of Fort Lauderdale, Florida, and at all the times hereinafter

mentioned operated a storage basin with a large shed for the purpose of storing yachts and other vessels afloat and under cover at Fort Lauderdale, Florida.

II.

The Respondent, John S. Phipps, is a winter resident of Palm Beach, Florida, and is now within this District.

III.

On or about the 29th day of February, A. D. 1936, a Libel was filed in this Court by Charles Coryell, Julian J. Marks, and others, against your Petitioner, George J. Pilkington, and against John S. Phipps, Respondents claiming damages estimated in the total sum of $242,442.00, for loss through destruction by fire of approximately 46 yachts and other vessels as the result of an explosion and fire which occurred at your Petitioner's Yacht Basin on or about June 24, 1935. In said libel it was alleged:

1—"Prior to June 24, 1935, the vessels named (in paragraph First of this Libel) together with the personal property on board thereof, were stored afloat in tidal navigable waters of the United States, to wit: The Pilkington Yacht Basin at Fort Lauderdale, Florida, by the respondent, George J. Pilkington, pursuant to agreements made by the owners thereof with said respondent, and for valuable considerations, to him in hand paid, or agreed to be paid. By virtue of said agreements, it was the duty of the said respondent Pilkington to store and care for the said vessels, to place them afloat under the shed of the aforesaid Pilkington Yacht Basin, to inspect them and other vessels so stored from time to time, to protect them and the property on board thereof from fire and other hazards, and to redeliver the same upon demand to the

owners thereof in the same good order and condition as when received."

2—"On or about April 16, 1935, the said yacht 'Seminole' arrived at the Pilkington Yacht Basin for storage. The said yacht was at the time in charge of Captain William Baker, as master, and Robert Schlappi, as engineer, both employees, agents and servants of the respondent, John S. Phipps. The said yacht 'Seminole' was tendered by the said Captain Baker and accepted for storage and placed in the shed of the Pilkington Yacht Basin, adjacent to the vessels of your libelants, by the respondent, George J. Pilkington, in a dangerous and unsafe condition, in that her tanks contained large quantities of gasoline, the gasoline pipes and valves of the yacht were improperly and defectively installed, the gasoline valves were not closed, and the electrical and lighting lines, switches and devices were improper, defective and improperly installed, and in other respects, all of which was apparent and readily ascertainable by inspection. The respondent, George J. Pilkington made no inspection of the Yacht 'Seminole', or her gasoline tanks, or her engine room, or the interior of the yacht, and negligently placed the said yacht in the condition aforesaid in storage in the shed of the Pilkington Yacht Basin in proximity with the aforesaid vessels of your libelants thereby creating serious danger of fire and conflagration, and placing the vessels and other property of your libelants in danger of destruction."

3—"On or about June 24, 1935, respondent John S. Phipps, owner of the yacht 'Iolanthe', by virtue of his control of the yacht 'Seminole' sent his employees, agents and servants, Captain R. C. Abel and John Thomas, to the Pilkington Yacht Basin with authority and instructions to board the yacht 'Seminole', for the purpose of removing certain articles of personal property of the said respondent and examining certain decorative work in

order to arrange for its duplication on the said respondent's yacht 'Iolanthe', and for other purposes. The said R. C. Abel and John Thomas with the consent of the respondent George J. Pilkington, boarded the yacht 'Seminole', as authorized and directed by the respondent John S. Phipps. While on board said yacht 'Seminole' the said R. S. Abel, in order to obtain light needed for the performance of their said mission, entered the engine room of the yacht and, although the presence of gasoline vapor in the engine room was or should have been apparent, and although he was in fact warned thereof, negligently threw the electric light switch, which was an open knife switch. When said switch was thus thrown, it created a spark, which ignited an accumulation of gas vapor in the engine room and caused an explosion. The accumulation of gas and vapor in the engine room was due to the improper and defective installation of the gasoline pipes and valves of the yacht for which said respondent, John S. Phipps was responsible, and to the negligence of the respondent John S. Phipps, his agents and servants, in failing to close the gasoline valves on the yacht 'Seminole', and in permitting large quantities of gasoline to remain in the tanks of the yacht which leaked through open valves and otherwise into the bilge of the yacht and created large quantities of gasoline vapor in the engine room. As a result of said explosion, Captain R. C. Abel was killed and said John Thomas was badly injured. The yacht 'Seminole' and adjacent yachts and the shed of the storage basin were badly damaged by the explosion. Fire, which was caused by the explosion broke out immediately. This first, fed by the large quantities of gasoline present in the tanks of the yacht 'Seminole', spread rapidly and burned fiercely. The first spread so quickly through the storage shed that the shed and all the vessels under it were afire within a few minutes after the explosion. The vessels which were stored in the shed afloat, including those of libelants, were burned to the

water's edge and together with the property on board thereof became total losses before effective steps could be taken to save them; thus rendering the redelivery thereof to the aforesaid owners by the respondent Pilkington in the same good order and condition as when received, impossible."

In said Libel it is further alleged that the loss of the Libelants' vessels and other property and the consequent damage were caused by fault and negligence on the part of your Petitioner in the following, among other respects:

1—"In that said respondent failed in his duty to protect the said vessels and other property from danger of damage or destruction, and to return the same to the owners thereof in like good order and condition as when received."

2—"In that said respondent failed to require that the tanks of all vessels accepted for storage should be drained of all gasoline, and, on the contrary, accepted for storage and placed in the storage shed with the vessels of your libelants the yacht 'Seminole', whose tanks contained large quantities of gasoline, thereby placing the vessels and property of your libelants in serious danger of damage or destruction by fire."

3—"In that the said respondent failed to inspect the yacht 'Seminole' to determine whether the gasoline had been drained from her tanks before placing her in the shed of the Yacht Storage Basin."

4—"In that the said respondent failed to inspect the yacht 'Seminole' for fire hazards before placing her in the shed of the Yacht Storage Basin and nevertheless, although said yacht was in a dangerous and defective condition, placed her in the shed, together with the vessels

of your libelants, although her tanks contained large quantities of gasoline, her gasoline pipes and valves were defective and improper and improperly installed, her gasoline valves were not closed and her electrical and lighting lines, switches and devices were improper, defective, and improperly installed, all of which was apparent and readily ascertainable by inspection.

5—"In that the said respondent failed to inspect the yacht 'Seminole' from time to time after she had been placed in the storage shed and failed to discover the dangerous condition existing."

6—"In that the said respondent failed to remove the yacht 'Seminole' from the shed of the Yacht Storage Basin before the disaster occurred."

7—"In that the said respondent permitted the employees of the respondent, John S. Phipps, namely Captain R. C. Abel and John Thomas, to go upon and enter the yacht 'Seminole', without proper supervision and without warning as to the dangerous conditions existing."

8—"In that the said respondent did nothing to prevent the destructions of the vessels and property of your libelants by fire."

IV.

The true facts and circumstances of the matters referred to in said Libel are as follows:

Prior to June 24, 1935, Petitioner had accepted for storage afloat in the covered storage basin operated by him at Fort Lauderdale, Florida, from the various owners or operators thereof approximately 62 yachts and other vessels, most of them being constructed of wood and all of

them having more or less wood used in their construction or fittings, and most of them being fitted with engines customarily requiring the use of gasoline for motive power.

Petitioner had no written contract of storage with the owners of any of said vessels, all of them being accepted under a verbal contract for dead storage in petitioner's warehouse sheds, afloat in the fresh tidal waters of New River, Florida.

That Petitioner under his contract of storage as a warehouseman, did not contract nor agree to prepare said vessels for laying up or storage, but Petitioner required the owners of said vessels to prepare the same for storage at their own pleasure, risk and expense.

That under his said verbal contract of storage, Petitioner did not obligate himself to perform any service whatsoever with respect to said vessels while same were in storage, but the contract was limited in each instance to assigning to each vessel accepted for storage, suitable place in said warehouse or shed where the same could remain in dead storage afloat in said fresh tidal waters until the owners of the respective vessel should terminate said storage and remove said vessel.

That it was customary for the owner of the various vessels, before storing the same, to tie the same up to a bulkhead or landing platform adjacent to said storage shed and there prepare said vessel for storage, after which preparation being completed by the said owners or their agents or servants, the said vessel would be towed by manual power of the owners of said vessels, or their servants, or by the manual power of Petitioner or his servants, to a suitable location in said storage shed, where they would be tied up and allowed to remain in said loca-

tion, or some suitable substitute location in said shed, in dead storage until removed as aforesaid.

Petitioner, under his contract of storage, was not required to inspect said vessels after the same had been prepared for storage by the owners as aforesaid. That it was the practice of Petitioner, however, after each vessel had been prepared for storage by the owners, as aforesaid, either before or at the time when said vessel was placed under the shed in its storage berth, to go aboard said vessel and walk through all parts of said vessel which were open for inspection and examine said vessel to see whether or not, as to all open, patent and usual matters said vessel had been, or on said inspection seemed to have been properly prepared for storage. That this inspection or examination was sometimes made by Petitioner in person, and some times by one of his experienced employees. That Petitioner did not contract to perform any services with respect to said vessels, while the same were in storage, said contract and agreement, with respect to said storage being confined to an agreement to keep said vessels in dead storage as aforesaid. However, notwithstanding the facts aforesaid, Petitioner did offer, as a gratuitous service for which Petitioner received no additional compensation, when desired by the owners of the various boats, to periodically go aboard any vessel, when requested to do so by the respective owners, and air out such vessels, turn over by hand the engines, and pump out their bilges where necessary. But said services, when performed, were as aforesaid, wholly gratuitous, merely to secure the good will and favorable opinion of the owners. But in such cases, Petitioner did not receive any compensation in addition to that paid by an owner for whom such services were not performed.

That Petitioner had a fixed and invariable rule, applicable to every boat which he stored, that the gasoline

or other motors of said vessels must not be operated while said vessels were under the sheds.

That Petitioner had no fixed or invariable rule with respect as to how said vessels should be prepared for storage except that Petitioner did require that all gasoline tanks and outlets therefrom, through which gasoline might flow or be drained, should be tightly and securely closed. However, Petitioner did recommend to all boat owners that all gasoline be removed from vessels before the same were put in storage.

That if vessels in being prepared for storage have the gasoline tanks and outlets properly prepared as required by Petitioner, it is not, in fact, unsafe or dangerous for gasoline to remain in the storage tanks of said vessels.

V.

For several years prior to the disaster herein referred to, the yacht "Seminole" had been at intervals during the year, stored at your Petitioner's storage basin, pursuant to agreements made with your Petitioner by the Respondent, John S. Phipps. In respect to such storage of the said Yacht "Seminole" your Petitioner was expressly instructed by the Respondent, John S. Phipps, or his authorized agent, not to go into the engine room of said yacht, or turn over said engines by hand, while the said yacht "Seminole" was in storage. By said agreement of storage, the respondent, John S. Phipps agreed and warranted to your Petitioner that the said Yacht "Seminole" was safe and in all respects fit for safe storage in Petitioner's Yacht Basin where said vessel "Seminole" would be stored with and in close proximity to the vessels of other owners which had been or should be entrusted to Petitioner for Storage and thereby (impliedly if not exressly) warranted that if gasoline was left in the tanks of said vessel, that all drains,

valves and outlets through which gasoline might be drawn or flow out of said tanks, were tightly and securely closed so that gasoline could not drain out into the bilge of said vessel, and that said drains and outlets would be kept tightly closed as aforesaid.

Pursuant to said agreement for storage, the said yacht "Seminole" was delivered at your Petitioner's Yacht basin for storage afloat under your Petitioner's shed on or about April 16, 1935, by the Respondent, Phipps, his agents and servants. That said respondent, Phipps, his agents and servants, prepared said vessel for storage while the same was moored alongside the bulkhead adjacent to your Petitioner's storage sheds but not under said sheds. That said Respondent, Phipps, his agents, servants and employees, upon tendering said vessel for storage as aforesaid, represented to your Petitioner that said Yacht Seminole was and had been in all respects, and particularly in respect to the condition existing in her engine room which Petitioner was instructed not to enter, in a safe and proper condition for storage, in the covered sheds of Petitioner's yacht basin where, as said Respondent Phipps, knew, said yacht "Seminole" would be stored in close proximity to other vessels owned by other customers of Petitioner, which vessels had been or would be entrusted to Petitioner for storage.

Replying upon the agreement, warranty and representation of the Respondent, Phipps, his agents and servants, as herein set forth, Petitioner received said yacht "Seminole" for storage in his covered yacht basin; that said yacht "Seminole" after being prepared for storage by the respondent, Phipps, his agents and servants was by manual power, moved by Petitioner, his agents and servants into a berth under said shed; that when said vessel was tendered for storage, the said vessel was locked up so that Petitioner could not go within said vessel to examine the

same which was his customary practice as aforesaid; that Petitioner demanded that the keys to said vessel be delivered to him and he was furnished with keys which gave him access to all portions of said vessel except the engine room of said vessel, and Petitioner did make his customary examination except as to the engine room which he could not enter; that during the previous years when said vessel "Seminole" had been stored in Petitioner's yacht basin as hereinbefore stated, Petitioner had never been delivered the keys to said engine room, and as aforesaid, had been expressly instructed not to enter said engine room; that by reason of the premises, Petitioner did not and could not discover the dangerous and defective condition within said engine room as herein stated.

Notwithstanding the premises and the duties and warranties of the respondent, Phipps, as herein set forth, the said yacht "Seminole" when tendered to Petitioner for storage and stored in said shed on or about the 16th day of April, A. D. 1935, was not in fact, safe or fit for storage in your Petitioner's yacht basin, but on the contrary, said Yacht "Seminole" was in a dangerous and unsafe condition, in that her tanks then contained large quantities of gasoline (which of itself did not necessarily render said vessel unsafe), the gasoline pipes and valves of the yacht were improper, defective and improperly installed, the gasoline valves were not closed, and the electrical and lighting lines, switches and devises were improper, defective and improperly installed, and in other respects, all in violation of the agreement, warranty and representations to Your Petitioner of the Respondent, John S. Phipps, his agents, servants and employees.

Upon arrival at Petitioner's yacht basin on or about April 16, 1935, the said yacht "Seminole" was in the charge of William Baker, as Master, and Robert Schlappi, as engineer. The aforesaid Baker and Schlappi were agents,

servants and employees of the Respondent, John S. Phipps. The said yacht was tendered by the said Captain Baker to the Petitioner for storage in the dangerous and unsafe condition hereinbefore described, and the said Baker and Schlappi negligently failed to properly close or cause to be closed the gasoline valves on or attached to the tanks and fuel lines of the said yacht and left them open in such a way as to permit gasoline to escape into the engine room and bilges of said vessel, thus causing the gasoline vapor to be present in her engine room and bilges.

On or about June 24, 1935, the respondent, John S. Phipps, sent his agents, servants and employees, Captain R. C. Abel and John Thomas to Petitioner's yacht basin with authority and instructions to board said yacht "Seminole" for the purpose of removing certain articles of personal property from said vessel, and for the purpose of examining certain useful or decorative work installed upon said vessel, in order to arrange for the installation of similar useful or decorative work on the yacht "Iolanthe", then owned by the respondent, John S. Phipps, and for other purposes. Upon the arirval of said Abel and Thomas at said yacht basin of Petitioner, for the purpose of carrying out their mission aforesaid, for said Phipps, the said Abel and Thomas, with the consent of the Petitioner, boarded said yacht "Seminole" as they had been authorized and directed to do by representatives of said Phipps and on his behalf. While on board said yacht "Seminole" the said R. C. Abel, in order to obtain light needed for the performance of his mission aboard said vessel "Seminole" or for other purposes, entered the engine room of said yacht where the light switches were located. At the time when said Abel entered the engine room of said yacht "Seminole", the presence of gasoline vapor in said engine room was, or by the exercise of reasonable care and caution, would have been apparent to said Abel. Said

Abel was, on or about the time when he entered said engine room, warned of the presence therein, of said gasoline vapor.

That at the time when said yacht "Seminole" was tendered and received for storage as aforesaid, and at the time when said Thomas and Abel went aboard said vessel as aforesaid, the switches installed on said vessel "Seminole" which were in the engine room and by which electric lights were turned on said vessel were of a kind commonly known and designated as "knife switches"; that knife switches of the kind which were installed in and upon said yacht "Seminole" as aforesaid, on being operated, that is, on being opened or closed, frequently emitted or caused an electric spark as he, the said R. C. Abel then and there well knew, or by the exercise of reasonable care and caution could have known. That about the time when said Abel entered said engine room as aforesaid, and while said engine room contained the fumes of gasoline as aforesaid, as he, the said Abel then and there knew, or by the exercise of reasonable care and caution could and would have known, he, the said Abel, entered the said engine room and negligently and carelessly operated and manipulated a certain electric light knife switch located in said engine room as aforesaid.

That when said Abel operated and manipulated said knife switch in said engine room as aforesaid which engine room, due to the negligence of the Respondent Phipps as herein stated, then contained gasoline fumes or vapor, the operation and manipulation of said knife switch created or caused to be emitted from said switch, an electric spark which spark ignited the gasoline fumes or vapor which, due to the negligence aforesaid was then present in said engine room, and thereby by reason of the negligence aforesaid, said gasoline vapor was caused to explode.

Petitioner alleges that the accumulation of gasoline vapor in said engine room as aforesaid, was due to the improper and defective condition of valves and gasoline pipes of the said yacht "Seminole" for which the said John S. Phipps was responsible, and to the negligence of the representatives of John S. Phipps, his agents, servants and employees, in failing to close the gasoline valves and outlets from the gasoline tanks of said yacht "Seminole" prior to placing said vessel in storage, and allowing the valves and outlets of said yacht "Seminole" to be so far open as to permit large quantities of gasoline which was left in the tanks of said vessel, to leak out and flow into the bilge of said yacht, thereby creating and causing large quantities of gasoline vapor to be present in said engine room when said Abel operated and manipulated said electric switch as aforesaid.

As a result of said explosion said R. C. Abel was killed and said John Thomas was badly injured. The yacht "Seminole" and certain other yachts adjacent thereto, and petitioner's storage shed were badly damaged by said explosion; a fire was caused by said explosing and immediately ignited said yacht "Seminole" and the gasoline and gasoline vapor; and this fire, fed by the large quantity of gasoline present in the bilge of the said yacht "Seminole" burned firecely and spread rapidly to said storage shed and various of the vessels stored therein. Said fire spread so quickly and burned so firecely that the entire storage shed and all the vessels stored within it were on fire within a few minutes after said yacht explosion. All the vessels which were then stored afloat in and adjacent to said shed, including certain vessels of the Libelants described in said libel, were badly damaged by fire, and in many, if not most instances, were burned to the water's edge, and together with large amounts of personal property then upon said vessels, were almost completely destroyed, and save for some very small salvage value, were,

by said fire, as aforesaid, rendered a total loss. That due to the rapidity with which said flames spread and the fierceness with which it burned, petitioner, though he attempted to do so, was unable to remove any vessel from said shed; but said vessels were, including said yacht "Seminole" all destroyed by fire and have become a total loss. That thus by the fault of the representatives of said Phipps and without negligence on the part of the Petitioner, said vessel, including all of the vessels of the libelants herein, were rendered a total loss, and the delivery thereof to the various owners thereof, by Petitioner, in good order, was rendered impossible.

VI.

The explosion and fire hereinbefore referred to which occurred on the yacht "Seminole" and the resulting fire and conflagration which destroyed the vessels of your Petitioner and of the Libelants herein, was not caused nor contributed to by any negligence or fault on the part of your Petitioner, but were, as aforesaid, caused by and resulted from the dangerous, unsafe, defective and improper condition in which the yacht "Seminole" was tendered by the respondent, John S. Phipps, his agents, servants and employees and received by your Petitioner for storage, said improper condition of said yacht "Seminole" then being in violation of the agreement, warranty and representations by the respondent, John S. Phipps, his agents, servants and employees, to your Petitioner hereinbefore alleged, and were further caused by fault and negligence on the part of the respondent, John S. Phipps in the following among other particulars which will be pointed out at the trial of this action:

1—In that the respondent, John S. Phipps failed to maintain the yacht "Seminole" in proper, safe and seaworthy condition.

2—In that he permitted the yacht "Seminole" to be stored in the shed of the Yacht Storage Basin with the vessels of your libelants, although it was known, or should have been known, to him or his employees that the tanks of the yacht "Seminole" contained large quantities of gasoline; that her gasoline pipes and valves were improper, defective and improperly installed; that her gasoline valves were not closed; that the electrical and lighting lines, switches and devices were improper, defective and impropery installed; and that the said yacht was in other respects in a dangerous and unsafe condition for storage with other vessels.

3—In that he failed to permit the operators of the Yacht Storage Basin to inspect the engine room of the yacht "Seminole" and concealed the dangerous and defective conditions there existing.

4—In that he failed to disclose to the operators of the Yacht Storage Basin the dangerous and defective conditions existing on board the yacht "Seminole" and caused the yacht "Seminole" to be stored in the shed of the Yacht Storage Basin with the vessels, thereby placing the vessels and property of the Libelants, your Petitioner's, property in danger of damage or destruction by fire and conflagration.

5—In that he sent his agents and servants, Captain R. C. Abel and John Thomas, aboard the yacht "Seminole" without disclosing to them or warning them of the dangerous and defective conditions existing aboard that yacht and without proper supervision, instructions or warning.

6—In that his agents and servants, negligently operated and manipulated the open knife electric switch on the yacht "Seminole" in the presence of a quantity of gasoline fumes and vapor, thereby causing the explosion, fire and

conflagration which destroyed the vessels and property of your libelants.

7—In that his agents and servants negligently caused an explosion on the yacht "Seminole" thereby causing the fire and conflagration which destroyed the yachts of your libelants.

8—In that he was negligent in other respects.

VII.

Your Petitioner alleges that by reason of the premises, the Respondent, John S. Phipps, is liable to your Petitioner for the damages set forth herein and in the Libel in this cause, and further, that if your Petitioner should be held by the Court to be liable to the Libelants herein for damages, the Respondent, John S. Phipps, is liable to your Petitioner for indemnity with respect to such liability and is liable directly and primarily to the Libelant herein.

VIII.

Your Petitioner files herewith his answer to the Libel and a proper Stipulation with sufficient surety to pay all costs, damages and expenses which may be awarded against your Petitioner by this Court, or in case of an Appeal to any Appellate Court,

Wherefore, Petitioner prays that Process in due form of law, according to the course and practice of this Honorable Court in causes of Admiralty and Maritime jurisdiction, may issue against the Respondent, John S. Phipps, and that the said Respondent may be cited to appear and answer all and singular the matters aforesaid; and further that this Court be pleased to decree that the Petitioner is not liable to Libelants herein; or, if liable, that the said

Respondent, Phipps, is liable to indemnify your Petitioner against any such liability and is liable directly and primarily to the Libelants herein; and that the Court will make such further orders or decrees as to law and justice may appertain.

BOTTS & FIELD,
W. G. MILLER,
Proctors for Petitioner.

State of Florida,
County of Broward, ss.

On this day personally appeared before me, the undersigned authority, George J. Pilkington, to me well known, who having been by me first duly sworn deposes and says that he is Petitioner in the above styled cause; that he has read the foregoing Petition, knows the contents thereof, and that the same is true in substance and in fact except as to those things which are alleged on information and belief, and as to those, he verily believes them to be true.

GEORGE J. PILKINGTON.

Sworn To And Subscribed before me at Fort Lauderdale, Broward County, Florida, this 24 day of March, A. D. 1936.

FLOSSIE BYRD,
(Seal) Notary Public, State of Florida.

My commission expires: April 25, 1939.

On the 4th day of May, 1936, respondent, John S. Phipps, filed an answer, with six interrogatories annexed thereto, and an answer to the interrogatories propounded by libelants, which are in words and figures as follows:

ANSWER OF RESPONDENT, JOHN S. PHIPPS WITH INTERROGATORIES ANNEXED THERETO:

ANSWER OF RESPONDENT, JOHN S. PHIPPS TO INTERROGATORIES PROPOUNDED BY LIBELANTS.

To the Honorable the Judge of the United States District Court for the Southern District of Florida, Miami Division.

The answer of John S. Phipps, respondent, to the libel and complaint of Charles Coryell and others in an alleged cause of negligence, civil and maritime, alleges upon information and belief as follows:

First: Respondent denies that he has knowledge or information sufficient to form a belief as to the allegations contained in the first article of the libel.

Second: Respondent admits the allegations contained in the second article of the libel.

Third: Respondent admits that in April, May and June, 1935, the yacht Iolanthe was owned by him, that the yacht Seminole was owned by, and registered in the name of, Seminole Boat Co., and that said company had no bank account. Respondent denies the other allegations contained in the third article of the libel.

Fourth: Respondent denies that he has knowledge or information sufficient to form a belief as to the allegations contained in the fourth article of the libel.

Fifth: Respondent denies that at the times alleged Captain William Baker, as master, and Robert Schlappi, as

engineer, were employees, agents or servants of John S. Phipps; that the yacht Seminole was in a dangerous or unsafe condition; that her tanks contained large quantities of gasoline; that her gasoline pipes and valves were improperly or defectively installed; that her gasoline valves were not closed; that the electrical or lighting lines, switches or devices were improper, defective or improperly installed; that any such condition as alleged was apparent or ascertainable; that the Seminole created any danger of fire or conflagration, or placed any vessels owned by libelants in danger. Further answering, respondent denies that he has knowledge or information sufficient to form a belief as to the other allegations contained in the fifth article of the libel.

Sixth: Respondent denies that on June 24, 1935, R. C. Abel or John Thomas were his employees, agents or servants; that he sent R. C. Abel or John Thomas to the Pilkington Yacht Basin; that he authorized or directed R. C. Abel or John Thomas to board the yacht Seminole; that any gasoline pipes or valves of the Seminole were improperly or defectively installed; that he is responsible for any improper or defective installation of any gasoline pipes and valves; that he or any servants or agents of his negligently failed to close any gasoline valves on the Seminole or permitted large quantities of gasoline to remain in the Seminole's tanks; that any gasoline leaked into the bilge of the Seminole; that any large quantity of gasoline vapor was present in her engine room; that he or his agents or servants were negligent; that any fire was fed by large quantities of gasoline present in the tanks of the Seminole. Further answering, respondent denies that he has knowledge or information sufficient to form a belief as to the other allegations contained in the sixth article of the libel, except that he admits that there was a fire.

Seventh: Respondent denies the allegations of fault and negligence as to him and any agents or servants of his, and denies that he has knowledge or information sufficient to form a belief as to the other allegations contained in the seventh article of the libel.

Eighth: Respondent denies the allegations contained in the eighth article of the libel.

Ninth: Respondent admits the admiralty and maritime jurisdiction of the United States and of this Honorable Court and denies the other allegation contained in the ninth article of the libel.

Tenth: Further answering, respondent alleges that he neither owned, operated nor controlled the yacht Seminole in April, May or June, 1935, and that he is ignorant of the circumstances of the fire alleged to have occurred in the Pilkington Yacht Basin on or about June 24, 1935, as well as the details of the arrangements made by the Seminole Boat Co., for the storage of the yacht Seminole at the Pilkington Yacht Basin.

All and singular the premises are true.

Wherefore, respondent John S. Phipps prays that the libel be dismissed as to him with costs.

R. C. ALLEY,
LOFTIN, STOKES & CALKINS,
BURLINGHAM, VEEDER,
CLARK & HUPPER,
Proctors for Respondent,
John S. Phipps.
JNO. P. STOKES,
Of Proctors for Respondent,
John S. Phipps.

Answers to Interrogatories:

1. (a) No.

(b) No.

(c) Respondent excepts to interrogatory 1 (c) on the ground that the ownership of the yacht Seminole on and prior to February 16, 1929, is irrelevant and immaterial.

(d) Respondent excepts to interrogatory 1 (d) on the ground that the information sought to be elicited is irrelevant and immaterial, except that he admits that the registered owner of the yacht Seminole on June 24, 1935, was Seminole Boat Co.

(e) Respondent excepts to interrogatory 1 (e) on the ground that the information sought to be elicited is irrelevant and immaterial.

(f) No.

(g) No. The expenses incurred on behalf of the yacht Seminole were paid by the Seminole Boat Co. and periodically the sum of such payments was made good by the shareholders of that Company in the proportion in which the shares held by each bore to the total number of shares outstanding.

(h) Respondent excepts to interrogatory 1 (h) on the ground that the information sought to be elicited is irrelevant and immaterial.

(i) Respondent excepts to interrogatory 1 (i) on the ground that the information sought to be elicited is irrelevant and immaterial.

2. Respondent does not know.

3. Respondent does not know, and has no blueprint of the pipe line layout and connections from gasoline tanks to carbureters on the Seminole, or the locations of valves, shut-offs, filling lines and vents. Respondent does not know whether it was possible to draw off completely all gasoline or other liquids from the tanks. Respondent does not know whether any changes in such arrangements were made subsequent to the Seminole's original conversion from steam to gasoline.

4. Respondent has made casual visits to the engine room of the Seminole, but does not know how often. Respondent has never operated the gasoline engines on the Seminole and was not familiar with the layout of pipe lines and connections in the engine room.

5. The electricity used on the Seminole was supplied by batteries, which in turn were charged periodically by a generator. Respondent does not know the make, type, capacity or voltage of the batteries or the layout of the switches on any switchboard. Respondent does not recall whether any such switches had ever been operated by him. Respondent was not familiar with the same.

6. (a) No.

(b) Respondent does not know.

(c) No.

(d) Respondent does not know.

(e) William Baker and Robert Schlappi were not employed by respondent or on respondent's behalf, but, upon information and belief, were at some times employed by Seminole Boat Co.

(f) Respondent does not know.

7. (a) Yes.

(b) R. C. Abel was not in respondent's employ in any capacity on June 24, 1935.

(c) No.

(d) No.

(e) Not by respondent; respondent does not know as to Riley.

(f) Riley had no such authority; respondent does not know the fact as to the letter.

8. Respondent was not the owner of the yacht Seminole. Any authority possessed by J. F. Reilly and the Palm Beach Company to act with reference to the Seminole flowed from the Seminole Boat Co., of which respondent was merely a stockholder.

9. Respondent excepts to interrogatory 9 on the ground that the information sought to be elicited is irrelevant and immaterial.

10. Respondent excepts to interrogatory 10 on the ground that the information sought to be elicited is irrelevant and immaterial.

R. C. ALLEY,
LOFTIN, STOKES & CALKINS,
BURLINGHAM, VEEDER,
CLARK & HUPPER,
Proctors for Respondent,
John S. Phipps.
JNO. P. STOKES,
Of Proctors for Respondent,
John S. Phipps.

State of Florida,
Southern District of Florida, ss.

John S. Phipps, being duly sworn, says that he is the respondent herein; that he has read the foregoing answer and answers to interrogatories and that the same are true to the best of his knowledge, information and belief.

JOHN S. PHIPPS.

Sworn to before me this 2nd day of May, 1936.

JACK M. GORHAM,
Notary Public, State of Florida.

(Seal)

My commission expires: July 27, 1936.

Interrogatories Propounded by Respondent John S. Phipps To The Libelants To Be Answered Under Oath:

1. State the over-all dimensions of each of the vessels referred to in the first article of the libel.

2. State the nature of the motive power which propeled each of the vessels mentioned in the first article of the libel.

3. With respect to those vessels referred to in the first article of the libel which were propelled by gasoline, state (a) the total capacity of their gasoline tanks, and (b) the amount of gasoline in the tanks of each of such vessels when they were delivered for storage at the Pilkington Yacht Basin.

4. State the date on which each of the vessels referred to in the first article of the libel was delivered for storage at the Pilkington Yacht Basin.

5. State what persons were aboard each of the vessels referred to in the first article of the libel on June 24, 1935, prior to the time of the alleged explosion on the Seminole, and (a) the purpose of each such persons on board each such vessel, and (b) whether or not the engine in any such vessel was operated on June 24, 1935, prior to the time of the alleged explosion on the Seminole.

6. Attach to your answers to these interrogatories a diagram or plan showing the location of each of the vessels referred to in the first article of the libel and the alleged location of the yacht Seminole within the Pilkington Yacht Basin shed or basin at the time of the alleged explosion on the Seminole.

R. C. ALLEY,
LOFTIN, STOKES & CALKINS,
BURLINGHAM, VEEDER,
CLARK & HUPPER,
Proctors for Respondent
John S. Phipps.
JNO. P. STOKES,
Of Proctors for Respondent
John S. Phipps.

On February 17th, 1937, an Order of Court was filed, which is in words and figures as follows:

ORDER GRANTING LEAVE TO AMEND PHIPPS' ANSWER, ETC.

Copy.

In the United States District Court for the Southern District of Florida,, Miami Division.

Charles Coryell, et al., Libelants,
vs. In Admiralty, No. 122.
George J. Pilkington and John S. Phipps, Respondents.

Order Granting Leave to Amend Phipps' Answer; Overruling Libelants' Exceptions to Interrogatories contained in Answer; and to Require George J. Pilkington to Make Discovery, Etc.

This cause, after due notice, came on for hearing before me this 17th day of February, 1937, on

(a) the application of John S. Phipps for leave to amend his answer by setting up the defense of limitation of liability, and the objections of the libelants filed thereto,

(b) the libelants' exceptions to the interrogatories attached to the answer of John S. Phipps, and

(c) the motion of John S. Phipps for an order requiring George J. Pilkington to make discovery of all things taken from the yacht "Seminole" on or after June 24, 1935, etc.

And the Court being duly advised in the premises, it is Considered and Ordered As follows:

1. That the respondent John S. Phipps be and he is hereby granted leave to amend his answer, heretofore filed herein, by striking out the last three lines thereof and inserting the following:

"Eleventh: Further answering, resondent alleges that if he is liable for any of the damages claimed against him herein, which he denies, the same were done, occasioned or incurred without his privity or knowledge and he is entitled to limit his liability, if any, to the value of his interest in the yacht Seminole, pursuant to Sections 4283 and 4284 of the Revised Statutes of the United States and the statutes supplementary thereto and amendatory thereof, and respondent claims the benefit of the same.

All and singular the premises are true.

Wherefore respondent prays that the libel be dismissed as to him with costs, but that if such relief be not granted, then that his liability in the premises, if any, be limited to the amount or value of his interest in the yacht Seminole, and for such other and further relief as may be just."

2. That the exceptions heretofore taken by the libelants to the interrogatories attached to the answer of the respondent John S. Phipps and propounded by said Phipps to the libelants, to be answered under oath, be and the same are hereby overruled; and the libelants are hereby required to answer said interrogatories, under oath, on or before the 15th day of March, 1937.

3. That George J. Pilkington, respondent, be and he is hereby ordered to make, within ten days from the date of

this order, full and complete discovery, under oath, of all and all manner of valves, switches, panels, pieces and parts thereof, and all manner of things of whatsoever nature that are now or have been in his possession or under his control, or in the possession or under the control of any agent, servant, employee or representative of him, that were taken or removed from the yacht "Seminole" on or after June 24, 1935; that said George J. Pilkington produce and deliver unto the clerk of this Court at Miami, Florida, within 10 days from the date of this order, all of such valves, switches, panels, pieces and parts thereof, and all manner of things of whatsoever nature that are now in his possession or under his control, or in the possession or under the control of any agent, servant, employee, or representative of him; and that the respondent John S. Phipps, or his proctors of record, be permitted to examine said effects at any time.

Done And Ordered at Miami, Dade County, Florida, in chambers, this 17th day of February, 1937.

JOHN W. HOLLAND,
United States District Judge.

On the 10th day of March, 1937, respondent, John S. Phipps, filed his Amended Answer, which is in words and figures as follows:

AMENDED ANSWER OF RESPONDENT, JOHN S. PHIPPS.

To the Honorable the Judge of the United States District Court for the Southern District of Florida, Miami Division.

First: Respondent denies that he has knowledge or information sufficient to form a belief as to the allegations contained in the first article of the libel.

Second: Respondent admits the allegations contained in the second article of the libel.

Third: Respondent admits that in April, May and June, 1935, the yacht Iolanthe was owned by him, that the yacht Seminole was owned by, and registered in the name of, Seminole Boat Co., and that said company had no bank account. Respondent denies the other allegations contained in the third article of the libel.

Fourth: Respondent denies that he has knowledge or information sufficient to form a belief as to the allegations contained in the fourth article of the libel.

Fifth: Respondent denies that at the times alleged Captain William Baker, as master, and Robert Schlappi, as engineer, were employees, agents or servants of John S. Phipps; that the yacht Seminole was in a dangerous or unsafe condition; that her tanks contained large quantities of gasoline; that her gasoline pipes and valves were improperly or defectively installed; that her gasoline valves were not closed; that the electrical or lighting lines, switches or devices were improper, defective or improperly installed; that any such condition as alleged was apparent or ascertainable; that the Seminole created any danger of fire or conflagration, or placed any vessels owned by libelants in danger. Further answering, respondent denies that he has knowledge or information sufficient to form a belief as to the other allegations contained in the fifth article of the libel.

Sixth: Respondent denies that on June 24, 1935, R. C. Abel or John Thomas were his employees, agents or servants; that he sent R. C. Abel or John Thomas to the Pilkington Yacht Basin; that he authorized or directed R. C. Abel or John Thomas to board the yacht Seminole; that any gasoline pipes or valves of the Seminole were

improperly or defectively installed; that he is responsible for any improper or defective installation of any gasoline pipes and valves; that he or any servants or agents of his negligently failed to close any gasoline valves on the Seminole or permitted large quantities of gasoline to remain in the Seminole's tanks; that any gasoline leaked into the bilge of the Seminole; that any large quantity of gasoline vapor was present in her engine room; that he or his agents or servants were negligent; that any fire was fed by large quantities or gasoline present in the tanks of the Seminole. Further answering, respondent denies that he has knowledge or information sufficient to form a belief as to the other allegations contained in the sixth article of the libel, except that he admits that there was a fire.

Seventh: Respondent denies the allegations of fault and negligence as to him and any agents or servants of his, and denies that he has knowledge or information sufficient to form a belief as to the other allegations contained in the seventh article of the libel.

Eighth: Respondent denies the allegations contained in the eighth article of the libel.

Ninth: Respondent admits the admiralty and maritime jurisdiction of the United States and of this Honorable Court and denies the other allegation contained in the ninth article of the libel.

Tenth: Further answering, respondent alleges that he neither owned, operated nor controlled the yacht Seminole in April, May or June, 1935, and that he is ignorant of the circumstances of the fire alleged to have occurred in the Pilkington Yacht Basin on or about June 24, 1935, as well as the details of the arrangements made by the Seminole

Boat Co., for the storage of the yacht Seminole at the Pilkington Yacht Basin.

Eleventh: Further answering, respondent alleges that if he is liable for any of the damages claimed against him herein, which he denies, the same were done, occasioned or incurred without his privity or knowledge and he is entitled to limit his liability, if any, to the value of his interest in the yacht Seminole, pursuant to Sections 4283 and 4284 of the Revised Statutes of the United States and the statutes supplementary thereto and amendatory thereof, and respondent claims the benefit of the same.

All and singular the premises are true.

Wherefore respondent prays that the libel be dismissed as to him with costs, but that if such relief be not granted, then that his liability in the premises, if any, be limited to the amount or value of his interest in the yacht Seminole, and for such other and further relief as may be just.

R. C. ALLEY,
LOFTIN, STOKES & CALKINS,
By JNO. P. STOKES.
BURLINGHAM, VEEDER,
CLARK & HUPPER,
Proctors for Respondent,
John S. Phipps.

State of Florida,
Southern District of Florida, ss.

John S. Phipps, being duly sworn, says that he is the respondent herein; that he has read the foregoing answer and that the same is true to the best of his knowledge, information and belief.

JOHN S. PHIPPS.

Sworn to before me this 8th day of March, 1937.

BELLE WHIDDEN,

(Notarial Seal) Notary Public, State of Florida at Large.

My Commission Expires June 26, 1939.

On October 21st, 1936, libelants filed their motion for an order overruling exceptions of respondent, John S. Phipps, to certain interrogatories propounded by libelants and annexed to their libel; for leave to libelants to propound additional interrogatories; to strike out as sham certain of respondent Phipps' answers, and for discovery, which is in words and figures as follows:

64 MOTION.

(Title Omitted.)

Sirs:

Take Notice that on the libel and interrogatories filed herein on or about February 29, 1936, and on the answer and answers to interrogatories filed herein by the respondent, John S. Phipps, on or about May 5, 1936, and upon the annexed affidavit of Leonard J. Matteson, verified October 14, 1936, and upon all papers filed and proceedings had herein, we shall move this Court at a Stated Term for the hearing of motions, to be held in the Court Rooms thereof, U. S. Post Office Building, Miami, Florida, on the 13th day of November, 1936, at 11:00 A. M., or as soon thereafter as counsel can be heard, for an order:

(1) overruling the alleged exceptions of the respondent, John S. Phipps, to the interrogatories attached to the

libel filed herein numbered 1 (c), 1 (d), 1 (e), 1 (h), 1 (i), 9 (a), 9 (b), 9 (c) and 10 and requiring the respondent, John S. Phipps, to give full and complete answers with respect thereto,

(2) permitting the libelants to amend interrogatories 1 (a), 1 (b), 1 (f), 6 (a), 6 (b), 6 (d), 6 (e), 7 (b), 7 (e), 7 (f) and 8 as prayed for,

(3) permitting the libelants to propound additional interrogatories 1 (j), 1 (k), 1 (l) and 11 as prayed for,

(4) striking out as sham respondent's answers to interrogatories 2, 3, 4, 5, 6 (c), 7 (c) and 7 (d), and requiring the respondent to answer anew and give full, true, unevasive and explicit answers to such interrogatories or amended interrogatories,

And Further for an order requiring the respondent John S. Phipps, his agents, or representatives, Seminole Boat Company and Palm Beach Company, to make discovery on oath of any documents which are, or have been, in his or their possession or power relating to the ownership or operation of the yacht "Seminole", employment and payment of wages of officers or crew thereof, or of work, labor or services in connection therewith, and of the distribution, apportionment and making good of the expenses incurred on behalf of the said yacht "Seminole" by the shareholders of that Company, including books of account, cash books, check books, ledgers, stock books, statements or account, debit notes and all other books and documents relating or pertaining thereto, and for such other and further relief as to the Court may seem just.

Dated, Miami, Florida, October 16, 1936.

(S.) BATCHELOR & DYER,
(Batchelor & Dyer)
(S.) BIGHAM, ENGLAR, JONES & HOUSTON,
(Bigham, Englar, Jones & Houston)
Proctors for Libelants.

To: R. C. Alley, Esq.,

Lofton, Stokes & Calkins, Esqs.,

Messrs. Burlingham, Veeder, Clark & Hupper,
Proctors for Respondent, John S. Phipps.

Received copy of the foregoing notice this 20th day of October, 1936.

JNO. P. STOKES,
Of Proctors for Phipps.
BOTTS & FIELD & W. GERRY MILLER,
Proctors for George J. & Clara Pilkington.

(Title Omitted.)

State of New York,
County of New York, ss.

Leonard J. Matteson, being duly sworn, deposes and says:

I am a member of the firm of Bigham, Englar, Jones & Houston, associated with Batchelor & Dyer, as proctors for the libelants in the above entitled case.

This action is brought by some thirty-eight libelants against the respondents to recover damages for the total loss of forty yachts and a number of smaller vessels which were destroyed by fire while stored in the shed of the Pilkington Yacht Basin at Fort Lauderdale, Florida, on June 24, 1935. The libel alleges that the fire resulted from an explosion on board the yacht "Seminole", which occurred when two employees, agents and servants of the respondent, John S. Phipps, went on board the yacht "Seminole" by his authority and direction and negligently threw an open electric light knife switch in the engine room in the presence of an accumulation of gasoline fumes.

It is further alleged that the yacht "Seminole" was operated and controlled by the respondent, John S. Phipps, although owned and registered in the name of the Seminole Boat Company, a corporation, whose sole asset was the yacht "Seminole"; that the "Seminole" was used solely for the pleasure and convenience of the respondent, John S. Phipps and members of his family, and that the Seminole Boat Company had no bank account or funds for the upkeep or payment of expenses of the said yacht or the wages of the crew.

It is further alleged that the said yacht "Seminole" was laid up at the Pilkington Boat Yard by agents, servants and employees of the respondent, John S. Phipps, in a dangerous and unsafe condition, in that her tanks contained large quantities of gasoline, her gasoline pipes and valves were improperly and defectively installed, her gasoline valves not closed, and her electrical and lighting lines, switches and devices improper, defective and improperly installed.

Further, that the storage of the said yacht "Seminole" in the shed of the Pilkington Yacht Basin, in proximity with the yachts of your libelants which were stored there,

created serious danger of fire and conflagration, and placed the vessels and property of the libelants in danger of destruction.

The libel further alleges that on June 24, 1935, John S. Phipps, as owner of the "Iolanthe", sent Captain R. C. Abel, master of that vessel, and John Thomas, his employees, agents and servants, to the Pilkington Yacht Basin, with authority and instructions to board the yacht "Seminole" for the purpose of removing certain articles of personal property of the respondent and examining certain decorative work on the "Seminole" in order to arrange for its duplication on the respondent's yacht "Iolanthe"; that while on board the vessel R. C. Abel, in order to obtain light, entered the engine room, and, although the presence of gasoline vapor in the engine room was, or should have been apparent, and he was in fact warned thereof, negligently threw an open knife electric light switch, thus creating a spark which ignited the gas vapor in the engine room and caused the explosion. The accumulation of gas vapor in the engine room was due to the improper, defective and dangerous condition of the yacht. Abel was killed and John Thomas, who accompanied him, was badly injured. The fire caused by the explosion spread rapidly through the storage shed and in a short time destroyed all the vessels stored therein, including those of your libelants.

Negligence is alleged on the part of the respondent, John S. Phipps, in failing to maintain the yacht "Seminole" in a proper, safe and seaworthy condition in tendering her for storage with other vessels in the Yacht Basin, without draining all gasoline from her tanks and falsely representing that the gasoline had been drained from her tanks, in permitting her to be stored in the defective condition alleged, and in a dangerous and unsafe condition for storage with other vessels, and failing to permit in-

spection of the yachts by the operators of the Storage Basin; failing to disclose the dangerous and defective conditions; in sending his agents and servants aboard without disclosing to them or warning them, of the dangerous and defective conditions existing, and in that his agents and servants negligently threw the open knife electric switch in the presence of gasoline fumes and vapor, thereby causing the explosion, fire and conflagration which destroyed libelants' vessels.

The respondent's answer generally denies the existence of defective conditions, and denies knowledge and information as to the circumstances of the fire and the alleged acts of negligence.

The answer further denies that the respondent, John S. Phipps, operated or controlled the yacht "Seminole", and that the persons who delivered the vessel to the Pilkington Yacht Basin for storage and Captain Abel whose negligence directly caused the explosion were the respondent's agents and servants.

Libelants attached to their libel, in accordance with the Admiralty practice, interrogatories required to be answered by the respondent, John S. Phipps, under oath. The respondent has incorporated alleged exceptions in his answers to many of these interrogatories, and the remaining answers made to the other interrogatories are obviously evasive and subject to a motion to strike out as sham. However, from these answers, certain facts appear.

In the answer to Interrogatory 1 (d) respondent admits that the registered owner of the yacht "Seminole" on June 24, 1935, was Seminole Boat Company. In the answer to Interrogatory 4 (e), the respondent asserts that William Baker and Robert Schlappi, the men who delivered the

yacht "Seminole" to the Pilkington Yacht Basin for storage, "were not employed by respondent or on respondent's behalf, but, upon information and belief, were at some times employed by Seminole Boat Company".

In answer to Interrogatory 8, respondent states:

"Respondent was not the owner of the yacht Seminole. Any authority possessed by J. P. Reilly and the Palm Beach Company to act with reference to the Seminole flowed from the Seminole Boat Company, *of which the respondent was merely a stockholder.*" (Italics ours.)

A most significant admission is contained in the answer to Interrogatory 1 (g). The interrogatory is:

"1. Is it a fact that you

. . . . . .

(g) That at and prior to June 24, 1935, all expenses, including wages of captain and crew, of the yacht Seminole, were paid by you or for your account? State fully extent of your direct or indirect payment of such expenses and the method followed on paying and providing for such expenses."

The answer follows:

"*No. The expenses incurred on behalf of the yacht Seminole were paid by the Seminole Boat Company and periodically the sum of such payments was made good by the shareholders of that company in the proportion in which the shares held by each bore to the number of shares outstanding.*" (Italics ours.)

In spite of respondent's admissions, contained in the interrogatories and answers just quoted, that the respondent is a stockholder of the Seminole Boat Company, and that the corporation is merely an instrumentality for dividing the expense of operating the yacht "Seminole" among the stockholders of the corporation, respondent's answer states that he excepts to interrogatory 1 (e), which would require the respondent to state the number of shares of stock of that corporation outstanding and the number of shares standing in his name, the length of time such shares had been held, and the manner of their acquisition, the names of the other shareholders and the number of shares standing in the name of each; also particulars with respect to the respondent's interest in any corporation holding shares of stock of the Seminole Boat Company and any shares held by any individual for the respondent's account or in which he had any interest, on the ground that the information sought to be elicited is irrelevant and immaterial and respondent's answer fails to supply the information demanded.

The libelants in this case contend that the Seminole Boat Company is a dummy corporation, organized by the respondent, John S. Phipps, for his convenience in the management and operation of the yacht "Seminole"; that the said respondent is the sole or principal stockholder in said corporation and that the said respondent is responsible for the acts of said corporation as for the acts of his duly qualified and authorized agent. If the said John S. Phipps is not the sole and principal stockholder of said corporation, and there are other bona fide shareholders, libelants will contend that they also are liable in the same manner as the respondent, John S. Phipps, and the libelants will probably wish to amend their libel to include such stockholders as respondents in this action.

Respondent's answer already admits facts tending to support this contention.

Interrogatory 1 (e) is intended to elicit further facts which are also relevant.

Similarly, the other interrogatories excepted to and not answered by the respondent, John S. Phipps, are intended to elicit facts supporting libelants' theory that the respondent, John S. Phipps, was in actual management and control of the yacht "Seminole", and that the Seminole Boat Company, which the respondent attempts to set up as a screen for his personal activities and, in order to protect himself from the personal liabilities flowing from his interest in, and management and control of, the yacht "Seminole", was in fact merely his agent in the operation thereof. In this connection interrogatories 1 (a), 1 (b) and 1 (c) are relevant and material. These interrogatories require disclosure of the fact that, from 1923 until 1929, the yacht "Seminole" was registered in the name of John S. Phipps as owner thereof and during this period was converted by him from a steam to a motor yacht using gasoline for fuel. (The faulty manner in which this conversion was carried out was the cause of many of the defects and dangerous conditions at the time the "Seminole" was stored on which libelants rely as a basis for liability.) These facts appear from the official Government records on file in the Office of the Collector of Customs at Miami, Florida.

Temporary Consolidated Enrollment and Yacht License No. M-11 of the steam yacht "Seminole", filed at Miami, Florida, April 18, 1923, shows that John S. Phipps was registered as of that date as the sole owner of said vessel upon surrender of previous license, "property changed".

Temporary Consolidated Enrollment and Yacht License No. M-8 of the gas yacht "Seminole" filed at Miami, Florida, November 5, 1924, shows that John S. Phipps was at that time the sole owner thereof and that one of the reasons for the surrender of license M-11 and the issuance of a new license was "rig changed to gas".

This certificate continued in effect until the filing on February 16, 1929 of Permanent Consolidated Enrollment and Yacht License No. M-15 of the gas yacht "Seminole", in which Seminole Boat Company is shown to be the sole owner of said vessel, "property changed". This registry, according to the records, remained unaltered until subsequent to June 24, 1935.

In view of these facts, the answers to interrogatories 1 (a) and 1 (b) are obviously evasive.

Interrogatory 1 (d) requires the respondent to disclose the fact that, shortly prior to February 16, 1929, he caused the organization of Seminole Boat Company, a corporation of the State of Delaware, for the purpose of holding record title of the yacht "Seminole" and caused the yacht "Seminole" to be registered in the name of Seminole Boat Company, and that such registration continued to, and including, June 24, 1935.

Interrogatory 1 (h) requires the respondent to disclose the fact that the yacht "Seminole", when in operation, carried his personal yachting pennant; and interrogatory 1 (i) requires disclosure of the fact that the yacht "Seminole" was registered with one or more yacht clubs, fishing clubs or similar organizations, as the vessel of the respondent, John S. Phipps.

We submit that all of these interrogatories are pertinent, relevant and material, and that the libelants are entitled to full and direct answers thereof by the respondent.

Similarly, Interrogatories 9 (a), (b) and (c), requiring disclosure of the state of the funds or the bank account of the Seminole Boat Company, in which the respondent was a stockholder, particulars as to the books of account and transfer agent, and Interrogatory 10, requiring information as to whether shares of stock of the Seminole Boat Company have been bought, sold, or traded in, and, if so, where and by whom, are relevant and material in support of the theory on which libelants' causes of action are based and should in fairness be answered by the respondent.

Many of the respondent's answers to interrogatories are obviously evasive and evidently based on the subterfuge that all knowledge with respect to the yacht "Seminole" and all responsibility with respect to matters relating to the management and operation of that vessel belonged to the Seminole Boat Company, thus avoiding any obligation on the part of the respondent to furnish facts which are or should be within his knowledge. In view of the fact that the respondent, John S. Phipps, was the registered owner of the yacht "Seminole", according to Government records, from 1923 to 1929, and that during this period the "Seminole" was converted about 1924 from a steam to a motor gasoline yacht, and further, in view of the fact that the Seminole Boat Company is obviously, according to respondent's answers already given, merely a convenience for holding title to the yacht "Seminole" and distributing the expenses of maintenance among the stockholders of whom the respondent John S. Phipps is evidently the chief, the respondent's answers to Interrogatories 2, 3, 4 and 5, denying knowledge with respect to the equipment and arrangements of the yacht "Seminole", are obviously evasive. The information, if not immediately in the mind of the respondent, can readily be obtained by him and is subject to his call and control. Under the circumstances, we submit that the answers to these inter-

rogatories should be stricken out as sham and full and complete answers required.

Similarly, respondent's answers to interrogatories 6 (a), 6 (b), 6 (c), 6 (d) and 6 (e) are evidently based on the assumption that the respondent had no responsibility in connection with the storage of the yacht "Seminole" and that the entire responsibility lay with the Seminole Boat Company. Deponent is informed and believes that the respondent personally on one or more occasions visited the Pilkington Yacht Basin and discussed with the respondent, George J. Pilkington, the terms and arrangements for storage of the yacht "Seminole". Yet the respondent in answers 6 (a) and 6 (b) denies knowledge of these arrangements, evidently on the theory that he was acting as agent for the Seminole Boat Company in such discussions.

Respondent's answer to Interrogatory 7 (b) is believed to be a purely technical and evasive denial. The official government records of the Collector of Customs at Miami, Florida, show that on July 11, 1934 R. C. Abel was registered as Master of the yacht "Iolanthe", owned by the respondent, John S. Phipps, and that such designation continued in effect on June 24, 1935 (Consolidated Certificate of Enrollment and Yacht License M-2 and indorsements). Yet the respondent denies that Abel was in his employ in any capacity on June 24, 1935.

Deponent is informed that John Thomas will testify that he was employed by Abel as master of respondent's yacht "Iolanthe" to make certain rope work for the yacht "Iolanthe" to be duplicated from similar work existing on the yacht "Seminole" and that in connection with such employment he accompanied Abel upon his visit to the "Seminole" for the purpose of examining the rope work on that vessel. This is undoubtedly the fact, as it is the only explanation of Thomas' accompanying Abel at that

time. Under these circumstances it is submitted that respondent's answers to Interrogatories 7 (c) and 6 (d), denying the employment of Thomas and the authorization for Thomas to board the "Seminole" are evasions and sham and should be stricken out.

In view of the evasions and refusals of the respondent to supply facts relevant to the issues herein, deponent submits that the libelants are further entitled to all of the relief available to them under Rule 32 of the Admiralty Rules of the United States Supreme Court and the general equity powers of the admiralty Court for discovery of all documents which are, or have been, in the possession or power of the respondent John S. Phipps, or his agents or representatives, relating to the matters and questions at issue. In this connection it is submitted that the Seminole Boat Company and Palm Beach Company are agents and representatives of the respondent John S. Phipps and subject to such order.

As already pointed out, the Seminole Boat Company is not an active corporation and has no bank account. It is, according to admission of the respondent a mere convenient agency for the respondent and perhaps others for sharing the expense of managing and operating the yacht "Seminole". Deponent is informed and believes that all bills of the yacht "Seminole", including those for storage in the Pilkington Yacht Basin, were actually paid by Palm Beach Company by its own checks. It is, therefore, apparent that Palm Beach Company, equally with the Seminole Boat Company, was an agency of the respondent in paying the expenses of operation of the yacht "Seminole" and that full disclosure of the records of the Palm Beach Company as well as of the Seminole Boat Company is necessary and proper for development of the true facts with respect to the respondent's operation and control of the yacht "Seminole".

Libelants, therefore, pray for the following relief:

1. That the alleged exceptions of the respondent John S. Phipps to interrogatories 1 (c), 1 (d), 1 (e), 1 (h), 1 (i), 9 (a), 9 (b), 9 (c) and 10 be overruled and that the respondent be directed to give full and complete answers thereto.

2. That the libelants, in order to meet the evasions of the respondent, have leave to amend interrogatories 1 (a), 1 (b), 1 (f), 6 (a), 6 (b), 6 (d), 6 (e), 7 (b), 7 (c), 7 (d), 7 (e), 7 (f) and 8 as follows:

"1. Is it a fact that

(a) you purchased the yacht 'Seminole', then a coal burning steam vessel, in or about the year 1923? Give the date;

(b) you converted the yacht 'Seminole' into a motor yacht using gasoline for fuel in or about the year 1924; give the date;

(f) at and prior to June 24, 1935, the yacht 'Seminole' was maintained chiefly for the pleasure and convenience of yourself and members of your family and guests."

"6. Is it a fact

(a) that you, either personally or through your agent or representative, on your own behalf, or on behalf of Seminole Boat Company, or otherwise, made arrangements with George J. Pilkington for storage of the yacht 'Seminole' at the Pilkington Yacht Basin at Fort Lauderdale, Florida; if through an agent or representative, state who that agent or representative was and the extent of his authority. Give particulars and the substance of such arrangements.

(b) that it was pursuant to such arrangements that the yacht 'Seminole' was delivered to George J. Pilkington for storage with other yachts in the shed of the Pilkington Yacht Basin at Fort Lauderdale, Florida, on or about April 16, 1935;

(d) that the yacht 'Seminole' was so delivered by Captain William Baker and engineer Robert Schlappi;

(e) that Captain William Baker and engineer Robert Schlappi were employed by you, or on your behalf, or by Seminole Boat Company, in such or similar capacities on the yacht 'Seminole' at the time of the delivery of that vessel to Pilkington Yacht Basin for storage on or about April 16, 1935.

"7. Is it a fact

(b) that R. C. Abel on or prior to June 24, 1935 was employed by you, or on your behalf, as master of the yacht 'Iolanthe', or otherwise. State the nature and terms of such employment during the year 1935 and the date of termination thereof, if any. Was R. C. Abel master of the yacht 'Iolanthe' on June 24, 1935;

(c) that John Thomas had been employed by you, or by R. C. Abel, or by J. F. Riley, with authority on your behalf, to make certain rope work for the yacht 'Iolanthe' similar to work of this kind on the yacht 'Seminole'. If the foregoing statement is not correct, state the true circumstances of the employment of John Thomas.

(d) that R. C. Abel was directed or authorized by you, or by J. F. Riley, with authority on your behalf, or at your request, to take the said John Thomas on board the yacht 'Seminole' to inspect the rope work on that vessel. If the foregoing statement is not correct, state the true

facts and circumstances with respect to John Thomas' visit on board the 'Seminole' on June 24, 1935;

(e) that R. C. Abel was directed or authorized by you or by J. F. Riley with authority on your behalf or on behalf of Seminole Boat Company to go on board the yacht 'Seminole' for the purpose of removing certain fishing tackle or other personal property or equipment for your account and/or for other purposes. State the purposes;

(f) that J. F. Riley had authority from you or from Seminole Boat Company to write and give to R. C. Abel and did so write and give to R. C. Abel on or about June 24, 1935 a letter of authority reading substantially as follows:

'Captain Pilkington:
Please let Captain Abel take some equipment off the 'Seminole'.

J. F. RILEY."

"8. Is it a fact that J. F. Riley and or Palm Beach Company had authority from you and/or for, or on behalf of, Seminole Boat Company

(a) to oversee generally all arrangements with respect to the yacht 'Seminole';

(b) to negotiate and make contracts for repairs and storage of the yacht 'Seminole';

(c) to employ officers or crew;

(d) to approve and pay bills for expenses;

(e) to authorize or restrict the entry of persons on board said vessel.

State the extent and scope of the duties, functions and authority of each and the source of such authority."

and that the respondent, John S. Phipps, be required to answer such amended interrogatories fully, fairly and completely under oath.

3. That the libelants have leave to propound additional interrogatories 1 (j), 1 (k), 1 (l) and 11 to be answered by the respondent John S. Phipps under oath as follows:

"1. . .

(j) Is it a fact that the yacht 'Seminole' was at all times available for use by you for your personal purposes without payment to Seminole Boat Company for the use thereof. If not, on what basis was the yacht 'Seminole' available for your use.

(k) State what method was used in dividing the time and use of the yacht 'Seminole' among the stockholders of the corporation.

(l) State which stockholder of Seminole Boat Company had last had the use of the yacht 'Seminole' prior to June 24, 1935 and the dates of such use. If such use was by or for guests of a stockholder of Seminole Boat Company, state the name of the stockholder and the names of the guests."

"11. State the following facts:

(a) date of transfer by you of title to the yacht 'Seminole' to Seminole Boat Company;

(b) consideration received by you from Seminole Boat Company for transfer of title of the yacht 'Seminole';

(c) if consideration consisted of shares of stock state the number of shares of stock of the said corporation and the proportion of the total shares of the said corporation outstanding represented by the issuance of these shares to yourself;

(d) distributions or dividends received by you from Seminole Boat Company since the incorporation of that company and the source of these dividends or distributions, if any;

(e) the amounts which you have paid to Seminole Boat Company as shareholder of that company to make good the expenses of the yacht 'Seminole', the dates of such payments and the proportion of the total of such expenses borne by you.".

4. That the answers of the respondent John S. Phipps to interrogatories "2", "3", "4", "5", "6 (c)", "7 (c)" and "7 (d)" be stricken out as sham and that said respondent be required to answer said interrogatories anew, fully, fairly and completely, under oath.

5. That the libelants be granted an order requiring the respondent John S. Phipps, his agents or representatives, and Seminole Boat Company and Palm Beach Company, to make discovery on oath of any documents which are, or have been, in his or their possession or power relating to the ownership or operation of the yacht "Seminole", employment and payment of wages of officers or crew thereof, or of work, labor or services in connection therewith, and of the distribution, apportionment and making good of the expenses incurred on behalf of the said yacht "Seminole" by the shareholders of that Company,

including books of account, cash books, check books, ledgers, stock books, statements of account, debit notes and all other books and documents relating or pertaining thereto.

6. That the libelants be granted such other and further relief as to the Court may seem just.

LEONARD J. MATTESON.

Sworn to before me this 14th day of October, 1936.

FRANCIS L. GOGNAN,

(Seal) Notary Public, Kings Co.

Clk's No. 424, Reg. No. 7073.

Cert. filed in New York Co.

Clk's No. 107, Reg. No. 7-G-56.

Certificate filed in Westchester Co.

Commission expires March 30, 1937.

On February 18th, 1937, an Order of Court was filed, which is in words and figures as follows:

84 ORDER ON INTERROGATORIES.

At a Stated Term of the United States District Court for the Southern District of Florida, Miami Division, held in

the Court Rooms thereof in the U. S. Court and Post Office Building, Miami, Florida, on the day of February, 1937.

Present:

Honorable John W. Holland, United States District Judge.

(Title Omitted.)

The libelants herein having moved this Court on the libel and interrogatories filed herein on or about February 29, 1936, and on the answer and answers to interrogatories filed herein by respondent John S. Phipps on or about May 5, 1936, and upon the affidavit of Leonard J. Matteson verified October 14, 1936, and upon all papers filed and proceedings had herein for an order overruling exceptions filed by the respondent John S. Phipps to certain interrogatories attached to the libel, permitting libelants to amend certain of the interrogatories attached to the libel and to propound additional interrogatories, and striking out certain of the respondent's answers as sham and requiring new answers to certain interrogatories, and further requiring the respondents John S. Phipps, Seminole Boat Company and Palm Beach Company to make discovery under oath of certain documents, and the said motion having duly come on to be heard and been argued before the Court on the 13th day of November, 1936, and the Court having heard Leonard J. Matteson, Esquire, of counsel for the libelants, in support thereof, and John P. Stokes, Esquire, of counsel for the respondent John S. Phipps, in opposition thereto, and due deliberation having been had, and the Court having indicated in writing its decision with respect to the relief prayed for, it is

Now, on motion of Messrs. Batchelor & Dyer and Messrs. Bigham, Englar, Jones & Houston, proctors for the libelants,

Ordered, as follows:

That interrogatories 1 (a), (b) and (f) attached to the libel be amended to read as follows:

"1. Is it a fact that

(a) you purchased the yacht 'Seminole' then a coal burning steam vessel, in or about the year 1923? Give the date;

(b) you converted the yacht 'Seminole' into a motor yacht using gasoline for fuel in or about the year 1924; give the date;

(f) at and prior to June 24, 1935, the yacht 'Seminole' was maintained chiefly for the pleasure and convenience of yourself and members of your family and guests."

and that the respondent John S. Phipps do answer the said amended interrogatories as required by the rule.

That the exception of the respondent John S. Phipps to the first interrogatory 1 (d) be sustained with respect to the first part thereof, and overruled with respect to the second part thereof reading as follows:

"That on said date (February 16, 1929) you caused the yacht 'Seminole' to be registered in the name of Seminole Boat Company as record owner and that such registration continued to and including June 24, 1935."

and that respondent John S. Phipps be required to answer the part of the same so sustained as required by the rule.

That the exception of the respondent John S. Phipps to interrogatory 1 (e) be overruled as to the first and last sentences thereof and sustained as to the remaining parts of the said interrogatory, and that the respondent John S. Phipps do answer the first and last sentences thereof reading as follows:

"(e) That between April 1, 1935 and June 24, 1935 inclusive you were a stockholder of Seminole Boat Company. * * * * If any individual held shares of the Seminole Boat Company for your account, or if you had any interest in such shares, give particulars",

as required by the rule.

That the exceptions of the respondent John S. Phipps to interrogatories 1 (h) and (i) reading as follows:

"(h) That the yacht 'Seminole' when in operation carried your personal yachting pennant.

(i) That the yacht 'Seminole' was registered with one or more yacht clubs, fishing clubs or similar organizations as your vessel"

be overruled and that the respondent John S. Phipps do answer the same as required by the rule.

That the respondent John S. Phipps be, and hereby is, directed to answer fully interrogatory #3, with the exception of the last sentence thereof reading as follows:

"supply blueprint, plan or diagram of the same".

That interrogatories 6 (a), (b) and (d) be, and hereby are, amended to read as follows:

"6. Is it a fact

(a) that you either personally or through your agent or representative, on your own behalf, or on behalf of Seminole Boat Company, or otherwise, made arrangements with George J. Pilkington for storage of the Yacht 'Seminole' at the Pilkington Yacht Basin at Fort Lauderdale, Florida; if through an agent or representative, state who that agent or representative was and the extent of his authority. Give particulars and the substance of such arrangements.

(b) that it was pursuant to such arrangements that the yacht 'Seminole' was delivered to George J. Pilkington for storage with other yachts in the shed of the Pilkington Yacht Basin at Fort Lauderdale, Florida, on or about April 16, 1935;

(d) that the yacht 'Seminole' was so delivered by Captain William Baker and engineer Robert Schlappi"

and that the respondent John S. Phipps do answer the interrogatories as so amended as required by the rule.

That the libelants' application for leave to amend interrogatory 6 (e) be, and the same hereby is, denied and that the respondent do answer said interrogatory as originally propounded.

That interrogatories 7 (b), (c) and (d) be, and the same hereby are, amended to read as follows:

"7. Is it a fact

(b) that R. C. Abel on or prior to June 24, 1935 was employed by you, or on your behalf, as master of the yacht 'Iolanthe', or otherwise. State the nature and terms of such employment during the year 1935 and the date of termination thereof, if any. Was R. C. Abel master of the yacht 'Iolanthe' on June 24, 1935.

(c) that John Thomas had been employed by you, or by R. C. Abel, or by J. F. Riley, with authority on your behalf, to make certain rope work for the yacht 'Iolanthe' similar to work of this kind on the yacht 'Seminole'. If the foregoing statement is not correct, state the true circumstances of the employment of John Thomas.

(d) that R. C. Abel was directed or authorized by you, or by J. F. Riley, with authority on your behalf, or at your request, to take the said John Thomas on board the yacht 'Seminole' to inspect the rope work on that vessel. If the foregoing statement is not correct, state the true facts and circumstances with respect to John Thomas' visit on board the 'Seminole' on June 24, 1935."

and that the respondent John S. Phipps do answer the said interrogatories as amended as required by the rule.

That Libelants' application for leave to amend interrogatories 7 (e) and (f) be, and the same hereby is, denied and that the respondent John S. Phipps do answer the said interrogatories as originally propounded.

That libelants' application for leave to amend interrogatories 8 (a), (b), (c), (d) and (e) be, and the same is hereby, denied and that the respondent John S. Phipps do answer the said interrogatories as originally propounded.

That the exceptions of the respondent John S. Phipps to interrogatories 9 (a), (b), (c) and 10 be, and the same

hereby are, sustained and that the respondent John S. Phipps need not answer the said interrogatories.

That the motion of the libelants to strike out the answers of the respondent John S. Phipps as to interrogatories 2, 3, 4, 5, 6 (c), 7 (c) and 7 (d) is denied.

That the respondent's motion for leave to propound additional interrogatory 1 (j) as follows:

"1. (j) Is it a fact that the yacht 'Seminole' was at all times available for use by you for your personal purposes without payment to Seminole Boat Company for the use thereof. If not, on what basis was the yacht 'Seminole' available for your use."

be, and the same hereby is, granted and that the respondent John S. Phipps do answer the said additional interrogatory as required by the rule.

That the motion of the libelants for leave to propound additional interrogatories 1 (k) and 1 (l) be, and the same hereby is, denied.

That the motion of the libelants for leave to address additional interrogatories as follows:

"11. State the following facts:

(a) date of transfer by you of title to the yacht 'Seminole' to Seminole Boat Company;

(b) consideration received by you from Seminole Boat Company for transfer of title of the yacht 'Seminole';

(c) if consideration consisted of shares of stock state the number of shares of stock of the said corporation and

the proportion of the total shares of the said corporation outstanding represented by the issuance of these shares to yourself;

(d) distributions or dividends received by you from Seminole Boat Company since the incorporation of that company and the source of these dividends or distributions, if any;

(e) the amounts which you have paid to Seminole Boat Company as shareholder of that company to make good the expenses of the yacht 'Seminole', the dates of such payments and the proportion of the total of such expenses borne by you."

be, and the same hereby is, granted and that the respondent John S. Phipps do answer the aforesaid interrogatories as required by the rule.

That the motion of the libelants for an order requiring the respondent John S. Phipps, Seminole Boat Company and Palm Beach Company to make discovery on oath of certain documents be, and the same hereby is, denied in accordance with the Court's opinion filed in the papers of the cause on the 3rd of February, 1937, and it is further

Ordered that the respondent John E. Phipps do file and serve his answers under oath to interrogatories as above directed within thirty days from the date of service of this order with notice of the entry thereof upon proctors for the respondent, John S. Phipps, Messrs. Loftin, Stokes & Calkins.

This February 18th, 1937, at Miami, Florida.

JOHN W. HOLLAND,
United States District Judge.

On March 27th, 1937, respondent, John S. Phipps, filed his answers to the amended and additional interrogatories propounded by libelants, which is in words and figures as follows:

RESPONDENT JOHN S. PHIPPS' ANSWERS TO AMENDED AND ADDITIONAL INTERROGATORIES PROPOUNDED BY LIBELANTS.

90 (Title Omitted.)

Answers to Interrogatories.

1. (a) No. Respondent Phipps purchased a one-half interest in the Yacht Seminole, then a coal burning vessel on February 24, 1915.

(b) While the Yacht Seminole was jointly owned by Henry C. Phipps and John S. Phipps it was converted from steam power to gasoline motor power in the latter part of 1921 and the early part of 1922.

(d) No, the Seminole Boat Company purchased Yacht Seminole from Henry C. Phipps and John S. Phipps in November, 1928. Thereafter, Seminole Boat Company caused said yacht to be registered in its name and said registration continued to and including June 24, 1935.

(e) Between April 1, 1935, and June 24, 1935, John S. Phipps was a stockholder of Seminole Boat Company, owning one-half of the outstanding shares thereof. He had no interest in any other shares.

(f) No.

(h) Since the purchase of the yacht by Seminole Boat Company, the Yacht Seminole has not carried respondent's personal yachting pennant.

(i) The Seminole was registered at only one club; until 1921 it was registered in the name of Henry C. Phipps; from 1922 to 1932 it was registered in the name of John S. Phipps; since 1932 it has not been registered at any club.

(j) The Yacht Seminole was available for respondent's personal purposes at times mutually convenient to the stockholders except when the yacht was, or was about to be, on charter. Respondent paid no hire for the use of the Seminole but paid all operating expenses when the Seminole was being used solely for his personal purposes.

3. Respondent does not know the pipeline layout and connections from gasoline tanks to carburetors on the Seminole, or the locations of valves, shutoffs, filling lines and vents. Respondent does not know whether it was possible to draw off completely all gasoline or other liquids from the tanks. Respondent does not know whether any changes in such arrangements were made subsequent to the Seminole's original conversion from steam to gasoline.

6. (a) Respondent made no arrangements with respondent Pilkington, either personally or through any agent of his, for the storage of the Seminole at the Pilkington Yacht Basin. Upon the termination of a cruise at Miami in April, 1935, respondent believes that the yacht proceed to Pilkington's Yacht Basin to be stored pursuant to arrangements made between Seminole Boat Company and said Pilkington.

(b) Respondent believes that the Yacht Seminole was delivered for storage at the Pilkington Yacht Basin on or about April 16, 1935, pursuant to the aforesaid arrangement between Seminole Boat Company and respondent Pilkington, which was not made by respondent.

(d) Respondent was not on board the Seminole when she was delivered at the Pilkington Yacht Basin in April, 1935, but is informed and believes that she was navigated from Miami to the Pilkington Yacht Basin by Captain William Baker, the engines being in charge of Engineer Rollie Schlappi, and was there placed by them in the custody of respondent Pilkington.

(e) Baker and Schlappi were not employed by respondent or on his behalf. Upon information and belief they were employed by Seminole Boat Company.

7. (b) From time to time, prior to June 24, 1935, R. C. Abel was in respondent's employ as master of the Yacht Iolanthe and otherwise. On June 24, 1935, Yacht Iolanthe was not in service and R. C. Abel was not employed as her master. R. C. Abel was in respondent's employ at a monthly wage working generally in connection with the respondent's fishing boats except upon occasions when his services were employed by another who paid his wages for such period. His services were employed by the Seminole Boat Company on June 24, 1935.

(c) No. John Thomas had contracted to make a rope net similar to one on the Seminole.

(d) No. Upon information and belief, it was upon his own initiative that R. C. Abel took John Thomas with him to the Seminole on June 24, 1935.

(e) Not by respondent. Respondent does not know as to Riley.

(f) Riley had no such authority from respondent; respondent does not know the facts as to the letter.

8. (a) No.

(b) No.

(c) No.

(d) No.

(e) No.

11. (a) Henry C. and John S. Phipps transferred title to the Yacht Seminole to Seminole Boat Company in November, 1928.

(b) The purchase price of the Seminole was paid in stock.

(c) Originally 40 shares of stock were issued. 20 to respondent and 20 to Henry C. Phipps. On June 24, 1935, respondent owned one-half of the issued shares.

(d) There have been none.

(e) Prior to June 24, 1935, respondent paid the following amounts on the dates mentioned, the percentages set forth being respondents proportion of the total:

Date	Amount	Percent
Oct. 31, 1929	$ 249.27	48.5%
Oct. 31, 1929	1110.07	50%
Dec. 31, 1929	3496.69	87.7%
Apr. 30, 1930	1877.93	50%
July 31, 1930	1701.19	50%
Dec. 31, 1930	1618.53	50%
June 30, 1931	3098.14	50%

Date	Amount	Percent
June 30, 1931	374.70	50%
June 30, 1932	896.49	50%
Dec. 31, 1932	$1158.32	50%
June 30, 1933	478.78	50%
Dec. 30, 1933	372.30	50%
Dec. 31, 1934	1022.38	50%
Feb. 20, 1935	369.68	50%
June 22, 1935	1224.91	50%

R. C. ALLEY,
LOFTIN, STOKES & CALKINS,
BURLINGHAM, VEEDER,
CLARK & HUPPER,
Proctors for Respondent,
Phipps.
By JNO. P. STOKES.

State of Florida,
Southern District of Florida, ss.

John S. Phipps, being duly sworn, says that he is one of the respondents herein; that he has read the foregoing answers to interrogatories and that the same are true to the best of his knowledge, information and belief.

JOHN S. PHIPPS.
RCA.

Sworn to before me this 26th day of March, 1937.

BELLE WHIDDEN,
(N. P. Seal) Notary Public, State of Florida at Large.

My Commission Expires June 26, 1939.

On March 15th, 1937, the libelants filed their Answers to Interrogatories propounded by respondent, John S. Phipps, and attached to his answer, which is in words and figures as follows :

THE ANSWERS OF THE LIBELANTS TO INTERROGATORIES PROPOUNDED BY THE RESPONDENT JOHN S. PHIPPS ATTACHED TO RESPONDENT'S ANSWER.

(Title Omitted.)

Answers to Interrogatories 1, 2 and 4.

Name of Vessel	Interrogatory 1—Overall Dimensions (Approximate)	Interrogatory 2—Motive Power	Interrogatory 4—Date of Delivery at Pilkington's Yacht Basin
Yacht "Mahelaudor"	60′	Gasoline	May 23, 1935
Fishing Boat	30′	Gasoline	May 23, 1935
Yacht "Circe"	30′	Gasoline	Apr. 18, 1935
Yacht "Fra Mar II"	38′	Gasoline	June 8, 1935
Yacht "Lady of the Wye"	36′	Gasoline	Feb. 28, 1935
Yacht "Bonetta"	35′	Gasoline	Apr. 19, 1935
Yacht "Miown"	38′	Gasoline	May 14, 1935
Yacht "Lee Hann"	28′	Gasoline	Mar. 24, 1935
Yacht "V 20165"	38′	Gasoline	Apr. 21, 1935
Yacht "Amberjack"	30′	Gasoline	Apr. 7, 1935
Yacht "Valentine"	35′	Gasoline	May 4, 1935
Yacht "Sergeantic"	54′6″	Gasoline	Jan. 31, 1934
Yacht "Sea Dog"	32′	Gasoline	Jan. 31, 1934

Name of Vessel	Interrogatory 1—Overall Dimensions (Approximate)	Interrogatory 2—Motive Power	Interrogatory 4—Date of Delivery at Pilkington's Yacht Basin
Yacht "Lieutenant"	38′	Gasoline	May 31, 1935
Yacht "Oasis"	54′	Gasoline	May 3, 1935
Yacht "Desert"	28′	Gasoline	June 14, 1935
Yacht "Sea Drift"	29′	Gasoline	Apr. 16, 1935
Yacht "Catchie"	38′	Gasoline	May 24, 1935
Yacht "My Pal Ida K"	24′	Gasoline	May 7, 1935
Yacht "V 23487"	21′	Gasoline	Mar. 31, 1935
Yacht "Kaco Tene"	56′	Gasoline	Apr. 29, 1935
Yacht "Acushla II"	65′	Gasoline	May 19, 1935
Yacht "Ernco"	21′	Gasoline	Mar. 31, 1935
Yacht "Riposo"	52′	Gasoline	Feb. 21, 1935
Yacht "Agnes"	28′	Gasoline	May 10, 1934
Yacht "Autogo IV"	21′	Gasoline	Mar. 31, 1935
Yacht "Patsy"	42′	Gasoline	Apr. 1, 1935
Sea Skiff	26′	Gasoline	Apr. 1, 1935
Yacht "Scimitar VI"	30′	Gasoline	Apr. 30, 1935
Yacht "George M"	35′	Gasoline	May 7, 1935
Yacht "Sancho"	26′	Gasoline	May 15, 1935
Yacht "Lassen"	43′	Gasoline	Mar. 29, 1935
Yacht "Vagabondia II"	28′	Gasoline	June 16, 1935

Yacht "Margo"	42′	Gasoline	Apr. 14, 1935
Yacht "Rosecliff II"	65′	Gasoline	May 10, 1935
Yacht "Mikar"	32′	Gasoline	May 19, 1935
Yacht "Vagabond"	45′	Gasoline	Apr. 23, 1935
Yacht "Evelyn R"	50′	Gasoline	June 5, 1935
Yacht "San Cristobal"	50′	Gasoline	May 23, 1935
Yacht "Blue Lagoon"	50′	Gasoline	June 23, 1935
Yacht "Mystic"	55′	Gasoline	Apr. 5, 1935
Houseboat	45′	None	Mar. 16, 1935
Yacht "Tropic"	88′	Gasoline	Jan. 31, 1935
Yacht "Blue Runner"	32′	Gasoline	May 9, 1935
Yacht "Adieu"	43′	Gasoline	June 5, 1935
Yacht "Nancy B"	40′	Gasoline	June 5, 1935

Answer to Interrogatory 3 (a)—capacity gasoline tanks: Libelants have no knowledge or information as to the capacity or approximate capacity of the gasoline tanks, and respectfully submit that such capacity is not germane to their cause of action.

Answer to Interrogatory 3 (b)—amount of gasoline in tanks of each vessel when delivered for storage at the Pilkington Yacht Basin: On information and belief, the gasoline had been removed from all the boats of libelants except the Yacht "Mystic", and that yacht had two tanks, one of which was wholly full of gasoline, and the other partially full. All of the gasoline was removed from the tank partially full, but none removed from the tank wholly full.

Answer to Interrogatory 5:

(a) Libelants do not know and have no means of knowledge.

(b) To the best of libelants' knowledge, the engines were not operated in any of libelants' vessels on June 24, 1935, prior to the time of the explosion on the "Seminole", as it was the strict rule of the Pilkington Yacht Basin that the engines of vessels should not be operated while in the storage shed and all gasoline had been removed from libelants' vessels, except the yacht "Mystic" as shown in answer to Interrogatory 3 (b).

Answer to Interrogatory 6:

Libelants are unable to furnish a diagram or plan showing the location of the vessels referred to in the First Article of the libel and the location of the yacht "Seminole" within the Pilkington Yacht Basin, shed or basin

at the time of the explosion on the "Seminole", as the vessels were placed in the shed by the respondent Pilkington.

State of Florida,
County of Dade, ss.

Benjamin F. McCoy, being duly sworn, deposes and says that he is President of McCoy Brothers Indian River Navigation Company, one of the libelants named in the foregoing libel; that he has read the foregoing answers to interrogatories and that the same are true to the best of his knowledge, information and belief.

BENJAMIN F. McCOY.

Subscribed and sworn to before me this 8th day of March, A. D. 1937.

MILDRED M. SMITH,
Notary Public, State of Florida at large.

(Notary's Seal)

My Commission Expires: 2/10/40.

On March 18th, 1938, respondent, John S. Phipps, filed additional interrogatories addressed to libelants and respondent, George J. Pilkington, which is in words and figures as follows:

INTERROGATORIES PROPOUNDED BY RESPONDENT, JOHN S. PHIPPS, TO LIBELANTS AND RESPONDENT, GEORGE J. PILKINGTON.

101 (Title Omitted.)

To: Messrs. Batchelor & Dyer,
Messrs. Bigham, Englar, Jones & Houston,
Proctors for Libelants.

Messrs. Botts & Field,
Proctors for Respondent Pilkington.

Sirs:

Please Take Notice that upon all the pleadings and proceedings heretofore had herein, and upon the annexed affidavit of R. C. Alley, sworn to on March 14, 1938, Respondent John S. Phipps will present to the Hon. John W. Holland, as United States District Judge, at his office in the United States Court and Post Office Building, Miami, Florida, on March 18, 1938, at 10:15 o'clock, A. M., or as soon thereafter as counsel can be heard, a motion for an order requiring Libelants, Charles Coryell, et al., and Respondent George J. Pilkington to answer, upon oath, within two weeks of the entry of an order upon said motion, the following interrogatories propounded by Respondent John S. Phipps for the purpose of clarifying the allegations of the libel and petition and for the purpose of narrowing the issues to be tried:

Interrogatories Addressed to the Libelants.

1. State fully in what respect it will be claimed that the gasoline pipes and valves of the yacht Seminole were improperly and defectively installed, as alleged in the fifth article of the libel.

2. State particularly which gasoline valves it will be claimed were not closed, as alleged in the fifth article of the libel.

3. State fully in what respect it will be claimed that the electrical and lighting lines, switches and devices were improper, defective and improperly installed, as alleged in the fifth article of the libel.

4. State fully in what respect it will be claimed that Respondent Phipps was negligent in other respects, as alleged in the fifth article of the libel.

5. State fully in what respect it will be claimed that improper and defective installation of the gasoline pipes and valves on the yacht Seminole resulted in an accumulation of gas vapor in the engine room, as alleged in the sixth article of the libel.

6. State particularly which gasoline valves it will be claimed were not closed, resulting in an accumulation of gas vapor in the engine room, as alleged in the sixth article of the libel.

7. State particularly which valve or valves it will be claimed permitted gasoline to leak, as alleged in the sixth article of the libel.

8. State fully in what respect it will be claimed that gasoline leaked into the bilge of the yacht "otherwise"

than through open valves, as alleged in the sixth article of the libel.

9. State fully in what respect it will be claimed that Respondent Phipps failed to maintain the yacht Seminole in proper, safe and seaworthy condition, as alleged in the seventh article of the libel.

10. State whether or not it will be claimed that Respondent Phipps personally represented to the operators of the Pilkington Yacht Basin that the tanks of the yacht Seminole had been drained of all gasoline when she was tendered for storage at that yard, as alleged in the seventh article of the libel; if not personally, identify the individual who it will be claimed made such representation.

11. State fully in what respect it will be claimed that the Seminole's gasoline pipes and valves were improper, defective and improperly installed; which of her gasoline valves it will be claimed were not closed; in what respect it will be claimed that the electrical and lighting lines, switches and devices were improper, defective and improperly installed; and in what respect the said yacht was in other respects in a dangerous and unsafe condition for storage with other vessels, as alleged in the seventh article of the libel.

12. State in what respects it will be claimed that Respondent Phipps' agents and servants negligently caused an explosion on the yacht Seminole, as alleged in the seventh article of the libel.

13. State fully in what other respects it will be claimed that Respondent Phipps was negligent.

Interrogatories Addressed to Respondent Pilkington.

1. State whether or not it will be claimed that Respondent Phipps personally instructed Respondent Pilkington not to go into the engine room of the Seminole or turn over her engines by hand; if it will be claimed that such instructions were given by an authorized agent of respondent Phipps, identify such agent; if it is claimed that such instructions were given by respondent Phipps in person or by an authorized agent, state where and on what date such instructions are claimed to have been given.

2. State whether the agreements for the storage of the Seminole alleged in the fifth article of the petition were oral or in writing; if oral, state fully the substance thereof; if in writing, attach full and true copies thereof to your answers hereto.

3. State whether it will be claimed that the agreements for the storage of the yacht Seminole alleged in the fifth article of the petition are claimed to have been made by respondent Phipps in person; if not in person, identify the individual who it will be claimed acted on his behalf.

4. State whether or not it will be claimed that the agreement and warranty alleged in the fifth article of the petition was express or implied, oral or in writing; if express and oral, identify the person who it will be claimed made said agreement and warranty; if express and in writing, attach a full and true copy to your answers to these interrogatories.

5. State whether or not it will be claimed that respondent Phipps either personally or by any agent or representative expressly warranted that if gasoline was left in the tanks of said vessel, all drains, valves and outlets through which gasoline might be drawn or flow out of said tanks would be tightly and securely closed so that gasoline could not drain out into the bilge of said vessel,

and that said drains and outlets would be kept tightly closed; if by an agent or representative, identify him.

6. State whether it will be claimed that respondent Phipps personally represented to respondent Pilkington that the yacht Seminole was and had been in all respects in a safe and proper condition for storage, as alleged in the fifth article of the petition; if it is not claimed that respondent Phipps personally so represented, identify the person or persons who it will be claimed so represented on respondent Phipps' behalf.

7. State fully in what respect it will be claimed that the gasoline pipes and valves on the yacht were improper, defective and improperly installed, as alleged in the fifth article of the petition.

8. State which gasoline valves it will be claimed were not closed, as alleged in the fifth article of the petition.

9. State fully in what respect it will be claimed that the electrical and lighting lines, switches and devices were improper, defective and improperly installed, as alleged in the fifth article of the petition.

10. State fully in what other respects it will be claimed that the yacht Seminole was in a dangerous and unsafe condition, as alleged in the fifth article of the petition.

11. State which gasoline valves on or attached to the tanks and fuel lines of the Seminole it will be claimed Baker and Schlappi negligently failed to close or to close properly, as alleged in the fifth article of the petition.

12. State whether or not the warning alleged to have been given to R. C. Abel on or about the time when he entered the engine room of the Seminole on June 24, 1935, of

the presence therein of gasoline vapors is claimed to have been given by respondent Pilkington or any agent, servant or employee of his; if not, by whom.

13. Identify the certain electric light knife switch located in the engine room of the Seminole which it is alleged in the fifth article of the petition R. C. Abel negligently and carelessly operated and manipulated.

14. State in what respect it will be claimed that the condition of valves and gasoline pipes of the Seminole was improper and defective, resulting in an accumulation of gasoline vapor in the engine room, as alleged in the fifth article of the petition.

15. State fully in what respects it will be claimed that respondent Phipps failed to maintain the yacht Seminole in a proper, safe and seaworthy condition, as alleged in the sixth article of the petition.

16. State fully in what respect it will be claimed that the Seminole's gasoline pipes and valves were improper, defective and improperly installed; which of her gasoline valves it will be claimed were not closed; in what respect it will be claimed that the electrical and lighting lines, switches and devices were improper, defective and improperly installed; and in what other respects it will be claimed that the yacht was in a dangerous and unsafe condition, as alleged in the sixth article of the petition.

Dated, Miami, Florida, March 14th, 1938.

R. C. ALLEY,
LOFTIN, STOKES & CALKINS,
and BURLINGHAM, VEEDER,
CLARK & HUPPER,
By JNO. P. STOKES,
Proctors for Respondent John
S. Phipps.

(Title Omitted.)

State of Florida,
County of Palm Beach, ss.

R. C. Alley, being duly sworn, deposes and says:

I am one of the proctors for respondent John S. Phipps in the above entitled suit in admiralty, and I am familiar with the pleadings and proceedings heretofore had herein.

The libel alleges that on or about June 24, 1935, an explosion and fire occurred on the yacht Seminole due to the negligence of respondents Pilkington and Phipps, as the result of which libelants' vessels were destroyed or seriously damaged. Answers have been filed by both respondents, each denying negligence on his part, and respondent Pilkington has filed a petition purporting to assert a claim over against respondent Phipps. The case is at issue and has been set for trial on May 30, 1938.

The allegations of negligence in the libel and in the petition are in many instances extremely broad and general and do not sufficiently apprise respondent Phipps of the charges of negligence against him in the following particulars:

Both the libel and petition allege generally and without particularity that gasoline pipes and valves were improperly and defectively installed. Respondent Phipps does not know which pipes or which valves it will be claimed were improperly and defectively installed, and in view of the large number of pipes and valves on the Seminole, desires to be specifically informed of the charges of negligence in respect of them.

Both the libel and petition allege that some valves were not closed, as the result of which gasoline escaped, causing a gas vapor which exploded. Respondent Phipps does not know what valves it will be claimed were not closed, and in view of the large number of valves in the Seminole desires to be specifically informed of the charge of negligence in respect of the valves.

Both the libel and petition allege that the electrical and lighting lines, switches and devices were improper, defective and improperly installed. Respondent Phipps does not know which of these it will be claimed were improper, which defective and which improperly installed, and in view of the large number of electrical and lighting lines, switches and devices desires to be specifically informed of the charge of negligence in respect of them.

Both the libel and petition allege that respondent Phipps was negligent in other respects. Respondent Phipps desires to be specifically informed of the charges of negligence covered by these allegations.

Both the libel and petition allege that improper and defective installation of gasoline pipes and valves caused the escape of gasoline and the accumulation of gasoline vapor. Respondent Phipps does not know in what respect it will be claimed that this installation was improper or defective, and desires to be specifically informed of the charge of negligence in respect of this allegation.

Both the libel and petition allege that respondent Phipps failed to maintain the yacht Seminole in proper, safe and seaworthy condition. Respondent Phipps does not know in what respect it will be claimed that the condition of the yacht was improper, unsafe or unseaworthy, and desires to be specifically informed of the charges of negligence in respect of this allegation.

The libel alleges that respondent Phipps falsely represented to the operators of the Pilkington Yacht Basin that the tanks of the Seminole had been drained of all gasoline when she was tendered for storage at that yard. Respondent Phipps does not know whether it will be claimed that he personally made such a representation, or whether some other individual who it will be claimed was an agent or servant of his made such representation, and desires to be specifically informed of the charge in this respect.

The petition alleges that respondent Phipps instructed respondent Pilkington not to go into the engine room of the yacht Seminole. Respondent Phipps does not know whether it will be claimed that he personally gave such instructions, or whether it will be claimed that such instructions were given by some person who it will be claimed was a servant or agent of his, and desires to be specifically informed of the charge in this respect.

The petition alleges that the yacht Seminole was stored at the Pilkington Yacht Basin pursuant to agreements made between Pilkington and Phipps, and that by said agreement, Phipps made certain warranties with reference to the Seminole. Respondent Phipps does not know whether it will be claimed that said agreements and warranties were made personally by him or by some person who it will be claimed was an agent or servant of his, and desires to be specifically informed of the charge in this respect.

With further reference to said warranties, the petition fails to allege whether it will be claimed that the asserted warranties were express or implied, oral or in writing, and respondent Phipps desires to be specifically informed of the charge in this respect.

The petition alleges that respondent Phipps represented to respondent Pilkington that the yacht Seminole was and had been in all respects in a safe and proper condition for storage. Respondent Phipps does not know whether it will be claimed that the aforesaid representation was made by him personally or by some person who it will be claimed was an agent or servant of his, and desires to be specifically informed of the charge in this respect.

The petition alleges that a warning was given to R. C. Abel of the presence in the engine room of the Seminole of gasoline vapor at or about the time he entered said engine room prior to the explosion. Respondent Phipps does not know by whom it will be claimed such warning was given, and desires to be informed of the charge in this respect.

The petition alleges that said Abel entered the engine room of the Seminole and negligently and carelessly operated and manipulated "a certain electric light knife switch" located therein. Respondent Phipps does not know which of the many electric light switches located in the Seminole's engine room it is claimed Abel negligently and carelessly operated and manipulated, and desires to be informed as to which it will be claimed Abel so operated and manipulated.

Deponent verily believes that respondent Phipps cannot adequately prepare for trial or safely proceed to trial in this suit without being fully informed in the matters aforesaid, and that he is entitled to be so informed by propounding interrogatories to the libelants and to the petitioner and receiving from them verified answers to such interrogatories.

The allegations of the libel and petition are extremely broad, and it will require considerable time of this Court

and of the parties involved to try all the issues of fact that might be raised under the pleadings herein. More than two and one-half years have elapsed since the explosion and fire alleged in the libel and petition, and the libelants and petitioner have had ample time to formulate their claims specifically. In order to narrow the issues to be presented at the trial and to save the time of the Court and the parties to this suit, respondent Phipps desires to have the claims against him more specifically stated.

Wherefore, deponent prays that an order be made requiring the libelants and the respondent-petitioner Pilkington to answer under oath within two weeks of the entry of an order upon this motion the interrogatories set forth in the notice of motion to which this affidavit is annexed.

R. C. ALLEY.

Subscribed and sworn to before me this March 14th, 1938.

BELLE WHIDDEN,
Notary Public, State of Florida at Large.

(Seal)

My Commission expires: June 26, 1938.

State of Florida,
Dade County.

James Hathaway, being first duly sworn, says that he is employed in the office of Loftin, Stokes & Calkins, Attorney at Miami, Florida, that on March 14, 1938, he served the foregoing notice and interrogatories on Messrs. Batchelor & Dyer, attorneys, by leaving a true and correct copy of the same at the office of the said attorneys, in the Ingraham Building, with Mildred Smith; and further served said notice and interrogatories on March 14, 1938, on Messrs. Botts & Field, Attorneys, by leaving a true

and correct copy of the same at the office of the said attorneys, in the Biscayne Building, Miami, Florida, with Marjorie Varner.

(S.) JAMES HATHAWAY.

Sworn to and subscribed before me this 15 day of March, 1938.

(S.) NELL SMITH nee NELL BRANNEN,

(Notarial Seal) Notary Public, State of Florida.

My Commission expires: Nov. 13, 1940.

On March 18th, 1938, an Order of Court was filed, which is in words and figures as follows:

Copy.

ORDER REQUIRING LIBELANTS AND RESPONDENT PILKINGTON TO ANSWER INTERROGATORIES.

112 (Title Omitted.)

This cause, after due notice, came on for hearing before me this 18th day of March, 1938, on the application of Respondent Phipps by notice and motion dated March 14, 1938, for leave to propound certain interrogatories to the Libelants and the Respondent Pilkington, and no objection having been made to said motion, it is

Ordered that the Libelants herein answer fully, under oath, within thirty days of the date hereof, the thirteen

interrogatories set forth in Respondent Phipps' notice and motion dated March 14, 1938; and it is

Further Ordered that the Respondent Pilkington answer fully, under oath, within thirty days of the date hereof, the sixteen interrogatories set forth in Respondent Phipps' notice and motion dated March 14, 1938.

Ordered and Done at Miami, Florida, this March 18, 1938.

JOHN W. HOLLAND,
District Judge.

On May 2nd, 1938, libelants filed their answers to the additional interrogatories propounded by respondent, John S. Phipps, which is in words and figures as follows:

113 ANSWERS TO INTERROGATORIES.

(Title Omitted.)

Libelants, Charles Coryell, et al., answering the further interrogatories addressed to libelants by authority of order dated March 18, 1938, state that the occurrence of an explosion and fire on the yacht "Seminole' 'on June 24, 1935 at the Pilkington Shipyard, which resulted in the destruction of libelants' vessels and property was such an occurrence as could not and would not have taken place without negligence on the part of the respondent John S. Phipps, his agents and servants, and that such occurrence creates a presumption that the losses thereby resulting were due to the negligence of the respondent Phipps and were *res ipsa loquitur*. Libelants further state that they had no opportunity for examination or inspection of

the yacht "Seminole" prior to the said explosion and that such information as they have been able to obtain up to this time is principally based on such an inspection as it has been possible to make of the wreckage of the said vessel. The facts as to the conditions on board the yacht "Seminole" prior to the disaster are, or should be, fully in the possession of or known to the respondent and are not fully in the possession of or known to libelants. Libelants are, therefore, not in a position to answer the interrogatories of the respondent in other than general terms. Libelants, nevertheless, answering the interrogatories as fully as they are able to do at this time, answer as follows:

1. Libelants state that it will be claimed that the gasollines pipes and valves of the yacht "Seminole" were improperly and defectively installed in that the installation permitted gasoline and gasoline fumes to leak therefrom into the interior and the bilges of the said vessel, that the installation contained a drain cock or cocks in the gasoline lines for the drawing of gasoline in the engine room of the yacht "Seminole" and a glass gauge or gauges in the engine room connected with the gasoline tanks, that there were no shut off valves in the carburetor lines, nor drip pans or back fire arrestors on the carburetors, and in that such cock or cocks, gasoline pipes, valves and gauges were not maintained in a tight condition, and in such other respects as may appear upon the evidence developed at the trial of this action. Further than this, libelants are not able to state at this time.

2. Libelants state that it will be claimed that the gasoline valve or valves, cock or cocks, installed in the gasoline lines in the engine room and in particular such valve or valves as were utilized for the drawing of gasoline in the engine room and any others which may be developed

by the evidence at the trial were not closed. Further than this, libelants are not able to state at this time.

3. Libelants state that it will be claimed that the electrical and lighting lines, switches and devices were improper, defective and improperly installed, in that they were of such type and so installed as to permit electric sparks to be emitted therefrom in the engine room of the yacht "Seminole", and in such other respects as may be developed upon the evidence at the trial, and in particular that the knife type electric switches were improper, defective and improperly installed so as to emit electric sparks upon the operation thereof. Further than this, libelants are not able to state at this time.

4. Libelants state that it will be claimed that the respondent Phipps was negligent as alleged in the Fifth Article of the libel in that no adequate means of ventilating the engine room of the yacht "Seminole" while in storage was provided, in that there were no cowl ventilators for ventilating the engine room, in that no adequate system of inspection was established, in that access to the engine room by the respondent Pilkington for the purpose of inspection and ventilation was not arranged for or permitted, in that the engine room was locked and the respondent Pilkington was not furnished with proper keys or means of access thereto, and in such other respects as may appear upon the evidence at the trial. Further than this, libelants are not able to state at this time.

5. Libelants state that it will be claimed that improper and defective installation of the gasoline pipes and valves on the yacht "Seminole" resulted in an accumulation of gas vapor in the engine room by reason of leakage of gasoline and gasoline fumes therefrom into the engine room and the bilges of the yacht "Seminole" resulting in evaporation of the gasoline and accumulation of gas vapor

in the engine room, and in such other respects as may be developed by the evidence at the trial. Further than this, libelants are not able to state at this time.

6. Libelants state that it will be claimed that the valves, which it will be claimed were not closed as a result of which gasoline leaked into the engine room and bilges of the yacht "Seminole" and evaporated resulting in an accumulation of gasoline vapor in the engine room, were the gasoline valve or valves in the gasoline lines in the engine room which were used for the drawing of gasoline in the engine room and any other valves which it may appear upon the evidence at the trial were defective or were not tightly closed. Further than this, libelants are not able to state at this time.

7. Libelants state that the valve or valves which it will be claimed permitted gasoline to leak, as alleged in the Sixth Article of the libel, were the gasoline valve or valves installed in the gasoline lines to permit the drawing of gasoline in the engine room and any other valves which it may appear upon the evidence at the trial were not tightly closed as well as the absence of shut off valves in the carburetor lines. Further than this, libelants are not able to state at this time.

8. Libelants cannot state more fully at this time in what other respect it will be claimed that gasoline leaked into the bilge of the yacht "Seminole" other than that it is apparent from the nature of the explosion which occurred on the yacht "Seminole" that gasoline did leak into the bilge of the yacht "Seminole" and resulted in an accumulation of gasoline fumes there and that the occurrence of the explosion establishes the presence of such fumes which would not have been present if gasoline had not leaked into the bilge of the yacht "Seminole" from leaky, improper, or defective gasoline pipes or valves or

glass gauge or gauges, or by reason of absence of shut off valves on the said yacht, which conditions the respondent John S. Phipps, in the exercise of due care and caution, should not have permitted to exist. Further than this, libelants are not able to state at this time.

9. Libelants state that it will be claimed that the respondent Phipps failed to maintain the yacht "Seminole" in a proper, safe and seaworthy condition in all respects mentioned in the libel and in the answers to these interrogatories and in such other respects as may be developed upon the evidence at the trial. Further than this, libelants are not able to state at this time.

10. Libelants state that it will be claimed that over a period of eight years next preceding this disaster the yacht "Seminole" had been stored with respondent Pilkington at the Pilkington Yacht Basin at intervals by the respondent John S. Phipps and that on all occasions during such period it had been customary for the respondent Phipps, his agents and servants, to prepare the said yacht for storage and it was so prepared; that due care in the preparation of said yacht for storage under the conditions existing in the Pilkington Yacht Basin required that the tanks of said yacht be drained of all gasoline and that if any gasoline remained in the said tanks that all gasoline lines, drains, valves, outlets and gauges through which gasoline might be drawn of flow or leak should be tight and securely closed and that the said yacht should in all respects be fully, sufficiently and properly prepared for safe storage with other vessels principally of wooden construction in the wooden shed of the Pilkington Yacht Basin; that the presentation of the yacht "Seminole" at the Pilkington Yacht Basin for storage, under the conditions and circumstances described in the libel, the answers to interrogatories and the petition of the respondent Pilkington, was a representation both by the respondent

Phipps personally, and by his agents, servants, and representatives, that the said yacht had been properly prepared for safe storage in all respects, including those hereinbefore set forth. Libelants are unable to state whether express representations were also made and respectfully refer the interrogator to the respondent-petitioner Pilkington for a further answer to this interrogatory.

11. In response to Interrogatory No. 11, libelants reallege all the allegations of the libel and the answers to interrogatories 1 to 10 inclusive and further state that it will be claimed that the conditions therein set forth caused the yacht "Seminole" to be in a dangerous and unsafe condition for storage with other vessels, as alleged in the Seventh Article of the libel. Further than this, libelants are not able to state at this time.

12. Libelants state that it will be claimed that respondent Phipps' agents and servants negligently caused an explosion on the yacht "Seminole" as alleged in the Seventh Article of the libel in all the respects set forth in answers to interrogatories 1 to 11, inclusive, and further in that the respondent negligently permitted gasoline gasses to exist in the engine room of the yacht "Seminole", and in that the agents and servants of the respondent Phipps entered the engine room of the yacht "Seminole" on June 24, 1935, while the said gasses were in said engine room, and by the use of an electric knife switch caused a spark and set fire to an accumulation of gasoline fumes in the engine room of the yacht "Seminole" thereby causing an explosion which resulted in the damages sustained by the libelants, as alleged in the libel. Further than this, libelants are not able to state at this time.

13. Libelants state that it will be further claimed that the respondent Phipps was negligent in such other respects as may be developed by the evidence at this time.

BATCHELOR & DYER,

Ingraham Building,
Miami, Florida.

BIGHAM, ENGLAR, JONES & HOUSTON,
(Proctors for Libelants.)

99 John Street,
New York, N. Y.

State of Florida,
County of Dade, ss.

William F. McCoy, being duly sworn, deposes and says:

That he is Vice-President of McCoy Brothers Indian River Navigation Company, one of the libelants named in the foregoing Answers to Interrogatories; that he has read said Answers to Interrogatories and knows the contents thereof and that it is true to the best of his knowledge, information and belief; that the reason this verification is made by deponent and not by the said libelant is that the said libelant is a corporation.

WILLIAM F. McCOY.

Sworn to before me this 30th day of April, 1938.

MILDRED M. SMITH,
Notary Public, State of Florida at large.

(Seal)

My Commission expires: 2/10/40.

On May 2nd, 1938, respondent, George J. Pilkington, filed his answer to the additional interrogatories pro-

pounded by respondent, John S. Phipps, which is in words and figures as follows:

121 ANSWER TO INTERROGATORIES.

(Title Omitted.)

Respondent George J. Pilkington, answering further interrogatories addressed to him by authority of the order of this Court dated March 18, 1938, states that the occurrence of the explosion and fire on the yacht "Seminole" on June 24, 1935, at respondent's shipyard, which resulted in the destruction of a number of vessels and respondent's shed, was such an occurrence as could not and would not have taken place except for the negligence on the part of John S. Phipps, his agents and servants, and that such occurrence created a presumption that the losses thereby resulting were due to the negligence of the respondent Phipps and were res ipsa loquitur. Respondent Pilkington further states that he had no opportunity to examine or inspect the engine room of the yacht "Seminole" prior to the explosion because the respondent Phipps failed to deliver to respondent Pilkington proper keys to permit an examination of the said engine room of said yacht, although respondent Pilkington had requested respondent Phipps to let him have such keys.

Answer to Interrogatory No. 1.

Respondent Pilkington states that for eight years prior to the explosion which occurred on the yacht "Seminole" on June 24, 1935, he had stored a number of boats for the respondent Phipps. The yacht "Seminole" was first received for storage pursuant to an agreement made with respondent Pilkington by respondent Phipps by and through one A. A. Simmon, an agent of said Phipps. When

said agreement was made, respondent Pilkington inquired of said Simmons the name of the owner, the master, and by whom the master was paid. The said Simmon informed said Pilkington that the yacht "Seminole" was owned by John S. Phipps, that one Nelson was her master, and that the wages of the master were paid by the said Phipps. At no time thereafter prior to the explosion aforesaid was the said Pilkington given any other information as to the ownership of the said yacht. During the year 1929, respondent Phipps introduced one J. F. Riley to respondent Pilkington and respondent Phipps informed respondent Pilkington that the said Riley was the personal secretary of the said Phipps and that whatever the said Riley said about the yachts controlled by said Phipps, including the yacht "Seminole", was with authority of the said Phipps. During the early part of January, 1932, respondent Phipps accompanied by the said Riley, called to see respondent Pilkington and requested the said Pilkington to make as low a charge as possible for the storage of the boats controlled by the said Phipps, including the yacht "Seminole", and said Pilkington thereupon wrote a letter, dated January 18, 1932, to the Palm Beach Company in response to a letter from said company, dated January 15, 1932, explaining prices charged for storage. Thereafter, on January 21, 1932, J. F. Riley wrote a letter to said Pilkington stating that the prices were not too high. Thereafter on April 26, 1933, the said Pilkington wrote a letter to the Palm Beach Company quoting a price of $600.00 a year for storing the yacht "Seminole". On May 3, 1933, J. F. Riley wrote a letter on the stationery of the Palm Beach Company, to the said Pilkington accepting this figure. Thereafter, on March 20, 1934, Respondent Phipps wrote a letter to respondent Pilkington, requesting respondent Pilkington to deliver the yacht "Seminole" to Captain Willie Baker. When the said Baker returned the said yacht to the yard of said respondent Pilkington, on all subsequent occasions the said Baker expressly

stated that he did not desire Pilkington to turn over the engines of the "Seminole". On April 16, 1935, when the yacht "Seminole" was returned to the yard of said Pilkington, respondent Phipps did not, as was customary, deliver to said Pilkington keys to the said yacht, so that the said yacht might be aired and ventilated. Thereafter, when said Pilkington requested the said Riley to furnish him with said keys, he was supplied with two keys, neither of which fitted the lock of the hatch leading to the said engine room. Respondent Pilkington has never since April 16th, 1935 been supplied with a key to said engine room and in consequence was unable to air and ventilate said engine room.

Answer to Interrogatory No. 2.

The agreement for the storage of the yacht "Seminole" was oral. This agreement had been in existence for a period of about eight years, and was originally made by respondent Pilkington through A. A. Simmon, as agent for respondent Phipps, as owner. Respondent Pilkington was never informed of any change in the ownership. The details concerning the agreement are set forth in answer to interrogatory No. 1. In addition to what is stated in the answer to interrogatory No. 1, respondent Pilkington states that the said Phipps agreed to prepare the said yacht for storage, which involved draining her tanks and delivering the said yacht to the said Pilkington prepared for storage, and particularly in such a condition that her engine room could be aired and ventilated while stored.

Answer to Interrogatory No. 3.

This interrogatory has been answered in the answers to the two preceding interrogatories.

Answer to Interrogatory No. 4.

This interrogatory has been answered in the answers to interrogatories Nos. 1 and 2.

Answer to Interrogatory No. 5.

Throughout the eight years that the yacht "Seminole" was in storage at the yard of respondent, Pilkington, respondent, Phipps, assumed all the responsibility of fitting the said yacht for storage and when during 1935, the said yacht was left near the shed of respondent, Pilkington, by the agents and servants of respondent, Phipps, respondent, Pilkington, was informed by Captain Baker, that it was not desired that Respondent, Pilkington, should turn over the engines of the yacht "Seminole." Thereafter when respondent Pilkington asked J. F. Riley, the general agent of the said respondent, Phipps, that the keys be left with him, keys of the said boat permitting entry to the engine room were not delivered to the said Pilkington, and at no time after the said Pilkington received the said boat for storage did he have access to the engine room of the said yacht, "Seminole." Respondent asserts that the delivery of the yacht, "Seminole" at the Pilkington Yacht Basin for storage on April 16, 1935, under the circumstances and conditions hereinbefore set forth constituted a representation and a warranty by the respondent, Phipps that the said yacht "Seminole" was safe and fit and in all respects properly prepared for safe storage in close proximity with other vessels in petitioner's yacht basin, as alleged in the petition.

Answer to Interrogatory No. 6.

Respondent, Pilkington, relying upon the practice and custom of the respondent, Phipps, existing for a period of eight years, that the yacht "Seminole" would be in all re-

spects in a safe and proper condition when delivered to respondent, Pilkington, for storage, received the said yacht "Seminole" for storage in full reliance upon the said usage and custom that the said Phipps would make the said boat safe and in a proper condition for storage.

Answer to Interrogatory No. 7.

Respondent, Pilkington, was never supplied with a key to permit him to air the engine room of the yacht "Seminole" although a key was requested, and respondent does not know of the condition in said engine room, but among other things, it will be claimed that the gasoline pipes and valves on the said yacht were in such condition that gasoline leaked therefrom and permitted gas to accumulate in the engine room compartment, and oil to accumulate in the bilge, thus resulting in a condition which led to an explosion and fire.

Answer to Interrogatory No. 8.

Among other things, it will be claimed that the shut-off valve to the Number 2 tank on the fule line to the carburetor was open and there was not shut-off valves at the carburetor. A one-half inch drain line from tanks with globe valves for drawing gasoline in the engine room was open one-quarter turn.

Answer to Interrogatory No. 9.

Respondent is not fully informed as to the electrical and lighting lines, switches and devices which were in the engine room, but so far as respondent is informed, there was an open knife switch in the said engine room which would arc when thrown in.

Answer to Interrogatory No. 10.

Respondent refers to the answers to all of the preceding interrogatories and to the general statement as an introduction to these answers to interrogatories, and states that the said yacht "Seminole" was in a dangerous and unsafe condition because she contained gasoline, and because she was in such condition that it was impossible for her to be ventilated to permit the said gasoline vapors to find their way out into the open air.

Answer to Interrogatory No. 11.

Respondent, refers to his answers to all of the preceding interrogatories, particularly to Interrogatory Number 8.

Answer to Interrogatory No. 12.

Respondent, Pilkington, gave no warning to the said Captain Abel because the said Abel presented to respondent, Pilkington, a written order from J. F. Riley, the general agent of respondent, Phipps, but respondent Pilkington is informed that the companion of the said Abel, one John Thomas, warned the said Abel that there was gasoline vapor in the said yacht "Seminole".

Answer to Interrogatory No. 13.

According to the information received by respondent Pilkington, the electric knife switch which was operated negligently by the said R. C. Abel was located in the engine room of the "Seminole" on a bulkhead at the after part of the engine room.

Answer to Interrogatory No. 14.

In answer to Interrogatory Number 14, respondent, Pilkington, repeats his answers to all of the preceding

interrogatories, and in addition, states that the valve and gasoline lines of the "Seminole" were improper and defective in that there should have been no outlet in the engine room of the "Seminole" permitting gasoline to be drawn off from her tanks, that gas should not have been permitted to accumulate or remain in said engine room, and that there was no means to ventilate same.

Answer to Interrogatory No. 15.

Respondent will claim that respondent, Phipps, failed to maintain the yacht "Seminole" in a proper, safe and seaworthy condition in that the yacht was in such condition that gasoline vapor and liquid gasoline could and did accumulate and remain in her engine room so as to constitute the danger of an explosion and fire, and in all other respects set forth in the petition and in the answers to interrogatories.

Answer to Interrogatory No. 16.

Respondent refers to his answers to all the preceding interrogatories for answer to this interrogatory.

BOTTS & FIELD,
Attorneys for Respondent,
Pilkington.

GEORGE J. PILKINGTON,
Respondent.

State of Florida,
County of Dade, ss.

On this day personally appeared before me, the undersigned authority, George J. Pilkington, to me well known who having been by me first duly sworn, deposes and says that he is one of the respondents in the above styled cause; that he has read the foregoing answers to Inter-

rogatories; knows the contents thereof and that the same are true to the best of his knowledge, information and belief.

GEORGE J. PILKINGTON.

Sworn To And Subscribed before me, this 30th day of April, A. D. 1938.

MABLE C. BARWICK,
(Seal) Notary Public, State of Florida.

My commission expires: Mar. 4, 1942.

THE DEPOSITION OF CARL HOLM A WITNESS IN BEHALF OF THE LIBELANTS TAKEN DE BENE ESSE.

In the United States District Court for the Southern District of Florida. In Admiralty, Miami Division.

Charles Coryell et al., Libelants,
vs.
George J. Pilkington and John S. Phipps, Respondents.

The deposition of Carl Holm, a witness produced in behalf of Libelants, taken before Ben S. Hancock, Jr., Commissioner (also in the presence of the Hon. John W. Holland) in Chambers of the United States District Court, Miami, Florida, on the 23rd and 24th days of January, A. D. 1939, pursuant to notice.

The Commissioner:
Do you gentlemen wish me to swear the Reporter?

Mr. Matteson:
Yes, if you will.

(Thereupon the Commissioner duly sworn Henry E. Colman, a Court Reporter, to report in shorthand notes the deposition of Carl Holm and a true transcript thereof make.)

Mr. Matteson:

Will you mark the notice of the taking of this testimony? The order respecting the change of place for the taking of the testimony has already been filed

The Commissioner:

Is there any objection to this notice being marked?

Mr. Underwood:

No.

(Thereupon the notice above referred to was by the Commissioner marked Libelants' Exhibit No. 1.)

129 Thereupon: CARL HOLM was produced as a witness in behalf of the Libelants, and having been first duly sworn by the Commissioner, was examined and deposed as follows, to-wit:

Direct Examination.

By Mr. Matteson:

Q. Your name is Mr. Carl Holm?

A. Yes, sir.

Q. What is your age?

A. 36.

Q. What is your present address?

A. Marian, Kentucky.

Q. You have come here at my request to give your testimony in this case?

A. Yes, sir.

Q. You are a native of Denmark, are you not?

A. Yes.

Q. And a naturalized citizen of the United States?

A. Yes, sir.

Q. Before we go any further, Mr. Holm, will you give us an outline of your experience in the way of education and your connection with the ownership or the management of vessels of different types?

A. At the age of fourteen I enlisted in the Danish navy for a course in ship construction, boat building and naval architecture, which I finished at the age of eighteen or nineteen years; then went to the Orient where I bought two sponging vessels near Singapore and operated them in the South Seas for about a year and a half.

Q. What type of vessels were they?

A. Auxiliaries.

Q. What type of engines?

A. Gasoline-driven and sail.

Q. And how much were they, how large were they?

A. One was a 55-footer and the other one was a 60-footer.

Q. After that what did you do?

A. I went back to Denmark for commercial fishing for approximately one year, and after that I went to the United States.

Q. What type of vessels were you familiar with in connection with fishing?

A. I had two 30-foot auxiliaries.

Q. What was your connection with them?

A. Master of them.

Q. Were you Master of those vessels in the Far East?

A. Yes, sir.

Q. Continue from there.

A. I started in the Tebo Shipyards in New York; was boat-builder and ship's carpenter and gradually went to steel construction and yachts; I built two barges for

them. I came to Florida in 1926 and worked at Mathews Boatyard in Waytona Beach, and McDonald's Boatyard in Daytona Beach, until I started the United States Marine Salvage Company in Miami in 1929, and I operated it until I became Engineer for the Hickory Cane Mining Company; and now I am Engineer for the Federal Mining and Smelting Company.

Q. In connection with the United States Marine Salvage Company what type of boats did you have?

A. I was president of the corporation. I did most of the diving myself. We only had two divers employed most of the time.

Q. What type of vessels?

A. What type of vessels?

Q. Yes.

A. I had a 75-footer with two 150 H. P. Sterling engines—

Q. Gasoline?

A. Gasoline engines. A 65-footer with two 32-37 Eastern Standard gasoline engines, no sail power; and a 42-footer with a 110 H. P. Universal, no sail power.

Q. Gasoline engines also?

A. Yes, sir.

Q. When you worked in Tebo's Shipyard in Brooklyn what type of vessels did that have to do with mostly?

A. Yachts.

Q. Did you in your work there have to do with yachts, too?

A. Yes, with the exception of the barges.

Q. You constructed two steel barges there?

A. Yes.

Q. The rest of your work was on yachts?

A. Yes, sir.

Q. Did your education in the Danish Naval Academy cover gasoline installations?

A. Yes, sir. I aided in the installation of engines in the first motor-driven lifeboat in Europe and designed several similar gasoline-driven boats.

Q. Did it cover electrical installations as well?

A. No, sir. My education included electrical installations.

Q. I mean did it—

A. My education did but my work did not.

Q. How did you happen to become connected with the Mining Company?

A. Through the Salvage Company. Mr. Gibson and Mr. Parker, who owned the Hickory Cane Mining Company, asked us to pump out a 250-foot shaft for them in Marian, Kentucky, which we undertook, and after three months' operation there, the period I had undertaken to stay up there, I was asked to stay there and see the mine started in so far as machinery installation was concerned; they asked me to stay until the ore was found and the mine turned over to some other company, which was done.

Q. Did you have gasoline engines up there?

A. Yes, sir.

Q. Then from the time you were fourteen years old to date your experience, with the exception of those years in the mines, has had to do with boats and their construction and operation?

A. Yes, sir.

Q. Particularly gasoline boats?

A. Yes, sir.

Q. Now do you remember the fire that occurred at the Fort Lauderdale shipyard?

A. Do I remember the fire?

Q. Yes.

A. Yes, sir.

Q. What connection did you have with that situation up there?

A. I heard the newsboys in Miami calling the headlines of the papers, and I went to a telephone and called the yacht basin to see if we could offer any assistance as to recovery of the lost men—as was thought at that time that two were lost.

Q. Was that an offer of assistance or soliciting of business?

A. Offering of assistance.

Q. You were not soliciting business?

A. No, sir.

Q. Just tell us who you got in touch with and what the result was.

A. I contacted Mr. Miller on the telephone who, I think, was the District Attorney of that county, and asked him if we could be of any assistance in recovering the bodies of the men, and he said, "Yes, you certainly can, but the fire is still too hot to get near the boat", and he asked us to come the next day, which we did, and I brought a diver along and diving gear and arrived there the next morning.

Q. When you arrived there what conditions did you find?

A. We found the yacht basin in a deplorable condition; the boats that had caught fire sunk of course; not all of them, because some were afloat, and Mr. Pilkington advised us that a man—

Mr. Underwood:

I object to what Mr. Pilkington advised this witness.

The Commissioner:

Note the objection.

Q. Continue.

A. That a man was lost in the Seminole, and we were asked to bring the diving gear over near the Seminole

and go into her, which I did. The poles on the dock-shore construction were burning and--

Q. Wooden poles?

A. Yes. And Bill and Ben McCoy, who owned the Blue Lagoon, arrived on the scene, and Bill thought I was crazy for wanting to go into that gasoline water, and he grabbed me by the neck and dragged me off the pier, but I convinced him I wasn't crazy and that there wasn't as much danger as he thought there was, and I went in the water and looked for the man and gave it up during the day as a bad job due to the wreckage and debris falling in the engine-room which was liable to cause an explosion.

Q. It was in the engineroom that you searched?

A. Yes, sir.

Mr. Underwood:

I move to strike out what the McCoys thought.

The Commissioner:

Note the motion on the record.

Q. Now how did you go about diving in the engine-room of the Seminole?

A. We removed two davits, as I recall, so as to open the passageway in the hatch, the engineroom hatch, and went through there with my diving helmet.

Q. You went down the hatch?

A. Yes.

Q. Where was your diving equipment located, the air pump?

A. The pump was on the dock.

Q. Did you personally do all of the diving there?

A. Yes, sir.

Q. How long did you continue searching that afternoon, do you recall?

A. Spasmodically for the rest of the day; I dare say that that under-water work consisted of approximately two to three hours' searching.

Q. When you were not able to find the man in that fashion, what did you do next?

A. I suggested to Mr. Miller that we raise the Seminole in order to move enough of the debris so that we could get to the floor, which he granted.

Q. What did you do?

A. And contacted Mr. West, a contractor at Fort Lauderdale, for a pump.

Q. You spoke of raising and pumping; what was the condition of the Seminole at that time?

A. The Seminole was sunk at the time I suggested to Mr. Miller to raise the boat.

Q. All right.

A. And there was an awful lot of gasoline on the water.

Q. And she was sunk also when you were searching for the man, I assume?

A. Yes, sir.

Q. Now how did you go about raising that boat?

A. Mr. West I think had a contract on the pumping. Hose suctions were inserted in the hull where we could get nearest to the bilges and the water was discharged in that way. We had to go all around the vessel with rags and seaweek and other things or whatever we might have picked up in order to tighten the seams and seat connections.

Q. Were there any openings which had to be stopped?

A. All the lead pipes, toilets and bathtubs and so on were burned, and we had to open a way to the sea and the seams in the vent were strained to such an extent that we had to fit seaweed and sawdust in them so as to—

Q. When you say that you did that with seaweed and sawdust, what do you mean?

A. The suction of the pump created lower pressure in the hull of the whole vessel, and when we held our hands

in the seams we observed the gradual suction into the seams where the leaks might be.

Q. And would that stop the leaks?

A. Yes, to some extent.

Q. If the leaks were not stopped or diminished would the boat float?

A. The boat floated, and when the boat came up to where we could insert more permanent plugs in the seat-connections we did.

Q. What seat-connections did you find that you had to stop?

A. The toilet connections and the bathtub connections, and I think two seacocks in the engine-room, one in the port and one in the starboard side.

Q. Where were these toilet connections you speak of?

A. One forward in the starboard side I know and as far as I remember there was one in the port side abaft the engineroom bulkhead.

Q. About what time of the day did you begin pumping?

A. If I remember it was dark and the boat floated about two or three o'clock in the morning.

Q. Will you describe just what conditions you noted during the course of the pumping?

A. When I noticed a sort of spring out of the water—above the surface of the water—Jack Lowney called my attention to it—I stuck my fingers into it and smelled it and tasted it, and there was no question but—

Q. You smelled it and tasted it?

A. Yes, and there was no question about it being gasoline coming out of some source, which I later found was the pipe.

Q. What did you do about that?

A. We made plugs and plugged that one and two others.

Q. What openings did you plug?

A. Pipes leading to the gas tanks.

Q. Did you continue pumping?

A. Continued pumping, and some gas naturally escaped out of those openings. We were very careful with our flashlight. A man in the yard wanted to rig up an electric cord as a means whereby we could see, but I suggested not to fool around with anything but a flashlight, and we were very careful with the switches and those things, because gasoline was all over the surface of the water, in the boat and the poles were burning nearby—the poles around the shed had been wrecked.

Q. You say the boat floated about two-thirty?

A. Between two and two-thirty, something like that.

Q. What did you do then?

A. We took up the search for the body again. We had to move some debris and finally found—

Q. Did you do that that night or did you wait for daylight?

A. That night. We kept on the job continuously.

Q. Did you pump the vessel until the engineroom was dry?

A. As dry as we could get it with the suction we had.

Q. Was the water then below the level of the floor of the engineroom?

A. Yes, sir.

Q. Describe for us your search for this man that you found.

A. Jack Lowney noticed the flesh spattered over the forward engineroom bulkhead and he called my attention to it; we found the body lying just ahead of the port engine, if I remember right; his arms were blown off at the elbows and his legs blown off at the knees. We notified the Coroner that Mr. Miller instructed us to notify and if I remember right the hearse or ambulance arrived at daybreak. We brought the body ashore in a canvas.

Mr. Underwood:

I move to strike the witness' testimony in so far as he purports to give the cause of the dismemberment of the body, on the ground that he is not qualified and no foundation has been laid.

The Commissioner:

Note the motion on the record.

Q. How was the body located with respect to debris in the engineroom?

A. The body was lying under a slab that had falled from the upper deck which practically covered the body.

Q. Now after the body was removed what did you do? Did you continue your investigation of the engineroom or not?

A. Mr. Miller asked us what might be the cause of the fire—

Mr. Underwood:

I object to any conversation between this witness and Mr. Miller on the ground that it is incompetent, irrelevant and immaterial and not binding on the respondent I represent.

The Commissioner:

Note the motion on the record.

Q. Well, did you do something at the request of Mr. Miller?

A. We removed the valves.

Q. Do I understand Mr. Miller requested you to do something?

A. Yes, Mr. Miller requested us to look into the position of the valves.

Mr. Underwood:

I move to strike that out on the ground that it is a conclusion; on the ground that it is hearsay, incompetent, irrelevant and immaterial and not binding on the respondent Phipps.

Q. As the result of what Mr. Miller said to you tell us what you did?

A. I removed a valve laying below the opening of Tank number 2, counting from the port side of the vessel looking forward, a valve that had been located there for the purpose of dischaging gas from the tank.

Mr. Underwood:

I move to strike the conclusion of the witness as to the purpose of the location of the valve before he saw it.

The Commissioner:

Note the motion on the record.

Q. Continue.

A. I removed two valves lying between the two engines near the position of the body.

Q. Did you make any examination of the piping, any general examination of the piping and valves in the engineroom?

A. Yes, sir.

Q. Now among the things which we have here on this table, which have been impounded under an order of Court on February 17, 1937, will you see if you can pick out and identify any of the things you have told us about?

A. This is the valve that was removed from below the opening leading into the number 2 tank.

Q. How many tanks did the Seminole have?

A. There were four gas tanks.

Q. Where were they located?

A. They were located between two steel bulkheads ahead of the forward engineroom bulkhead.

Q. Separated from the engineroom by what?

A. By a steel bulkhead.

Q. And what provision was there for drawing gasoline into the engineroom from these tanks?

Mr. Underwood:

Can we, before we go any further, identify this piece in some way so it won't get mixed up with the other stuff?

Mr. Matteson:

In just a minute.

A. What provision was there for drawing gas from—

Q. —the four tanks in the engineroom?

A. Four openings in the tanks approximately five inches above the edge of the bottom of the tanks resulting in a manifold connecting the four, of which that valve is a part and this pipeline also.

Q. Were the valves on any of the tanks in place?

A. Yes, sir; three of the valves were in place.

Q. How did they compare with this valve?

A. Exactly the same.

Q. And the valve from tank number 2 was displaced?

A. Displaced. The tank was distorted from its original position upward; distorted upward from its original position, I guess.

Q. Where did you find this valve and its attached pipe with respect to the opening from the number 2 tank?

A. Below the opening on the engineroom floor.

Q. From its position and its similarity to the other valves what did you deduce?

Mr. Underwood:

I object to what he deduced.

The Commissioner:
Note the objection.

A. I decided—

Mr. Underwood:
Same objection.

Q. Go ahead.
A. I decided that it was a valve designed for the same purpose as the other three, for draining gas from the tanks.

Mr. Matteson:
Will you mark this as Exhibit 2. I offer it in evidence.

The Commissioner:
Is there any objection you wish to put in the record?

Mr. Underwood:
Let me look at it. I object to it on the ground that it has not been properly identified.

Mr. Matteson:
Mark it for identification.

(Thereupon the valve above referred to was marked for identification as Libelants' Exhibit number 2.)

Q. I show you this picture which was taken very recently and ask if you can identify it and tell us what it shows?

Mr. Underwood:
I object to the witness telling what the photograph shows.

The Commissioner:
Note the objection.

A. Shall I answer the question?
Q. Yes.
A. This picture shows—

Mr. Underwood:
I object on the further ground that the picture has not been identified nor the time or place of taking the picture shown.

A. Shall I answer the question now?
Q. Yes.
A. This picture shows the drain valve on tank number 1 and the silencer and the auxiliary light plant as far as I can determine.
Q. Will you indicate where the valve on tank number 1 appears in this picture?
A. Here (indicating).
Q. I will draw an arrow pointing to that spot and I will write "valve number 1" opposite the end.
A. They are numbered from port to starboard, looking forward.
Q. So the three other tanks and valves would be to the right-end of this picture as you look at it?
A. Yes.
Q. The other tank that you spoke of was where?
A. This side of here (indicating).
Q. Now I will draw another arrow at the end of which I will write the word "silencer". Can you tell us what that silencer is, what its function is?
A. Its object is to muffle the sound of the exhaust of the engine.
Q. What engine is that attached to?
A. The auxiliary light plant as far as I could determine at the time.

Mr. Matteson:

I offer this picture in evidence.

A. Pardon me. There is something else shown in this photograph.

Q. Please point it out.

A. A sea-connection. As far as I remember we plugged it; water came in through this.

Q. At which end was it plugged, inside or out?

A. We had the plug on the inside; we couldn't reach it from the outside.

Q. I will draw an arrow pointing to this object and will mark it "sea-connection." Is there anything else in this picture that—

A. Nothing of importance.

Q. What is this object which is at the left of the hole? There seems to be something standing out there.

A. A shelf bracket; for what purpose I don't know.

Q. Shelf bracket?

A. Yes.

Q. I will draw an arrow there and mark it "Bracket."

A. The surfact there is of the steel bulkhead.

Q. Does the bottom of the tank appear in that picture?

A. Yes, sir.

Q. Where is that?

A. The bottom of the tank is here (indicating) and its construction is shown in this same picture.

Q. What part of its construction is shown?

A. The bottom part of the tank construction is shown in the picture, the riveted convex bottom and the sides of the tank.

Q. I will draw an arrow pointing to that and mark it "tank bottom." Now this valve number 1 as it is attached to tank number 1 in this picture appears to be partially inside and partially outside of the bulkhead, is that correct?

A. Yes, sir.

Q. So that if the tank were displaced what would the effect on that valve be?

Mr. Underwood:

I object to that question because he could not possibly know that, and no proper foundation has been laid

The Commissioner:

Not the objection.

A. It would be torn off.

Q. I show you another picture here. Can you identify that?

A. Yes, sir.

Q. What is that a picture of?

A. It is a close-up of the same valve as shown in picture number 1.

Mr. Underwood:

May I suggest that before we go any further, Mr. Matteson, you offer that or have it identified in some manner?

Mr. Matteson:

I will offer the first picture in evidence.

Mr. Underwood:

Will Mr. Matteson concede that that is one of the pictures taken in December of this year pursuant to leave granted by this Court in another action?

Mr. Matteson:

That is correct; I will concede that.

Mr. Underwood:

I object to the picture on the ground that it was taken in another cause, and on the further ground that it has not been properly identified, and the circumstances of the place and the taking of the picture have not been shown.

Mr. Matteson:

That will all be shown in due course.

Mr. Underwood:

You have a copy of that picture, I believe.

Mr. Matteson:

Yes. Mark it for identification.

(Thereupon the photograph above offered in evidence was marked Libelants' Exhibit No. 3.)

Q. This second picture I believe you said, Mr. Holm, was a close-up of the same valve?

A. Of the same valve.

Mr. Matteson:

I offer that in evidence.

Mr. Underwood:

Same objection.

The Commissioner:

I will mark it for identification as Libelants' Exhibit No. 4.

Q. And this other picture I now show you is what?

A. It is a "closer-up" of the same valve.

Mr. Matteson:

I offer it in evidence.

The Commissioner:

I will mark it for identification as Libelants' Exhibit No. 5.

Q. There is one other feature that appears in this picture I would like to ask you about. What is this that seems to project from the bulkhead just to the left of the opening for the valve in this Exhibit number 4?

A. It is a web, an angle iron riveted to the bulkhead for the strengthening of the same.

Q. You call it a web?

A. Hangline web.

Q. Web?

A. Yes, sir.

Q. Can you tell us about how far from the bulkhead that projects?

A. Approximately two inches.

Q. I show you this picture and ask you what this is?

A. It is a view of the top of the four gasoline tanks in the Seminole, with number 2 tank in its distorted position.

Q. Is that the way it was at the time you first saw it?

A. Exactly.

Q. I will draw an arrow on that which you call number 2 tank.

A. Number 2 tank, yes.

Q. And this picture to the right is toward the bow of the ship, is it?

A. Yes, sir.

Q. How did those four tanks fit into the compartment in which they were placed?

A. Very snugly, with wooden padding between, of which some parts remained.

Q. When you say "snugly", how much space would there be between the tanks in their normal upright position?

A. As far as I remember two inches.

Q. How close would the tanks be to the bulkhead on the engineroom side if the bulkhead were undistorted?

A. Approximately the same distance.

Q. Approximately how close would they be to the bulkhead separating the tank compartment from the forward end of the ship?

A. Very close but I don't remember the exact distance.

Q. About the same?

A. I should say.

Q. Could you draw us a little picture showing an outline of the Seminole and the location of the engineroom and these tanks, so we would get a general visualization of it?

A. Yes (witness makes diagram).

Mr. Matteson:

I want to offer this additional picture in evidence, showing the tanks.

Mr. Underwood:

The same objection.

The Commissioner:

Note the objection on the record. You make the same objection as to all pictures, I presume?

Mr. Underwood:

Yes.

(Thereupon the photograph last offered in evidence was marked Libelants' Exhibit No. 6.)

Q. Did the tank compartment extend all the way across the ship?

A. Yes, sir.

Q. Are you about through with that diagram?

A. Yes, with the exception of what space is necessary of course due to the shape of the vessel.

Q. I show you what purports to be a plan of the Seminole and ask if that refreshes your recollection to any extent?

A. I don't remember the passageway; my recollection was that the tanks extended all the way across the vessel.

Mr. Underwood:

Let us have that marked for identification, please.

Mr. Matteson:

I have no objection. You can mark it my next exhibit for identification.

(Thereupon the plan above referred to was marked for identification as Libelants' Exhibit No. 7.)

Q. That plan—

A. That is my recollection of it; I may be wrong, however.

Q. Now the engineroom, I take it from this diagram, was approximately amidships?

A. Approximately.

Q. There were two engines, the port and starboard engines?

A. Yes, sir.

Q. Which you have marked here with two arrows and indicated the main engineroom?

A. Yes.

Q. And then on the other side of the port engine there is an auxiliary?

A. Yes, forward of the port engine.

Mr. Underwood:

May I suggest that you let the witness testify.

Mr. Matteson:

I am just referring to the marks that he indicated here. I will get at it in another way.

Q. What is this object here that I am pointing to now?

A. Auxiliary light plant, or light plant rather.

Q. Where is that located?

A. On the port side of the vessel.

Q. Was it nearer to the side of the vessel than the port engine?

A. Yes, sir.

Q. You call that the light plant?

A. Yes, sir.

Q. I will mark that "light plant". What is this other object that you have marked here?

A. Auxiliary light plant. They both could be termed auxiliaries.

Q. I will mark here "auxiliary light plant" and an arrow leading to that object. You mark it.

A. All right. Shall I mark "steel bulkheads" also?

Q. Yes, please.

A. (Witness so marks.) And the tanks?

Q. You have already marked the tanks.

A. I mean shall I number them?

Q. Yes, please.

A. (Witness complies).

Q. Now if it should turn out that you were in error about the tanks extending all the way across the ship and it should be a fact that there was a passageway on the starboard side of the ship passing the tanks, would there be any other effect than simply to push this tank compartment toward the port side?

A. No, sir.

Q. That would be the only difference in your diagram?
A. Yes, sir.
Q. They would still fill the compartment?
A. Fill the compartment that they were installed in.

Mr. Matteson:
I will offer this diagram in evidence.

(Thereupon the diagram above referred to was marked in evidence as Libelants' Exhibit No. 8.)

Q. I show you one more photograph and ask if you can identify that?
A. It is a view of the forward engineroom bulkhead and the aft tank compartment bulkhead, which would be about the same, showing the openings for the gas drain valves.
Q. Which openings can you see there?
A. Nos. 1, 2 and 3.
Q. I will draw an arrow referring to number 1. Where is number 2?
A. Number 2 must be behind that bracket; I think the halfmoon or half-circle is shown behind the bracket there.
Q. I will mark that number 2. Where do you see number 3?
A. Number 3 is shown there (pointing) very plainly.
Q. I will mark that number 3.

Mr. Matteson:
I offer this picture in evidence.

Mr. Underwood:
The same objection as to the other photographs.

(Thereupon the photograph above offered in evidence was marked Libelants' Exhibit No. 9.)

Q. I have one more picture here. Can you tell me if you can identify that?

A. It is a view of the auxiliary light plant stationed ahead of the port engine, port main engine, and against the forward engineroom bulkhead.

Q. Do any of these tank valve openings you have been speaking of appear in that picture?

A. Yes number 1; the others apparently are hidden.

Q. Will you point out number 1 to me?

A. Here (indicating) is number 1.

Q. I will mark that number 1. Is the valve shown in place on that picture or not?

A. The handle of the valve.

Q. Appears just above the bracket?

A. Yes, sir.

Q. Did you see that valve in place at the time you were examining the wreck of the Seminole?

A. Yes, sir.

Q. How did it compare with this valve which we have marked as Exhibit number 2?

A. The make and the size of the valve appeared exactly the same as that Exhibit.

Q. Can you identify any of these other parts here on the table which are deposited in Court under the order of Court referred to?

A. This exhibit I recognize as the valves we decided were the drain valves attached to the pipe leading to the gas line manifold in the starboard side of the tank compartment.

Mr. Matteson:

I offer in evidence the photograph last referred to.

Mr Underwood:

The same objection.

(Thereupon the photograph above referred to was marked Libelants' Exhibit No. 10.)

Q. I show you this little photograph and ask if you can identify that?

Mr. Matteson:

Before we go any further I will ask that this pair of valves which has just been identified be marked in evidence as Exhibit 11.

The Commissioner:

Do you wish to make an objection on the record?

Mr. Underwood:

I would like to cross examine the witness on that first, reserving my objection until I have had an opportunity to do so.

Mr. Matterson:

I will examine him quite a bit about it first.

(Thereupon the two valves above referred to were marked as Libelants' Exhibit No. 11.)

Mr. Matteson:

Now read the last question.

(Preceding question repeated by the Reporter as follows: "Q. I show you this little photograph and ask if you can identify that?")

A. I identify this photograph as a view or picture of the engineroom taken from the port side with the position of the body marked, and the position of the auxiliary light plant on the port side of the vessel shown to the left, and the starboard engine in the right side of the picture—

it would be the port engine, pardon me. The pipe indicated with the arrow is the pipeline that fits the exhibit of the two valves and leading to the gas line manifold on the starboard side of the tank compartment.

Q. Were these valves that were marked Exhibit 11 attached to this line that you have spoken of as a gas line at the time you found it?

A. No, sir:

Q. Where were they?

A. They were lying immediately below the openings shown and indicated with the arrows in the picture.

Q. Is there anything about the valves themselves to indicate whether or not they were attached to that line?

A. The pipe broken off at the end of the drain valve marked "150" fitted the broken pipe indicated by the arrow.

Q. If these valves were connected to that line in that manner for what purpose could they be used?

A. They could be used as drain valves for the purpose of discharging gasoline from the four tanks.

Q. Into what?

A. Into containers and other things that might be—

Q. —used for that purpose?

A. That might be used for that purpose.

Mr. Matterson:

Mark this little photograph as Exhibit 12.

Mr. Underwood:

The same objection.

(Thereupon the photograph above referred to was marked Libelants' Exhibit No. 12.)

Q. I show you this object here, which is also one of those items deposited under the order of the Court referred to. Can you tell us what that is?

A. It is a gasoline—it is a can found at the forward end of the engineroom beside the body.

Q. And where with respect to these valves that you have been referring to?

A. Beside them.

Q. In what position was the can when you found it?

A. Tilted over in the debris or wreckage, with the funnel hanging on one side; gasoline funnel I should say.

Mr. Matteson:

I will fasten this tag right on to the can and offer this can in evidence.

(Thereupon the gasoline can above referred to was marked Libelants' Exhibit No. 13.)

Q. Now can you tell us what this object is that I hold in my hand?

A. That is the gasoline funnel.

Q. And where did you find that?

A. Hanging about like that (indicating), with the can tilted over and dripping—

Mr. Matteson:

I will offer this tax in evidence, together with the funnel.

(Thereupon the tag and funnel above referred to were marked Libelants' Exhibit No. 14.)

Q. I show you another picture and ask you if you can identify that?

A. It is a photograph taken between the two main engines of the forward engineroom bulkhead and the small auxiliary plant in the right side of the picture, apparently a water-pressure system.

Q. Is that a gasoline engine or electric-driven?

A. Electric-driven. And the pipe where the drain valves fit is shown through the center of the picture.

Q. Is this the line right here (pointing)?

A. Yes, sir.

Q. I will write "drain line" here. I offer this picture in evidence.

Mr. Underwood:

The same objection.

(Thereupon the photograph above referred to was marked as Libelants' Exhibit No. 15.)

Q. I show you another photograph and ask you to tell me about that?

A. This photograph was taken toward the forward portside corner of the engineroom, showing the auxiliary light plant and the end of the gasoline drain pipe in the righthand side of the picture; also showing number 1 gasoline drain valve in the left upper corner of the picture; that is the end of the gasoline drain pipe.

Q. I will mark it "end of drain pipe". And what else do you see?

A. This is the gas line valve to number 1 tank.

Q. Gas line valve to number 1 tank?

A. Yes, number 1.

Q. In the vicinity of valve number 1 there is some sort of a line there. Do you know what that is?

A. I don't know what it is unless it would be a part of the gas line manifold broken off from valve number 1 and turned a quarter of a turn to the right showing the elbow.

Q. Is it connected to the valve on that picture?

A. I don't think so.

Q. Did you say what this white object in the picture is supposed to represent, or do you know?

A. I don't know.

Mr. Matteson:

I offer this in evidence as Exhibit 16.

Mr. Underwood:,

Same objection.

(Thereupon the photograph above offered in evidence was marked Libelants' Exhibit No. 16.)

Q. When you speak of a gasoline manifold line just what do you mean?

A. A gasoline line branched out with connections to the four tanks.

Q. And a common line running to all four tanks?

A. Yes, sir.

Q. Can you tell us what these sections of pipe connected with this valve that you have identified as number 2 valve, Exhibit 3, are?

A. That is a part of the gas manifold line.

Q. Is there anything about these tanks to show how they were filled?

A. This picture shows part of the filling-line fittings there (indicating); one of the filling line holes is shown on tank number 3.

Q. Is this the filling line hole that is shown on the side of tank number 3 (Exhibit 6)?

A. Yes, sir.

Q. I will mark that "filling hole". And the piece that you spoke of as being a piece of the filling line,—what is that?

A. That is the fitting.

Q. That is just a plain, ordinary connection piece?

A. "Cross" it is called.

Q. It is lying free on top of number 3 tank?

A. Yes, sir.

Q. I will mark that "filling line fixture".

A. That picture also shows a part of the gasoline tank vents.

Q. How were they connected?

A. They were connected from each tank to a common manifold leading to the side of the vessel in the center of the top of each tank.

Q. I will mark one part of this "vent line".

A. That's right.

Q. Do you recall the size of the filler hole in the tanks?

A. As far as I remember "two inch".

Q. Were there openings in the bulkhead of the tank compartment for carrying the fuel line through the engine-room?

A. Yes, sir.

Q. Corresponding to the—

A. Corresponding to the openings in the tanks.

Q. In the bottom?

A. Yes.

Q. Now there is another object here. Can you identify this?

A. That is a part of the gasoline manifold line, what is known as a trap.

Q. And where did you find this in the engineroom?

A. Between the auxiliary light plant and the engine-room bulkhead.

Q. This piece that you referred to as a trap, is that a well known device used in gasoline lines?

A. Yes, sir.

Mr. Matteson:

I will ask to have this marked as an exhibit.

(Thereupon the trap above referred to was marked as Libelants' Exhibit No. 17.)

Mr. Underwood:

I make the same objection.

Q. Now there is one more object that you have not identified. Can you tell me what that is?

A. I recognize this as a part of the knife switch found in the aft end of the engineroom near the aft engineroom bulkhead.

Q. What do you mean by knife-switch?

A. A knife-switch is a double throw copper device used for connecting two poles of an electric system.

Q. Did you find the switch in the engineroom, the electrical switch?

A. Yes, sir.

Q. Where was that located?

A. A few feet ahead of the aft engineroom bulkhead below the position of the switchboard, of the remaining part of the switchboard.

Q. A part of the switchboard was in place?

A. Yes, the brackets.

Q. And the switchboard itself was in that vicinity?

A. Yes, sir.

Q. Where did you find this, referring to the object discussed?

A. A few feet ahead of the switchboard on the engineroom floor.

Q. Can you identify this as having been a part of the switchboard?

A. Yes, sir This is fastened to the switchboard with a hole in one end of this knife.

Q. Would this be the main switch?

Mr. Underwood:

I object to that. No proper foundation has been laid.

The Commissioner:

Note the objection.

A. That—

Q. Or would it be the largest switch on the switchboard?

A. As I remember it was the largest switch, the largest switch on the switchboard.

Mr. Matteson:

I will offer this in evidence.

(Thereupon the knife-switch above offered in evidence was marked Libelants' Exhibit No. 18.)

Q. From what you could see of the remains of the switchboard and the switches, can you tell us what type of switchboard it was?

A. What type?

Q. Yes; just its general characteristics and so on?

A. I determined that it was a typical slide switchboard.

Q. Open or enclosed?

A. With open switches.

Q. In what condition did you find the knives of the switch on the switchboard?

Mr. Underwood:

Did we have the switch identified?

Mr. Matteson:

I will reframe my question.

Q. Did you make an examination of the switchboard for the purpose of noting the position of the switch when you found it?

A. This particular switch wasn't on the switchboard at the time it was found.

Mr. Underwood:

Indicating Exhibit 18.

Q. What did you find on the switchboard?

A. The knives were not contacting; there was a space of approximately a quarter of an inch in between.

Q. Then the knives were within a quarter of an inch of contact, is that right?

A. Yes, that is right.

Q. If the switch were left in an open position, the normal ordinary way, how far apart would the knives be separated?

A. I would say approximately six to eight inches.

Q. In other words, the switch throws back some distance?

A. In this particular case it comes down; in opening the circuit you throw the switch down and in closing the switch you throw it up.

Q. And you found the knives on the switchboard within a quarter of an inch of being in contact?

A. Yes, sir.

Q. Now, Mr. Holm, how many years does your experience in gasoline boats cover altogether?

A. Approximately twenty.

Q. How many have you owned and operated altogether?

A. I have owned three and operated those, and several other boats or vessels.

Q. What can you tell us as to the safety factor involved in having a draw-off line for gasoline in the engineroom of a gasoline vessel?

Mr. Underwood:

I object to that on the ground that the witness has not been qualified to express an opinion.

A. I will answer that by saying that it is extremely dangerous.

Q. Do you know of any general rules dealing with that subject?

A. Yes, the laws concerning the—

Mr. Underwood:

I object to the proof of any law or rules by this witness in this way.

Q. Just tell us what you know about it.

A. The laws concerning rules and regulations of installation of gasoline engines and auxiliaries prohibit any drains in the engineroom.

Q. Have you ever had any such contrivance in any boat that you have been connected with?

A. No, sir.

Q. Can you tell us what the standard shipyard practice is with reference to such installation?

Mr. Underwood:

Objected to; not qualified.

A. The standard shipyard practice in this country is to have the gasoline tank on the open deck for the purpose of drawing off gasoline for auxiliary tenders and other uses.

Q. Well, is it permitted to have draw-off devices for gasoline in the engineroom?

A. It is permitted?

Q. I mean is that standard shipyard practice?

A. No, sir.

Q. Why do you say that it is not a safe thing to have them in the engineroom?

A. Because gas fumes originating from spilled gas due to drainage of gasoline from the spigots can create a very dangerous situation.

Q. Well, will you explain to us what the dangers of spillage of gas in the engineroom of a gasoline vessel may be?

A. Spilled gasoline in the engineroom will naturally accumulate in the bilges and throw off fumes to the extent

that if any spark or any fire is ever introduced in the engineroom an explosion will happen.

Q. Is that a hazard which is known generally and understood?

A. An explosion hazard.

Q. I say is that a hazard that is generally known and understood?

A. Yes, it is generally known as a hazard.

Q. Does it take very much in the way of gasoline fumes in the interior of the vessel to create such a hazard?

Mr. Underwood:

I object to that; the witness is not qualified.

The Commissioner:

Note the objection.

A. No, it doesn't take very much.

Q. Now the observations that you have just given us are based on what; the opinions that you have just given us are based on what?

A. General engineering, and experience of other yachts and boats and common information.

Q. Were you taught anything in respect to hazards in the handling of gasoline in connection with your schooling at the Danish Naval Academy?

A. Yes, sir.

Mr. Underwood:

I object to that on the ground that the practice in Denmark is not applicable here.

A. It is general international information that gas will explode and that explosions cause gas fumes.

Q. Is it or not a well known fact that the possible accumulation of gasoline vapors in the interior of a gaso-

line boat is a well known and understood hazard which requires great precaution?

A. Very much.

Q. Now you spoke of finding three of the valves attached to the gasoline tanks—

A. Yes, sir.

Q. In place?

A. Yes.

Q. Did you try those valves to determine their position?

A. At Mr. Miller's request, yes.

Q. What did you find with respect thereto?

A. They were open.

Q. All three were open?

A. Yes, sir.

Q. What do you mean by "open"?

A. They were open to the extent that one would have to use force in order to change the valve stem to a more closed position.

Q. Now did you note the condition of the gasoline connections to the main engines of the Seminole?

A. In particular, yes.

Q. What did you find with reference to those connections?

A. There were no shut-off valves near the carburetors on the two main engines nor on the larger light plant.

Q. Then if the valves of the tanks were open what would be the condition with respect to a supply of gasoline at the carburetors of those engines?

A. The entire head of the gas in the tanks would be on the carburetors.

Q. What sort of a condition would that create?

A. It would create a drip or a leak in the case of faulty fittings or faulty carburetor connections, which could not be stopped or checked without closing the main gasoline valves.

Q. And if a vessel were laid up with the main gasoline valves open, would that or would that not create a hazard of gasoline leaking in the engineroom?

A. Very much so.

Q. What is the effect of gasoline in a line that has numerous connections, elbow connections?

Mr. Underwood:

I object to that on the ground that the witness is not qualified.

A. The more connections in the gas line the greater the tendency for leaks.

Q. What is that?

A. Particularly where improper fittings are in question.

Q. Why is it that there is danger of leakage around elbow connections?

A. Because it is a joint and any joint is a weaker link than the pipeline itself.

Q. Is there any difference between the danger of leakage of water in such a line and leakage of gas?

A. There is a greater danger in the leakage of gas in the case of gasoline line due to the fact that gasoline is a penetrating fluid and water is not.

Q. I show you again this line connected to the valve which you have identified as number 2 valve and which you say was a part of the manifold line, and call your attention to the connections in that line. Would you or would you not say that that was a proper condition for the manifold gasoline line?

Mr. Underwood:

I object to that on the ground that the witness is not qualified.

A. I would say it is improper for a gasoline line.

Q. Why?

A. Due to too many elbows for one thing; too many elbows.

Mr. Underwood:
What exhibit is that?

Mr. Matteson:
Exhibit No. 2.

Q. How could the use of elbows be avoided?

A. By the bending of the brass tubing.

Q. Is that brass tubing easily bent?

A. Yes, sir.

Q. Now did you notice whether or not the carburetors of the main engines were equipped with drip pans or any contrivance for controlling leakage from the carburetors?

A. I didn't see any drip pans.

Q. Do you look for them? I mean did you examine the device closely?

A. Yes, as much as I could look at them at the time due to the debris and wreckage.

Q. I show you this picture and ask you if you can identify it?

A. It is a picture of the carburetor, as far as I could say, of the port engine with the detached gas supply line in the lower part of the picture.

Q. This shows a part of the gasoline feed line coming up from beneath the floor of the engineroom to the point where it connected with the carburetor, is that right?

A. That is right.

Q. And it become detached from the carburetor?

A. Yes.

Q. And this is the line in which you said there was no shut-off valve?

A. No shut-off valve.

Q. I will draw a line there and mark it "carburetor line". Now will you point out the carburetor for me there?

A. Here (points).

Q. All of this part here (pointing) is the carburetor, is it?

A. Yes.

Q. Draw a circle around it.

A. (Witness complies).

Q. I will mark it "carburetor".

A. That's right.

Q. You say there was no evidence of any drip pan having been under the carburetor?

A. No, there was no evidence of it.

Q. Then if there was a leakage through the carburetor where would that gasoline go?

A. In the bilges of the vessel.

Mr. Matteson:

I offer this photograph in evidence.

Mr. Underwood:

The same objection.

The Commissioner:

Let me mark it.

(Thereupon the photograph above referred to and offered in evidence was marked Libelants' Exhibit No. 19.)

Q. I show you this second photograph and ask if you can identify that?

A. This is a picture of the light plant installed in the portside of the vessel, showing the gasoline feed line in the center of the picture, and the port engine in the left-hand side of the picture.

Q. And where is the feed line for the generator?
A. Here (pointing).
Q. Is that it?
A. Yes, sir.
Q. I will mark that "feed line for generator."
A. That's it.
Q. And where is the feed line on the port engine?
A. Here (indicating) is the feed line on the port engine.
Q. And that is the other line in which you say there was no shut-off?
A. Yes; in neither one of the two lines.

Mr. Matteson:
I offer this in evidence.

Mr. Underwood:
The same objection.

(Thereupon the photograph above referred to and offered in evidence was marked Libelants' Exhibit No. 20.)

Q. Now I want to go back again to this pair of valves, Exhibit 11, and ask you about these valves, as to their suitability for use as valves in a gasoline line. What type of valves are they, to begin with?
A. Typical steam-water valves; one, without removing the bonnet, I would say was a piston seat valve, the one marked Crane 150; the other one, without removing the bonnet, I would say is a drainage seat valve, marked Crane 125.
Q. What would be the object in putting two valves like that in a drain line?

Mr. Underwood:
I object to that because it calls for the operation of somebody else's mind.

Q. What could the object be?

A. The object could be getting rid of a valve you would have nowhere else to place and the object could be in preventing a leak created in one valve by the placing of the other valve outside of it.

Q. Are these two valves the same size, by the way?

A. The Crane valve marked 150 is a half-inch bronze valve, and the Crane valve marked 125 is a three-quarter inch bronze valve, and a reducer is placed between the valve from three-quarters to half an inch, and a bronze union beyond that. I should say that the make-up between the valves is improper for one thing, due to the fact that the collar of the union is screwed up with its face close to the Crane valve marked 150, which could "impossibly" make a tight connection.

Q. You mean that it would be impossible for it to be eight in that way?

A. The object in plumbing is to make tight connections, which can only be done by having the threads of the female connection jammed tight in the threads of the male connection.

Q. And the fact that there is no thread showing outside of the connection—

A. I should say that it is an improper connection.

Q. And in your judgment would that or would that not leak if used as a gasoline connection?

A. It might and it might not leak, but it would not be accepted as a proper connection.

Q. From your years of experience as a boat owner and operator and your technical training and your work in shipyards and your knowledge of shipyard practice, would you say that that was a workman-like connection to use on a gasoline line?

Mr. Underwood:

I object to the question on the ground that the witness has not been qualified.

The Commissioner:
Note the objection.

A. No, sir.

Q. Now did you make any observation with respect to these valves when you first found them, as to whether they were open or closed or to what extent?

A. They were found with the valve stem half a turn towards the open position, which was marked by a hacksaw at Mr. Miller's request.

Q. Will you show us the hacksaw mark or marks?

A. Here (indicating) is a hacksaw mark on the stem corresponding to the hacksaw mark near the packing nut of the valve.

Q. I take it what you did was to draw the blade across between the stem and the nut and have the teeth-marking mark the packing near the nut at the same time?

A. Yes.

Q. Take this valve here marked "125"; is that now in the position in which it was when you found it?

A. Yes, sir.

Q. Now will you turn it in the position toward closing?

A. This is towards closing (indicating with valve).

Q. How much of a turn is that?

A. I would say approximately one-third of a turn.

Q. That is the way you found it?

A. Yes.

Q. How about the other valve?

A. The other valve was open approximately the same amount, and marked in the position in which it was found with the hacksaw; in that (indicating) position.

Q. Is it now in the position in which you found it?

A. Yes, sir.

Q. Turning it in that position (indicating), how much of a turn is that?

A. Approximately one-third of a turn.

Q. This is Crane valve 150?

A. Yes, sir.

Q. Could an explosion or fire affect a valve like this so as to alter its adjustment from what it was before the fire in your opinion?

Mr. Underwood:

Objected to; not qualified.

A. It could, yes, but the valves at the time they were found—any valve in proper condition is tight and not as easy to move as this one. due to the fact that the packing in the packing nut is moist, loosening the stem of the valve; in other words, it would not be as easy to turn with a piece of debris flying by it as it is now.

Q. The only way the adjustment could be altered would be for a piece of debris striking the handle?

Mr. Underwood:

I object to the form of the question.

A. Yes.

Q. A handle of this round type. Would that in your judgment be likely to happen?

Mr. Underwood:

I object to that as speculative.

The Commissioner:

Note the objection.

A. It would not be likely to happen.

Q. Did anyone else, from the time you were there, touch these valves except you up until the time you determined their position?

A. No, sir; I carried them ashore.

Q. And that is true of the tank valves, also?

A. Yes.

Q. You were the first one to touch them?

A. I was the first one to touch them, yes.

Q. I think you spoke of one of these valves as being, in your opinion, without opening it, a valve with a composition seat.

A. Yes.

Q. Is a valve with a composition seat a proper valve to use in a gasoline line?

A. Not in my opinion.

Q. Why not?

A. Because the dew and the salt water and moisture penetrates the seat and creates a leak.

Q. What is the significance of the markings on these valves: Crane 150 and Crane 125?

A. Indicates the pressure for which the valve is built.

Q. Steam pressure?

A. Steam or hydraulic.

Q. Going back to this trap, which is a part of Exhibit 17, are you familiar with this device?

A. Not that particular device.

Q. I mean are you familiar with devices of that type?

A. Yes, sir.

Q. How should that be closed at the bottom?

A. That should be closed with a plug if there is any opening at all.

Q. Could you tell me whether this trap was closed with a plug in it or not?

Mr. Underwood:

I object to that on the ground that the witness cannot possibly know how the thing was closed before the fire?

A. This trap wasn't closed with a plug due to the fact that the broken-off pipefitting is still inserted in the bottom of the trap.

Q. Would it be proper to have any kind of a pipe connection on the bottom of a trap of that type in a gasoline line?

A. It would generally be considered improper installation.

Q. Why?

A. Due to the danger of breaking off and damaging the entire pipe connections that might be connected to the bottom of the trap.

Q. If whatever connections were on the bottom of a trap like this were broken off what would be the result?

A. Gasoline leakage.

Q. Gasoline would flow out?

A. Yes, sir; in the ordinary make of trap gasoline would flow out.

Q. Well, a trap of this type of construction.

A. I do not know the construction of that particular type of trap, but if the body of the trap contains gasoline there is no reason why gasoline should not leak out.

Q. Can you tell by any simple test whether that was open to the gasoline line?

A. The bottom of the trap was open to the gasoline line.

Q. Can you determine that by blowing through it?

A. You mean determine that by blowing through it?

Q. Yes.

A. Yes, you can determine that by blowing through it.

Q. Have you had considerable experience in connection with the construction and installation of gasoline tanks?

A. Yes, sir.

Q. What can you tell us about the tanks that are used for gasoline tanks on the Seminole, as to their suitability for that purpose?

A. In my opinion they are not suitable—

Mr. Underwood:

Objected to; not qualified.

A. —due to the fact that they were convex bottoms and not accessible and due to the fact that the caulking seams around the entire head of the gasoline are resting on the inside of the tank and on the fluid side, whereas the proper and common practice in the construction of gasoline tanks is to place the caulking seams on the outside where they are open for inspection at all times.

Q. Can you draw us a diagram of the tanks constructed as those were on the Seminole?

A. Yes (draws diagram); that was the construction of the tanks in the Seminole.

Q. Now will you explain that to us; first of all, this is the bottom at this end of the sheet, is it not?

A. That is the bottom of the tank.

Q. All right.

A. The caulking seams in this case would be on the outside and not on the liquid side; the entire head would be resting on the caulking seams, with the liquid forcing the caulking seams outward, instead of the common practice in all shipbuilding tank construction; there would be no way of inspecting the caulking seams that the tank is resting on at all times, and the common practice is to inspect all tanks at regular intervals, due to the fact that rust created from moisture, and particularly in the case of upright tanks, will force these two sheets apart to the extent that it will create leakage, and these tanks were not accessible from any side whatsoever, nor were the rivet rows accessible for inspection. Do you want me to make a sketch of a properly constructed tank?

Q. Yes.

A. (Makes sketch.) Now I will indicate the rivets if you will allow me. The caulking seams would be there, there and there (indicating). That caulking is done

with electric-driven hammers, forcing the soft metal into the groove and making it a tight job.

Q. As I understand it the caulking is a matter of taking the sheets and forcing a part of the metal against the—

Mr. Underwood:

I suggest that you let the witness testify.

A. The caulking is done by way of forcing part of the metal of one sheet against part of the metal in the other sheet, creating a tight joint.

Q. Would it be advisable to build a tank like this without having a manhole or handhole in the end?

A. No, sir, and if so it would be improper construction because the caulking seams could not be inspected and the condition of the metal could not be inspected without a suitable manhole, which is generally located in one or the other sides of the tank.

Q. Under this larger diagram I have written "bottom" and right below that I will write "Seminole tank", and under the other diagram at the top I will write "proper tank".

Now where was the outlet from which gasoline was drawn with respect to the bottom of this tank?

A. I would say from memory approximately five inches above the edge of the cylindrical sheet of the tank.

Q. You have indicated a valve outlet on the side of the tank above the bottom, is that right?

A. Yes, sir.

Q. Now with the valve outlet in that position and the tank in an upright position would it or would it not be possible to drain the gasoline entirely from the tank?

A. It would not be possible to drain all of the gas from the tank.

Q. It would flow out down to the level of the valve and no farther, is that right?

A. Exactly.

Q. If you have a tank constructed like that and the bottom continually filled with gasoline over a period of years, what will the effect on the tank be?

Mr. Underwood:

I object to that as calling for a conclusion of the witness.

A. What would the effect of the gasoline on the tank be?

Q. Yes.

A. Gradually create a leak, particularly if moisture is evident in connection with the gasoline.

Q. How long would you say from your experience that a tank so constructed would remain tight after once installed, the maximum period?

Mr. Underwood:

I object to that on the ground that the witness has not been qualified.

A. I would say that the maximum period would be three years.

Q. Now with these tanks installed in this compartment as they were would there be any possibility of inspecting and testing these tanks to determine whether they had begun to leak or not?

A. There would not be a possibility of inspecting the tanks. There would be a possibility of testing the tanks, but in the event of a leak you would never be able to determine its position.

Q. Why wouldn't you be able to determine its position?

A. Due to the fact that you couldn't get close to the weaker spots and most likely positions of leaks in the tanks.

Q. You mean you couldn't get in a position to observe them; is that right?

A. Yes, that is what I mean.

Q. What did these tanks rest on, or do you know?

A. I don't remember.

Q. In their position in the vessel how were the bottoms of the tanks with respect to the water-line of the vessel?

A. Below the water-line.

Q. Under those conditions would it be possible to install a tray under them with an outlet overboard to carry off any gasoline leakage?

A. Not without sinking the vessel due to water coming from the same connections.

Q. You couldn't have an open connection at that level in the side of the ship?

A. No, sir.

Q. If a vessel like this were laid up for a period of time what would be the precautionary requirements that would have to be taken for safety?

A. The precautionary requirements that should be taken and that are ordinarily taken are to empty the tanks of all gasoline; to assure proper ventilation through the vessel; clean the bilges thoroughly; to remove all fire hazards such as batteries for open light and check up on oil leaks and other objects that may cause combustion.

Q How long would it take a crew of two or three men to lay up a boat of this type properly, taking the precautions you have just mentioned?

A. If the bilges were properly cleaned it would take three men, in my estimation, approximatey two days to lay her up in a proper way to insure safety of the vessel.

Q What would you say of the importance of ventilation as a requirement of safety in a case of this kind—

Mr. Underwood:

I object to that on the ground that the witness has not been properly qualified, and on the ground that the question is hypothetical and the facts are not properly included.

A. Proper precautions should be taken in a case of this kind to open the skylights for ventilation whenever weather permitted and to properly and continually open the cowl ventilators and turning towards the wind for assurance of proper ventilation throughout the vessel.

Q. Now if this vessel, the Seminole, was laid up in a shed for a period of two months approximately without any attention being given to her engineroom, would that in your opinion meet the requirements of the proper care with respect to ventilation?

A. No, sir.

Mr. Underwood:

I object to that on the grounds heretofore stated.

Q. Did this vessel have cowl ventilators, or do you recall?

A. It had deck cowl ventilators as far as I remember; it had two leading to the engineroom of an approximate diameter of 14 to 16 inches.

Q. I show you this picture and ask you can you tell me what that is?

A. It is a view of the deck of the engineroom as I last saw it, with the two ventilators showing in two corners of the picture; the entrance hatch in the corner opposite the skylight opening as far as I can determine.

Q. Which is the skylight opening and which is the entrance hatch?

A. As far as I can determine that is the skylight opening and this is the engineroom opening—engineroom hatch opening.

Q. Which was the farther aft?

A. The engineroom hatch was the farther aft.

Q. Look carefully at the picture and see if you can tell whether it is looking aft or not?

A. I would say that it is impossible to determine; my statement is based on memory.

Mr. Underwood:

Before we go any further let's mark the things that he indicated; mark that as the hatch and that as the skylight.

Q. You have marked two openings here which I will mark 1 and 2, and your present recollection is that number 1 is the hatch and number 2 is the skylight opening, is that right?

A. That is my recollection; whether I am turned around as to the position of the vessel I don't know.

Q. If it should turn out that number 2 was farther aft, then number 2 would be the hatch opening, is that right?

A. Yes, sir.

Q. These two objects that are so much crushed here are the ventilators?

A. Yes, sir.

Mr. Matteson:

First of all, I want to offer the diagram previously made by the witness.

(Thereupon the diagram above referred to and offered in evidence was marked Libelants' Exhibit No. 21.)

Mr. Matteson:

I now offer the picture in evidence.

(Thereupon the photograph above referred to and offered in evidence was marked Libelants' Exhibit No. 22.)

Q. Do these or did these ventilators extend below the deck of the Seminole?

A. No, there is no indication of any extension below the deck.

Q. Now was there any method on the Seminole of ventilating the tank compartment?

A. I didn't see any.

Q. Would you say that there was apparently none?

Mr. Underwood:

I object to that; calls for the conclusion of the witness.

The Commissioner:

Note the objection.

A. There was apparently no ventilating system of any kind for the tank compartment of the Seminole.

Q. After you completed your investigation of the wreck after the ship had been raised, did you make a report to any one or did anybody ask you for a report as to the result of your investigation?

A. Mr. Riley asked for a report.

Q. Who is Mr. Riley?

A. This gentleman here (pointing).

Q. Outside of being "this gentleman" who is he?

A. The gentleman with the blue necktie and the gray suit.

Q. In what capacity did he ask you for that report?

Mr. Underwood:

I object to that—

A. I met Mr. Riley as the representative of the owners of the Seminole, and Mr. Miller said "of the Phipps estate"—

Mr. Underwood:
I object to what Mr. Miller said.

Q. In any event, Mr. Riley asked you for the report?
A. Yes, sir.
Q. And as the result of that request what did you do?
A. Made a report on what I had seen and what I decided was the primary and secondary causes of the explosion.
Q. Did anyone else ask you for a copy of the report?
A. Yes, Mr. Miller, the District Attorney.
Q. You did prepare that report, did you?
A. Yes, sir.
Q. To whom did you give the original or copies?
A. As I remember Mr. Riley got the original and Mr. Miller a copy.
Q. Have you your own copy at the present time?
A. No.
Q. Have you looked for it?
A. I looked for it this morning, yes.
Q. Can you identify this as a copy of your report?
A. May I read it?
Q. Yes.
A. Yes, I would say that this is a true copy of my report.

Mr. Matteson:
Mark this for identification.

(Thereupon the copy of the report above referred to was marked for Identification as Libelants' Exhibit No. 23.)

Q. I think you said, Mr. Holm, that you volunteered your services up there and that you were not soliciting business. Did you as a matter of fact receive some compensation for what you did up there?

A. Yes, I received a check for $50 from Mr. Miller as a present for services.

Q. What was that for, do you know?

A. For aiding in removing the body and for searching for the body.

Q. Was there anyone else present at any time during the operations there representing the owners of the vessel other than Mr. Riley that you know of?

Mr. Underwood:

I object on the ground that it calls for the conclusion of the witness.

A. I don't know.

Q. There is one thing I want to go back to just for a moment: when you were pumping out the boat and you saw this substance coming to the surface of the water in the engineroom as you have described it, which you later determined was gasoline, who was present with you at the time that that was observed; who was there that observed that besides yourself that you know of?

A. Ben McCoy and Jack Lowney.

Q. Do you remember Captain Patten?

A. Captain Patten was there.

Q. Now these tanks, with their outlets four or five inches above the bottom, would all necessarily have gasoline in them to that extent?

A. Surely.

Q. Now if the lines were broken and the water came in and had access to the tanks, what would happen in the tanks?

A. The water would displace the gasoline and raise its level.

Q. Then if the water was pumped out again what would be the last to leave the tanks?

A. The lower part of the gasoline body would be level with the outlet in the tank.

Q. Suppose all of the leakage drained out that could come out through the opening five inches from the bottom, what would be left in the tank then?

A. The water.

Q. So that in the course of that operation what gasoline was left in the tanks would come out, is that right?

A. Yes, sir.

Q. Now you observed the quantity of the gasoline that did come out there. Can you tell us in your judgment from what you observed whether the last remaining five inches of gasoline in each of these tanks would have been sufficient to account for the quantity of gasoline that you saw come into the engineroom or whether the quantity that you saw in the engineroom gives you any opinion as to the quantity that must have been in the tanks?

Mr. Underwood:

I object to that as being speculative, and no proper foundation laid.

The Commissioner:

Note the objection.

A. The quantity contained in the vessel at the time of our pumping and raising the vessel I should say would be much superior to the quantity that could be contained in the tanks from the drain valves down—

Q. Of course it would be impossible to make any accurate estimate.

A. I could not make any accurate estimate of that at all.

Q. One more thing I want to ask you: your assistant was Jack Lowney, I believe you said?

A. Yes, that is true.

Q. Where is he; what has become of him?

A. I don't know; I wish I did.

Q. What was the last you saw of him?

A. The last I saw of Jack Lowney was two months ago in our mines at Marian, Kentucky.

Q. What happened then; the only point is that—you don't know where he is now?

A. I don't know where he is.

Q. You have no means of—

A. I am looking for him to get him to make a bad check good.

Mr. Matteson:

Your witness.

The Commissioner:

We will adjourn until eleven o'clock tomorrow morning.

(Whereupon an adjournment was taken to 11:00 o'clock A. M., January 24, 1939.)

January 24, 1939, 11:00 o'clock A. M.

Hearing resumed pursuant to adjournment.

Appearances same as heretofore noted.

190 Thereupon CARL HOLM, a witness produced in behalf of the Libelants, and having been previously sworn, resumed the stand and testified further as follows:

Cross Examination.

By Mr. Underwood:

Q. Mr. Holm, were you ever aboard the Seminole before the fire?

A. No, sir.

Q. How many separate times were you aboard it there while you were diving and helping around?

A. I would say I was there practically continually until I left.

Q. You got there on the morning after the fire?

A. Yes.

Q. That was Tuesday?

A. I don't remember the day of the week.

Q. What time of the day did you get there?

A. I don't remember that. I dare say it was six or seven o'clock.

Q. In the morning?

A. Yes, as far as I remember.

Q. That was the day you dove for the body and were unable to find it?

A. Exactly.

Q. And the pumping began sometime that night?

A. The pumping started sometime that night.

Q. And you found the body the next day?

A. I found the body very early the next morning.

Q. Were you on the boat after the body was removed?

A. Yes, sir.

Q. For how long?

A. I dare say four or five hours.

Q. What time of the day did you leave the boat for the last time?

A. As best I remember it was about noon.

Q. Have you been aboard it since?

A. Yes, sir.

Q. When?

A. When I was removing some of the other boats from the yacht basin, the wreckage of some of the other boats from the yacht basin.

Q. Do you remember when that was; what date?

A. Approximately a month after the fire.

Q. Where was the Seminole then?

A. It was laying in New River.

Q. It was across the river from Pilkington's?

A. On the bank there, yes.

Q. What was your purpose in going there on that day?

A. Merely crossing the boat in order to get to a steel barge.

Q. Were you in the engineroom?

A. No.

Q. Have you been aboard her since?

A. No.

Q. So that your presence on the Seminole was from the morning of the day after the fire until about noon of the day after that and once a month later approximately when you merely walked across her?

A. I saw the Seminole several times during the period of removing the wreckage.

Q. I am talking about when you were aboard of it. Am I right in saying that you were aboard of her from sometime early in the morning of the day following the fire, off and on continuously perhaps until about noon of the following day?

A. Yes.

Q. And the only other time was when you walked across her about a month later?

A. I might have been aboard her during the period of looking—I am unable to answer that question other than to say I might have been aboard her several times, and I might have stepped across her in removing some of the other boats, yes. We moved the Seminole for the yacht basin and tied her up to the bank on the other side of the canal.

Q. Were you down in the engineroom on that occasion?

A. I don't remember.

Q. Do you remember?

A. No, I don't remember whether I was or not; if I was it was just walking through it for a moment.

Q. Do you remember whether you were or not?

A. No, I don't remember.

Q. The only times you remember now being aboard the Seminole were when you got there the morning following the fire and until noon of the next day—in the engineroom?

A. Yes, that period was spent practically all in the engineroom.

Q. You don't remember being in the engineroom any other time?

A. I may have been there but I don't remember.

Q. While you were there on the day following the fire and the day after that, did you make any notes of your observations?

A. Yes, sir.

Q. What did you make them on?

A. I made notes on the little tags that were made fast to the exhibits you saw yesterday.

Q. Anything else?

A. I may have made notes in—

Q. Did you or didn't you?

A. I would say that I made notes.

Q. Where are they?

A. I don't know.

Q. What did you make notes of?

A. Of the conditions in the engineroom for one thing.

Q. What did you do with those notes?

A. I don't know.

Q. What did you make them for?

A. For the purpose of remembering the conditions.

Q. When did you last see them?

A. Condition of the boat notes?

Q. The notes.

A. Probably three or four months after they were made.

Q. Where did you last see them? Who had them?

A. I imagine they were in my car—no, I don't know.

Q. Did you consider them important?

A. No.

Q. What did you make them for?

A. I make my own notes on all my jobs.

Q. Where are the notes now?

A. I don't know.

Q. You have not seen them since how long ago?

A. Probably three or four months after the fire.

Q. You have not seen them since then?

A. No.

Q. Who did you give them to?

A. I don't know whether I gave them to any one.

Q. Your mind is a complete blank about that?

A. Yes, it is blank.

Q. You are sure of one thing, that you have not seen them since four or maybe five months after the fire?

A. No, with the exception of the report we saw yesterday.

Q. I am talking about notes?

A. No.

Q. You have not seen those notes since four or five months after the fire, is that right?

A. Yes; I didn't consider them important at any rate.

Q. Did you keep a copy of your report?

A. Yes, sir.

Q. When did you last see that?

A. April, two years ago.

Q. Who did you give that to?

A. It was in my office in 806 Biscayne Bank Building.

Q. Where is it now?

A. I don't know; I looked for it yesterday morning and didn't see it anywhere.

Q. Did you give it to somebody?

A. I loaned it to Mr. Batchelor for the purpose of allowing him to make a copy.

Q. When was that?

A. To the best of my memory, sir, about three years ago; the day and month I don't know.

Q. You have not seen that copy since that time?

A. I haven't seen the copy since April two years ago. I went through my files in the Biscayne Bank building and saw a copy of the report there.

Q. How long ago was that?

A. April, two years ago.

Q. Now you mentioned yesterday a school that you went to abroad at the tender age of fourteen.

A. Yes, sir.

Q. What was the name of that school?

A. The naval school for boatbuilders and shipbuilders of Copenhagen, Denmark.

Q. That is the name of it?

A. I don't know that there is any other name for it.

Q. Who maintained the school?

A. The Danish Navy.

Q. Were you enlisted in the navy?

A. Yes, sir.

Q. At the age of fourteen?

A. I didn't enlist as an enlisted man at the age of fourteen.

Q. Were you enlisted as a cadet of some sort?

A. They maintained that school for the purpose of instructing young people in the art of ship construction, boatbuilding, naval architecture and everything that has to do with ships.

Q. Did you receive some sort of a degree when you graduated from there?

A. You got a paper stating that you have passed as a ship constructor or shipbuilder or ship carpenter or boatbuilder or whatever it is.

Q. Did you get such a certificate?

A. I have a certificate.

Q. What does it say? Do you have it with you?

A. No, I haven't, but I had a certificate.

Q. Are you a certificated boatbuilder?

A. Yes, sir.

Q. Are you a naval architect?

A. No, sir. I studied naval architecture but I would not be considered a naval architect in this country. I spent four years studying naval architecture, however.

Q. Your course in boatbuilding had primarily to do with wooden or steel vessels?

A. Both.

Q. What did you do in that school; did you actually do the constructing; did you drive any rivets?

A. Yes, sir.

Q. You got right down and did the dirty work, is that the idea?

A. Absolutely.

Q. Have you ever prepared a design for any vessel?

A. Yes, sir.

Q. What kind?

A. Small gasoline-driven sail vessels.

Q. How many?

A. Four or five.

Q. Were they built?

A. Yes.
Q. According to your design?
A. Yes, sir.
Q. Where?
A. Two built in Copenhagen and one at Daytona Beach.
Q. Were they fishing boats?
A. Two of them were fishing boats.
Q. What size?
A. It is my recollection that the ones built in Copenhagen were respectively 30 and 40 feet.
Q. What sort of housing did they have?
A. Pardon me. I never heard of housing on a boat, sir.
Q. Were they open boats?
A. No, sir.
Q. How many persons did they accommodate?
A. They were not built to accommodate persons; they were built for commercial purposes, fishing.
Q. No sleeping quarters?
A. Sleeping quarters for the crew.
Q. How many?
A. Four.
Q. Both boats?
A. Yes, sir.
Q. How about this one up at Daytona Beach; what kind of a vessel was she?
A. She was a 30-foot pleasure cruiser.
Q. What is her name?
A. "Carl Holm".
Q. She was built for you?
A. No, she was built for the Mathews Boatyard.
Q. You built it for yourself?
A. No, built it for Mathews Boatyard.
Q. For the Boatyard?
A. Yes, for Mr. Mathews.

Q. What type of boat was she?

A. Pleasure cruiser.

Q. How many persons did she accommodate?

A. Four to the best of my recollection.

Q. Where is she now?

A. I don't know.

Q. What did you have to do with her planning and construction?

A. I laid the frame all out; I laid the boat out, together with Mr. Mathews and under his supervision.

Q. Was she steel or wood?

A. Wood.

Q. What was her power?

A. As far as I remember 150 H. P. to an engine.

Q. Are those the only two vessels that you have had anything to do with the construction of?

A. No, sir. I cooperated in the construction of the W. M., had charge of the work for Ben McCoy.

Q. That was one boat you mentioned?

A. Yes.

Q. What sort of a vessel was she?

A. 69-foot houseboat.

Q. Where was she built?

A. She was built at Holley, Florida, about three miles north of—

Q. What did you have to do with her design or construction?

A. I planned her and assisted in installing the engines; laid her deck; built the deckhouse and assisted in finishing the boat in its entirety.

Q. Who drew the plans?

A. Bill McCoy.

Q. Any more boats that you had anything to do with in that connection?

A. Built a tender for the Willowemoc.

Q. Any more?

A. I designed a boat for R. L. Denton, Manager of the Pan-American Airways. The construction was never finished; he died before it was finished.

Q. Any more?

A. Not that I remember, sir.

Q. Have you told us the full extent of your experience with designing and construction now?

A. I would not say I have; there may be more of them.

Q. Tell me all that you can right now?

A. You expect a lot of my memory.

Q. You have given us an example of a very particular memory about some things.

A. Unless you desire to wait, sir, I prefer to call that all for the moment.

Q. You have had this subject in mind for at least the last two or three days.

A. This subject of the Seminole?

Q. And your qualifications.

A. I wouldn't say that.

Q. You discussed it before testifying here yesterday?

A. As to my qualifications?

Q. As to your experience.

A. Somewhat.

Q. So that you have had it in mind?

A. I have had it in mind.

Q. For at least two or three days?

A. Not for two or three days, no.

Q. When did you begin to discuss your testimony before giving it yesterday?

A. Yesterday morning.

Q. So that at least since yesterday morning you have considered from time to time your experience so that you could state it on your testimony here yesterday and today?

A. Not the entire time.

Q. Of course not but from time to time?

A. From time to time.

Q. And you have told me now all that you can recall about your experience in the design and construction of boats, is that right?

A. All I can recall, yes.

Q. Now you told us yesterday about speaking with someone over the telephone on that afternoon of the fire. With whom did you speak?

A. Mr. Miller who I believe was District Attorney of the county next to it.

Q. Did you call him up?

A. Yes.

Q. Where did you get him; in Ft. Lauderdale?

A. I didn't call him; I called the Pilkington Boatyard.

Q. Did Miller tell you that he was Pilkington's lawyer?

A. No, sir.

Q. Not on the telephone?

A. Not that I remember.

Q. When did he tell you that he was Pilkington's lawyer?

A. I don't remember.

Q. When did you find out that he was the County Attorney?

A. I believe he introduced himself as the District Attorney when I met him.

Q. At Pilkington's Yacht Basin?

A. Yes.

Q. That was on the following morning?

A. Yes, sir.

Q. Didn't he also tell you that he was Pilkington's lawyer at that same time?

A. I am sure he didn't.

Q. You know him only as County Attorney?

A. Yes, sir.

Q. Where did you first meet Mr. Riley?

A. Where?
Q. Yes.
A. At Pilkington's Yacht basin.
Q. Who introduced you to him?
A. I don't recall, sir.
Q. Did you have any conversation with anybody apart from Miller before you met Riley?
A. Yes, I had a conversation with several people.
Q. Isn't it a fact, Mr. Holm, that you were asked to come there for the purpose of finding the body by a person other than Miller?
A. No.
Q. Do you remember a man by the name of Clark?
A. I remember several people by the name of Clark.
Q. At Ft. Lauderdale?
A. No.
Q. Did you ever see or talk with a man named Clark at Pilkington's at Ft. Lauderdale the day you got there?
A. There was a Captain Clark, I believe, on the premises.
Q. What was he Captain of?
A. He was Captain of the Willowemoc at that time.
Q. Do you remember anybody else named Clark?
A. No.
Q. When you met Riley had you been asked by Miller to do anything on the boat?
A. Yes, to note everything of importance in the engineroom and remove the objects that you saw yesterday.
Q. Did Miller tell you what objects to remove?
A. I don't think he specified every object.
Q. Did he tell you to remove the gasoline can?
A. I didn't remove the gasoline can.
Q. Did he tell you to remove the drain valves?
A. Yes, sir.
Q. That was before you conversed with Riley?

A. Yes, sir.

Q. What was the condition of the Seminole at that time?

A. At the time I removed the objects?

Q. No, at the time Miller told you to remove the drain valves?

A. She had just been raised.

Q. When was this conversation with Miller; was it the first day you got there or the second day after you got there?

A. The second day.

Q. I am talking now about your first conversation with Miller?

A. My first conversation with Mr. Miller was over the telephone.

Q. The first conversation in person with Miller; was that on the early morning of the day you got there?

A. I don't remember.

Q. What time did you meet Mr. Riley?

A. I don't remember that.

Q. You have no recollection of that?

A. No.

Q. Had you had a conversation with that Miller person before you had your conversation with Mr. Riley?

A. Yes, sir.

Q. And what had Miller asked you to do in that conversation?

A. To remove the objects of importance lying loose in the engineroom and mark the valves in their respective positions.

Q. Did he ask you to remove the drain valves?

A. Yes—not specifically drain valves but all loose objects.

Q. He asked you to remove any loose objects?

A. Of importance.

Q. He didn't specify any particular objects?

A. Not that I remember.

Q. What was your conversation with Riley?

A. As far as I remember Mr. Riley introduced himself as a representative of the boatowners, and Mr. Riley asked to get my viewpoints in writing as to the cause of the fire, and Mr. Miller in turn, as far as I remember, asked to get a copy of the report.

Q. This was your first conversation with Riley?

A. I am not sure that it was discussed in my first conversation with Mr. Riley.

Q. Just tell me what you are sure about in your first conversation with Riley?

A. My memory is not good enough to state all that was discussed in the first conversation with Riley, sir, because everything was in a turmoil and I had been up all night and I was looking for a bit of sleep more than anything else when I met Mr. Riley.

Q. Did Riley ask you to remove the body or try to find it?

A. I believe Mr. Riley was there when we were searching for it and he expressed his appreciation of—

Q. I am talking now about your first conversation with Mr. Riley when you got there or soon after you got there. The first day you were there did he ask you to look for the body?

A. I don't recall, sir.

Q. Did he agree with you on a price for your services?

A. No price was mentioned.

Q. Did you tell him anything?

A. No, sir.

Q. Didn't tell him a thing?

A. As to price?

Q. As to anything else?

A. Well, I very likely told him the things in the vessel but I don't recall what things.

Q. Tell me what you remember telling him.

A. I don't remember telling him anything.

Q. You have told me all that you can about your first conversation with Riley?

A. I have told you all that I remember of any of my conversations with Riley. I will take that back. Pardon me. Not of any conversation I had with Mr. Riley.

Q. Do you remember anything more of your first conversation than you have already told us?

A. No, sir.

Q. Did you have any discussion with Mr. Pilkington?

A. Several.

Q. What did he ask you to do?

A. He asked me to do an awful lot of things, but exactly what things I don't remember.

Q. Do you remember anything that he asked you to do about the Seminole?

A. The only—one thing he asked me to do was to be very careful and not catch the gasoline on the surface of the water afire.

Q. Anything else?

A. Yes, he asked us to plug the holes a little more permanently when she was afloat.

Q. Did he ask you to remove anything from the boat?

A. He was with Mr. Miller when the question came up about the objects in question.

Q. Did Mr. Pilkington tell you that Mr. Miller was his attorney?

A. Not that I remember, sir.

Q. To whom did you deliver these objects that you brought from the boat?

A. To Mr. Miller.

Q. You gave them to Miller?

A. Mr. Miller, yes, and they were placed in the office of Pilkington's house—tagged and marked.

Q. What day was that?

A. To the best of my memory the day the body was removed; I don't recall the day of the week nor the day of the month.

Q. Were they wrapped in paper at that time or not?

A. Were they wrapped up in paper?

Q. Yes.

A. No, they were not.

Q. You delivered them to Mr. Miller in Pilkington's house?

A. Outside of Pilkington's house.

Q. What did you say Mr. Miller did with them?

A. I saw him place them in Pilkington's office—for how long I don't know.

Q. When you dove how deep would you say the water was in the engineroom?

A. Guessing, approximately five or six feet.

Q. Was it up to the window sill, do you remember?

A. Yes, as far as I remember it was above the window—no, as far as I remember it was below the window sill, just below.

Q. Was the boat resting on the bottom at that time?

A. I am not sure; she was resting on something.

Q. She was sunk?

A. Yes.

Q. What sort of equipment were you wearing when you were diving?

A. Helmet.

Q. Were you able to see under the water?

A. No.

Q. You had to go entirely by feel?

A. Absolutely.

Q. Can you tell me where you went in the engineroom during your dives?

A. I didn't get very much further below the hatch. I couldn't move very far due to the debris; I squeezed in between the two engines as far as I could and reached

forward and tried to climb over the engine and struck debris wherever I went and got my helmet caught twice.

Q. Through what opening did you go down into the engineroom; do you remember?

A. The hatch as far as I remember.

Q. Did you land in the engineroom between the two engines?

A. I landed in the engineroom below the hatch.

Q. You went right down through the engineroom hatch?

A. Yes.

Q. Did that bring you out between the two engines?

A. Not exactly between the two engines; no, sir.

Q. Well, on which side?

A. I don't recall whether the hatch was a little towards the starboard side of the vessel—I believe the hatch is towards the starboard side of the vessel.

Q. How far forward of the after bulkhead were you when you landed in the engineroom?

A. As far as I remember, three or four feet.

Q. Did you walk forward between the two engines, towards the forward part of the engineroom?

A. As far as I could on account of the debris.

Q. You don't know how far that was?

A. No, I don't recall.

Q. You didn't get up to the forward end of the engines?

A. It was impossible to get to them.

Q. Then where did you get?

A. I tried to climb over the two engines.

Q. Were you able to do that?

A. Not all the way to the bulkhead.

Q. Did you get over one of the engines?

A. I reached over the engines.

Q. Did you climb over?

A. No, I couldn't climb over.

Q. You were walking on debris, I suppose?

A. Yes; such a mess of debris that you couldn't tell where you were.

Q. You couldn't tell where you were walking?

A. No.

Q. You didn't get forward of the forward end of the engines?

A. No, sir.

Q. You didn't get on the outboard side of either engine?

A. I believe I did get on the starboard of the starboard engine.

Q. Climb over it?

A. Over the aft end of it.

Q. You climbed over the aft end?

A. From the hatch I inspected the engineroom as well as possibly could be done.

Mr. Underwood:

I move to strike the answer as not responsive.

Q. All I want you to tell me is where you went.

A. Can a blind man tell where he goes?

Q. Most blind men can. Can you?

A. No, sir

Q. You don't know where you went?

A. I went in the engineroom.

Q. I want you to give me your best recollection as well as you are able to where you went?

A. My best recollection is that I went through the hatch in the engineroom with my diving helmet and inspected the engineroom as far as could be done without being able to say whether I was on the starboard side of the starboard engine or in the center of the engineroom on account of the debris, and I am not able to tell you any further.

Q. You told me that you walked forward between the two engines. Are you sure of that?

A. You couldn't walk.

Q. Climbed.

A. I climbed over one engine as far as a man could climb in the debris there; whether I climbed towards the starboard side or towards the port side I don't recall; the hatch took me down either on the starboard side of the starboard engine or in the alley between the engines as far as I remember.

Q. Now do you remember bringing up anything, any parts of the Seminole, from your diving?

A. I brought up part of the switchboard.

Q. Where is that?

A. It is below the hatch—

Q. Where is it now?

A. I don't know, sir. I gave the part I brought up to Mr. Miller.

Q. Is it here in Court?

A. No, it was merely part of the slab, just part of the slate. It had no bearing on it.

Q. Just a part of the slate?

A. Yes.

Q. No connections of any sort on it?

A. If there was any—

Q. Do you remember?

A. No, I don't remember.

Q. You gave that to Mr. Miller, however?

A. As far as I remember, yes.

Q. Do you remember who was doing the pumping on this boat?

A. A Ft. Lauderdale contractor by the name of West.

Q. You worked for him?

A. Did I?

Q. Yes?

A. No, sir.

Q. For West?

A. No, sir.

Q. While he was pumping the boat you were not working for him?

A. I was working to get the boat up.

Q. Were you working for West?

A. No.

Q. Didn't West pay you?

A. No.

Q. Who did pay you for your services there at that time?

A. At the time the boat was raised?

Q. The day you got there or the following day?

A. As far as I remember all I ever got paid was the fifty dollars that Mr. Riley presented me for services.

Q. You said that was a present, didn't you?

A. That was a present. He specified at the time that it was a present and I refused it at the time.

Q. You say he gave you a check for fifty dollars?

A. A check for fifty dollars.

Q. And you refused it and he insisted that you take it?

A. I refused the money because it is never a practice to charge for removal of bodies in cases involving fatal accidents.

Q. Did you give him a receipt for it?

A. If I gave Mr. Riley a receipt it was because he could recover his fifty dollars from other sources.

Q. Did you give him one? That is all I asked you?

A. I don't remember.

Q. Is this your writing; is that your signature (handing paper to witness)?

A. Yes, sir.

Mr. Underwood:

I offer it in evidence.

(Thereupon the receipt above referred to and offered in evidence was marked Respondent's Exhibit No. 1.)

Q. I believe you have told us that the body of Abel was found between the port engine and the forward bulkhead; is that correct?

A. That is correct, sir.

Q. And you found that on the morning of the second day you were there; is that right?

A. Yes, sir.

Q. Now at that time how much water was there in the bottom of the engineroom?

A. As far as I remember water was below the floor of the engineroom when we removed the body.

Q. And this concrete slab that you mentioned, where was that?

A. Covering part of the body.

Q. How big was the concrete slab; was it broken up?

A. Yes, it was broken up to some extent as far as I remember.

Q. Over how big an area did the concrete slab extend, the pieces?

A. I didn't measure it, sir.

Q. Well you were there and saw it.

A. As far as I remember an area of three to four feet.

Q. Three to four feet square?

A. As far as I remember.

Q. And that was only part of the debris that was there, I suppose?

A. Yes, only part of it.

Q. Now I would like you to tell me as accurately as you can where it was you found each of these pieces?

A. Do you want me over there?

Q. Yes, I think it will be more convenient if you will come over here. This can, Exhibit 13, where did you find that?

A. On the starboard side of the position where the body was found.

Q. Close to the body? You tell me how far from the body?

A. One to two feet.

Q. How far from the forward bulkhead?

A. Approximately the same distance.

Q. Now did you find Exhibit 13 yourself?

A. What do you determine finding an object?

Q. You tell me what happened; you were there and I was not.

A. I was stepping over the can several times probably before it was found.

Q. Who picked it up and brought it out?

A. I don't know.

Q. Did you?

A. As far as I know, no.

Q. Who did?

A. I don't know.

Q. Did you bring the funnel up?

A. As far as I remember I didn't.

Q. That is Exhibit 14?

A. Yes.

Q. You just simply stumbled over it and somebody else brought it up; is that right?

A. I didn't bring that up.

Q. You didn't think they were objects of importance then?

A. Not at that time, no.

Q. Now this Exhibit 18, did you find that and bring it up?

A. Yes, sir.

Q. Where did you find it?

A. In the aft part of the engineroom.

Q. Well be as specific as you can; between the engines or outside of the engines or where?

A. Approximately three or four feet ahead of the aft engineroom bulkhead.

Q. Between the engines or on the outboard side of either engine?

A. Below the position of the switchboard.

Q. That would be between the two engines.

A. As far as I know the switchboard was between the engines and the aft engineroom bulkhead.

Q. Was this attached to anything when you first picked it up, or was it free as it is now?

A. It was attached to the rest of the switch.

Q. Did you break it off?

A. No, sir.

Q. You didn't break it off but you picked it up and it came off?

A. Yes.

Q. When you first touched it it was attached to the switchboard?

A. No, sir; it was attached to the rest of that switch.

Q. But not the switchboard?

A. It may have been attached by strings or wires but no more than that, because it wouldn't have fallen apart.

Q. So the thing that you speak of as the rest of this switch was still attached to the panel when you brought this exhibit up?

A. Not to the panel.

Q. What was it attached to, if anything?

A. I wouldn't say it wasn't attached, with the exception of the wiring.

Q. It had been broken off from the panel itself?

A. Yes, the panel was all broken up and shattered.

Q. You didn't bring up the rest of that switch?

A. Not that I remember.

Q. Now Exhibit 11, these two drain valves, as you call them, where did you find them or did you find them?

A. Yes, I found them.

Q. Isn't it a fact that your helper is the man that first picked that up and said, "Here are the valves we have been looking for", and held them up and showed them to you?

A. I found them before.

Q. Then you put them back and let him pick them up; is that it?

A. No, it is not.

Q. All right.

A. I didn't touch them.

Q. Where were these when you first saw them?

A. They were laying on the engineroom floor in the debris.

Q. When you first saw them what did you do about them; did you pick them up?

A. When I first saw these valves I noticed the position they were laying in there and below what they were laying and then I picked them up.

Q. What did you do?

A. I notified Mr. Miller and Mr. Miller asked us to bring them up.

Q. Where were they when you first saw them?

A. Laying in the debris in the engineroom?

Q. And where in the engineroom?

A. Below the position of the pipe they were broken off of.

Q. It is plain, isn't it, that a pipe has been broken off from Crane 150?

A. Yes.

Q. When you first saw them that break had already occurred and this object was lying on the floor amongst a great deal of debris; is that right?

A. That is right.

Q. Do you say that you are the first one who picked those up?

A. No, sir, I am not the first one that picked them up.

Q. Who did?

A. The helper I had with me picked them up and held them up in the air.

Q. What did you see him do with them?

A. I told him to place them where they were laying when he picked them up.

Q. Did he tell you that they were open?

A. Not as far as I remember.

Q. Did you hear him say "these valves are open"?

A. Not that I remember, no.

Q. What did you see him do with them; did he just pick them up and put them down again?

A. I told him to put them down where they were.

Q. What else did you see him do with them?

A. Nothing.

Q. Just pick them up and put them down again?

A. Yes.

Q. What happened to them next?

A. I picked them up.

Q. You then picked them up?

A. Yes.

Q. That was before the top of the engineroom had been removed, wasn't it—the deckhead?

A. Before the deckhead had been removed, yes.

Q. When you were down below in there didn't you see that these valves were open?

A. Yes, I tried the position of them right there.

Q. You did?

A. Yes, sir.

Q. Both of them?

A. Yes, sir.

Q. You turned the stems?

A. Yes, in his presence.

Q. In whose presence?

A. In my helper's presence.

Q. There wasn't anybody else down in the engineroom at that time, was there?

A. I believe Mr. Patten was there on top of one of the engines as far as I remember.

Q. Anybody else?

A. I don't remember.

Q. You turned the valve handles and said they were open?

A. Yes.

Q. And then you gave them to Patten, didn't you?

A. Yes, sir.

Q. Didn't he turn the valve handles or valve stems and say also that they were open?

A. I don't know; I don't remember that.

Q. Who passed them on top while you were going back up on deck?

A. Jack Lowney.

Q. Then you had to take them ashore before you marked them; is that right?

A. Yes.

Q. So that your mark there doesn't represent the position or condition of that valve when you first found it?

A. Positively.

Q. It represents, doesn't it, your recollection of how much they were open?

A. I noted very carefully how much they were open.

Q. You did turn the valves before you marked them, didn't you?

A. Yes.

Q. You didn't mark them first and then turn them to see if they were open, did you?

A. They were turned before I got hold of them.

Q. By Jack Lowney?

A. I don't know, sir. They were open.

Q. But you turned the stems before you marked them, didn't you?

A. Yes, sir.

Q. And then you found it necessary to put them back in the position in which you found them, in the position in which you thought they were before you marked them?

A. We marked them with a pencil in the engineroom and then later we marked them with the hacksaw blade.

Q. This is the first time you said anything about a pencil. You never said anything about that yesterday or today. When did you think of that?

A. When?

Q. That comes in your memory now?

A. I marked them with a pencil in order to secure the position until I got ashore and could mark them more permanently.

Q. Look at Exhibit 17. Where did you find that?

A. I found that close to the forward engineroom bulkhead.

Q. Starting athwartships, what did you find it near?

A. Near the auxiliary light plant.

Q. Between the port engine and the auxiliary light plant?

A. Between the port engine and the forward engineroom bulkhead, as far as I remember.

Q. Now is it your testimony that from the bottom of this trap there was some connection?

A. No, sir; not some connection.

Q. What did you say was there?

A. Pipefitting.

Q. Some pipe or fitting of some sort?

A. Yes, sir.

Q. Perhaps a plug?

A. No, sir.

Q. You say that could not be a plug?

A. Not a standard make.

Q. You draw a distinction between a plug and a standard make?

A. Absolutely; a plug would be of wood.

Q. And obviously that is not wood, is it?

A. No.

Q. You say it could not be a brass plug?

A. Not a standard make brass plug.

Q. It could have been a brass plug, couldn't it?

A. It would be considered a cap but not a plug.

Q. It could have been a brass cap?

A. The name "plug" means something to go inside of something else.

Q. Do you draw a distinction between a plug that is solid and a plug that is not solid?

A. Yes.

Q. So that you say this was not a solid plug?

A. Couldn't have been.

Q. It could have been a cap?

A. It could have been a cap.

Q. Now, one more thing here, Exhibit 2. Tell me just where you found that?

A. I found that below the opening of the number 2 gasoline tank.

Q. Counting from port to starboard?

A. Yes.

Q. And you have expressed the opinion that this valve is number 2 valve; is that right?

A. Yes, sir.

Q. How close was it; right up close to the bulkhead?

A. Yes, it was pretty close.

Q. Now these four tank valves, did you try all four of them?

A. Yes, I tried all four of them.

Q. I didn't quite understand your testimony yesterday as to how far open they were.

A. A valve is considered jamb-open when you have to use force to move the stem downward, and these were jambed down.

Q. It is your testimony that they were open as wide as they could be?

A. Yes, sir.

Q. All four of them?

A. Yes, sir.

Q. That is not true of the drain valves?

A. No, sir.

Q. They were open, I believe you said, about one-third of a turn?

A. Yes, about a third of a turn.

Q. Do you think they were open enough to let any gasoline run out that was in the tanks?

A. Positively.

Q. How much of a stream do you think you could get from these valves open one-third of a turn?

A. Guessing at it, a gallon a minute.

Q. If those valves had been open, left open when the boat was laid up, those four tank valves jambed down and the two drain valves open to permit a stream of a gallon a minute, it would keep the gasoline in the tanks until the time of the fire?

A. Nothing would keep the gasoline in the tanks with the drain valves and the four tank valves open; it would run into the bilges.

Q. Anybody looking into that engineroom under these circumstances could hardly help but notice such a condition; is that so?

A. It is so.

Q. You could smell it?

A. Yes.

Q. You could see it?

A. Yes.

Q. Now you have spoken about great quantities of gasoline coming out of these tanks while the boat was being pumped out or around the time when you were diving. Where do you suppose that gasoline actually came from?

A. There was some gas contained in the tanks due to the fact that all of the gas could not be drained out of the tanks while the boat was afloat, but the gasoline being displaced with water would raise the volume of gasoline in the tanks, and with the water discharging from the openings there would come a moment when the gasoline left in the tanks before the boat sunk would be discharged also.

Q. Do you say that is what you saw when you saw this bubbling up from the water?

A. That is part of what I saw.

Q. What was the other part?

A. I saw so many things that—

Q. I am talking now about this bubbling up that you speak of.

A. That is all I saw of gasoline escaping from the tanks.

Q. Now if these valves were jambed open before the fire and the explosion and the two drain valves were open to such extent that they would permit the flow of a gallon a minute, that would keep the gasoline in the tanks until you saw it come out?

A. The bottom of the tank—

Q. You could not have seen that those valves were open prior to the fire; you could not have seen any more gas come out than would stay in the tanks below the level of the valves, could you?

A. No, if there was free escape for the gasoline before the boat sank.

Q. You remember one of the engineers of the boat was there?

A. No, I don't remember.

Q. You don't remember a man pointed out to you where some of the openings in the hull were?

A. Yes.

Q. Do you remember such a man?

A. Yes, sir.

Q. Do you know his name?

A. No, sir.

Q. Did you know that he had been an engineer on the boat at one time?

A. I knew that he must have been on the boat because he knew the boat and its seacocks and sea-connections very well.

Q. You had a conversation with him about whether the tanks were empty when the boat was laid up, didn't you?

A. Yes, sir.

Q. And he told you that they were practically empty, didn't he?

A. Yes, sir.

Q. He also told you that all of the valves were left closed, didn't he?

A. Yes, sir.

Q. You found no damage to the gas tanks themselves, did you?

A. Not as far as I could inspect them.

Q. You found them intact, didn't you?

A. Yes.

Q. Let's go back to this spring of gasoline for a moment; just where was that?

A. Coming up through the surface of the water.

Q. Where in the engineroom?

A. Near the engineroom forward bulkhead.

Q. Where?

A. Athwartships, near the port side of the vessel and one stream in the center of the engineroom athwartships, in the approximate center of the engineroom.

Q. I show you Exhibit 8, a sketch which you drew yesterday and ask you to mark on there where you saw this spring or bubbling up of gasoline?

A. I can only mark it approximate, sir.

Q. Do the best you can.

A. (Marks on diagram.) As I remember there was another leak further over that we plugged, a smaller leak, to the best of my memory.

Q. You have made three X's on here, is that right?

A. Yes, sir.

Q. One of them is just abaft number 1 tank?

A. Yes, sir.

Q. One of them is just abaft of number 2 tank?

A. Yes, sir.

Q. And one of them is just abaft number 3 tank?

A. Approximately.

Q. Making three springs of gasoline bubbling up through the water?

A. They reached the surface of the water.

Q. How big an area did they cover?

A. I didn't stop to take that into consideration.

Q. Were they as big as a pencil or as big as the Judge's wastebasket?

A. Probably as large as a lead pencil, two of them and one larger; we made a plug half an inch as far as I remember and two smaller plugs.

Q. Did you stop those springs?

A. As well as could be done in the circumstances, yes.

Q. Who put the plugs in?

A. I don't remember whether I put them in or whether my assistant put them in.

Q. But you did see what they were inserted into?

A. In the pipes, yes.

Q. Take the one that is just abaft the number 1 tank; what pipe was that put in?

A. As far as I remember into the nozzle of the valve.

Q. The valve on number 1 tank?

A. As far as I remember, sir.

Q. The one abaft number 2 tank, what was the plug put into there?

A. I believe a half inch pipe.

Q. Did the pipe run from the tank?

A. The pipe came from the starboard side of the vessel.

Q. Was that the pipe that you indicated yesterday as the drain line pipe?

A. I think it was, sir.

Q. Number 3, the spring just abaft number 3 tank?

A. As far as I remember it was coming out of a part of the gasoline manifold.

Q. Had that been broken off?

A. That had been broken off.

Q. And that you say was a mixture of the water that had gotten into the tanks while the boat was under, plus the gasoline that remained in the tanks, is that right?

A. It had been mixed but the major part of it was gasoline.

Q. How many gallons of gasoline do you think you saw in these three springs?

A. It all depends on the period of time that the springs would be active.

Q. Well you were there and saw them.

A. They could have been active long before I ever stopped them.

Q. How long did you see them?

A. Not very long; not very many minutes before I stopped the leaks.

Q. How much gasoline do you think came out of those springs?

A. How much do I think came out of the springs?

Q. Yes.

A. I can only guess at it, sir; judging from the position of the valves and from the gasoline that would have escaped if the valves had been in that position sometime before the vessel sank, I would judge that—

Q. I want you to tell me from what you saw and not from your calculations.

A. I can only make calculations, sir; no one could measure the quantity of gasoline escaping under such circumstances.

Q. Your surmise is "great quantities of gasoline"?

A. Yes, sir.

Q. You don't think it was a mere 20 or 30 gallons?

A. That would be considered "great quantities" of gasoline if you had to wade around in it with a fire above your head.

Q. What is the smallest number of gallons that you would call a great quantity of gasoline?

A. That all depends on the conditions.

Q. Under those conditions.

A. What is the smallest quantity that I would call a great quantity?

Q. Yes.

A. 25 gallons.

Q. Do you think you saw at least 25 gallons of gasoline?

A. I am sure of that.

Q. There may have been a great deal more?

A. Might have been.

Q. Couldn't have been any less?

A. Yes, could have been less.

Q. Substantially less?

A. No.

Q. It could not have been less than 24?

A. No, possibly not.

Q. Well now at the time you saw these springs, as you call them, the boat had been submerged below the surface of the water?

A. Yes.

Q. There was considerable oil on the water all over the Basin down there?

A. Yes, sir.

Q. Now getting back to this piece of switch, Exhibit 18, I believe you said yesterday that this was a part of the largest switch that you saw on the switchboard; is that right?

A. As far as I remember, yes.

Q. Do you remember where on the switchboard that switch was, or was the switchboard so battered at the time that you could not tell?

A. The switch was very badly damaged and I would not be able to determine the position of that switch.

Q. Now you spoke yesterday of the switch that was within a quarter of an inch of being closed; is this the switch you spoke of?

A. As it lay on the engineroom floor, yes.

Q. As it lay on the engineroom floor it was within a quarter of an inch of being closed; that is your recollection of it now?

A. That is my recollection.

Q. By the way, was that a two-way or one-way switch?

A. As far as I remember it was a one-way double knife-switch.

Q. You could only close one circuit with it?

A. As far as I remember, yes.

Q. Now you said something yesterday about how far open that switch would be if it were all the way open, how many inches it would be from the poles. Do you remember how much you said?

A. I think I said four to six inches or six to eight inches.

Q. Then if it were half closed it would be three to four inches from the poles, wouldn't it?

A. No, I wouldn't consider that half closed.

Q. What is your definition of "half closed" where the distance is six to eight inches?

A. I would consider a switch half closed when it is about arc and able to admit some current but not all of it.

Q. When you say "half closed" you don't mean that it is half way from the wide open position to the point of contact?

A. No, sir. A switch would be positively open when it is away from the other pole to the extent that no electricity could be admitted to the other poles.

Q. This switch that we are talking about was on the floor of the engineroom when you picked up this piece, is that right?

A. Yes, as far as I remember.

Q. It had been separated from the slab of the panel except by the wire connection?

A. Yes.

Q. It was no longer fastened by bolts or whatever its original fastening had been?

A. No, sir; I don't remember removing any bolts.

Q. It had been torn adrift in some way?

A. Yes, I think so.

Q. So then you don't know whether when the fire started this switch was in the position in which you saw it, do you?

A. I have no way of knowing that.

Q. While the pumping was going on and after you had dived and tried to find the body was the fire still burning in the shed?

A. The fire was still burning on the top of the poles above the shed, yes.

Q. Sparks dropped down from time to time?

A. Yes.

Q. Wind blowing?

A. I don't recall about the wind. We tried to put out the fire with fire extinguishers.

Q. The upright poles of the shed were still burning?

A. Yes, sir.

Q. Any fire still in the boat?

A. Not that I recall.

Q. Do these photographs that you saw yesterday and which were marked in evidence with your marks on them, represent the condition of things as you saw them the two days you were there?

A. As far as I remember, yes.

Q. I don't mean just structural but in every way.

Mr. Matteson:

Which photographs are you referring to?

Mr. Underwood:

All.

A. In every way?

Q. Yes.

A. That takes in a lot of territory.

Q. I am asking you.

A. No one's memory is good enough to remember whether Mr. Pilkington had a new roof on his house—

Q. I am just talking about the boat. You don't think I am interested in Mr. Pilkington's house, do you?

A. I don't know. May I look at them?

Q. Certainly. Take Exhibit 6 for example; is that just the way you saw things as far as the boat itself was concerned?

A. As far as I remember, yes.

Q. Is it your testimony that there has been no change between the 25th and 26th of June when you were there and the time this photograph was taken?

A. No one's memory is good enough to remember whether the pipes are laying in exactly the same condition they were then in, sir.

Q. If you can't say whether they correctly represent exactly what you saw all you have to do is to say so.

A. In general they represent what I saw at the time.

Q. Well, look at Exhibit 10.

A. As far as I remember some debris has been removed from the engineroom floor, for instance.

Q. Nothing but debris?

A. I would call the "hull" debris, sir.

Q. That statement I take it is true of the rest of these photographs?

A. In general yes.

Q. Now yesterday you expressed the opinion that it was not proper to have a drawoff valve in the engineroom; is that your opinion?

A. Yes, sir.

Q. And you gave your reason for that?

A. Yes.

Q. And you said for gasoline?

A. Yes.

Q. Now as far as the cause of this particular fire is concerned if that valve didn't leak or the line to it did not leak, it had no connection with the fire, did it?

A. I don't know. You say if they didn't leak?

Q. Yes; or were not open?

A. It could have had—no, I wouldn't say that if they were not open.

Q. Of course you don't know whether these valves were open or closed prior to the fire, do you?

A. No, I have no way of knowing.

Q. You don't know whether there were any leaks there or not, do you?

A. No.

Q. Now if they were not open and if they did not leak, they could not have had any casual relation to this fire, could they?

A. No, sir.

Q. So that even if they were in your opinion improper construction they did not contribute to this fire, did they, on those assumptions?

A. If they didn't leak and if they were not open gasoline was not escaping from them, so there is very small chance of them having anything to do with the cause of the fire, with causing the fire, if what you say is right.

Q. Now you said that there was no shut-off valve on the line that runs to the two carburetors on the main engine and that there was no shut-off valve on the line that runs to the auxiliary light plant.

A. I didn't see any.

Q. Assuming that there was no shut-off valve at those places and assuming also that the tank valves were shut tight, the absence of shut-off valves could not have had anything to do with this fire, could it?

A. Providing the gasoline was drained from all lines outside of the tank valves.

Q. That is the only provision you want to add to my question, is it?

A. Will you ask your question again?

Q. The stenographer will read it.

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. And providing the tank valves were not leaking and were in a closed position.

Q. Now you said with reference to Exhibit 2 that in your opinion there were too many elbows, too many connections; do you remember that?

A. Yes, sir.

Q. Well, if they didn't leak and were tight they didn't have any casual connection with this fire or explosion, did they?

A. If no gasoline was escaping from them, no, sir; very small chance of them having anything to do with the cause of the fire if they were not leaking.

Q. Now when you have a drip pan under a carburetor where does that gasoline go that goes into the drip pan?

A. In some cases it is spilled in the bilges; in other cases the drip pan is taken away from its position and the gasoline disposed of, and again in other cases gasoline in drip pans and other vessels is used by the engineer in cleaning his hands and so forth.

Q. Now if you had an engine unattended, and the valves open so that the gasoline goes to the carburetor and the carburetor overflows into the drip pan by and by the drip pan is going to overflow, is that right; assuming that you have enough gasoline in your tanks to fill the drip pan?

A. No gasoline engine could be unattended while in condition.

Q. Of course you understand that this boat had not been in condition for sometime?

A. Yes

Q. But if you have a leak through your carburetor it is going to fill up the drip pan and overflow and get into the bilge, is that right?

A. Yes.

Q. So if you have no leak at your carburetor the absence of the drip pan is immaterial, isn't it?

A. It is a safety measure.

Q. But if you have no leak out of your carburetor it doesn't make any difference whether you have a drip pan or not, does it?

A. If there was no other car on the road I would not have to have brakes.

Q. Please answer my question.

A. My answer would be that providing you have no leaks and providing no gasoline is escaping, the absence

of the drip pan, would be immaterial at the time, but a permanent type of gas line—

Q. You understand that we are here interested in the cause of this fire?

A. Yes.

Q. Now isn't it a fact that if there was no leak from the carburetors on the Seminole the absence of drip pans was wholly immaterial as far as the cause of this fire is concerned?

A. It would be immaterial if there were no leaks.

Q. Now yesterday you spoke of the two valves which you called "drain valves"; you described them as steam and water valves; do you remember that?

A. Steam and hydraulic valves.

Q. Assuming that you are right about that, if they didn't leak the fact that they were not proper gasoline valves did not have any casual relation with this fire or with this explosion, isn't that a fact?

A. If they didn't leak.

Q. Now you were asked as to the possible purpose of having two valves on the end of a drain line; do you remember that?

A. Yes, sir.

Q. And you expressed as your first reason the thought that somebody might have had an extra valve they didn't know what else to do with; is that right?

A. Yes, sir.

Q. You were serious about that?

A. Yes, sir.

Q. You were?

A. Yes.

Q. Do you remember your second reason?

A. Yes, sir.

Q. What was that?

A. That the first valve might leak somewhere and placing the second valve, for the purpose of preventing the leak, on the nozzle of the first valve.

Q. You mean that as an extra precaution against leaks two valves were installed instead of one?

A. Yes, sir.

Q. That indicates an item of precaution, doesn't it?

A. Yes.

Q. You said that you did not approve of the fitting employed between the two valves; do you remember that?

A. Of the fittings between the valves?

Q. You thought the fitting was all right but that it wasn't put together properly, is that right?

A. The fitting was all right.

Q. If it didn't leak it didn't have any relation to this fire and explosion, did it?

A. If it didn't leak there would be very little chance of it having anything to do with the fire.

Q. What chance would there be of it having something to do with this fire and explosion if it didn't leak?

A. There could be so many causes for it, sir.

Q. How could it have contributed to this fire and explosion if it didn't leak?

A. Do you want me to mention all the reasons that I might think of?

Q. Yes, how this fitting between these two valves could have contributed to this fire and explosion if it didn't leak?

A. For instance, a man carrying an electrical appliance of some kind and in that way accidentally striking the head of the valve.

Q. Resulting in a leak?

A. No, not necessarily.

Q. How would that contribute to this fire and explosion if it didn't leak?

A. Connecting two bodies of different polarity might create a spark which could ignite any fumes which might be in the engineroom.

Q. Your suggestion is in effect that somebody might have bumped into it and caused a spark?

A. Yes, sir.

Q. All right; any more ideas?

A. A man might bump into a valve and having matches in his pocket that might strike and—you are asking for reasons, sir.

Q. I am listening. Let me narrow my question a little bit: Can you tell me in what way this fitting, which you say is made up wrong, could have contributed to this fire and explosion without the intervention of some human being. In both instances you have given me you had men moving and doing something.

A. I can't think of anything without the human element.

Q. If it leaked it should not have leaked, is that true?

A. Yes.

Q. And if it didn't leak it did not contribute itself, without the intervention of some other happening, is that right?

A. Yes, sir.

The Commissioner:

We will recess until two this afternoon.

(Recess taken to 2:00 P. M., January 25, 1939—same day.)

January 25, 1939—2:00 o'clock P. M.

(By Mr. Underwood):

Q. Mr. Holm, I want to get on the record the answer to the question the Judge had in mind at the conclusion of the morning session, as to the various items that were brought out and removed. Now you got there on the morning of the 26th, is that right?

A. I don't recall the date, sir.

Q. The fire and explosion was on the 24th?

A. I don't remember the day of the week.

Q. You got there on Tuesday morning, didn't you?

A. Yes.

Q. And the boat was pumped out, I believe you said, on the morning of the next day, Wednesday; is that right?

A. Yes.

Q. And the body was removed about what time on Wednesday; six or seven o'clock or a little later on in the morning?

A. I think it was a little later on in the morning.

Q. Early in the morning anyway?

A. Yes.

Q. And turned over to the undertaker, is that right?

A. Yes.

Q. You brought none of these things up that have been marked in evidence until after the body had been removed, is that right?

A. Yes, sir.

Q. That is correct?

A. Yes.

Q. Yesterday morning you commented on the construction of the gasoline tanks. Do you remember that?

A. Yes, sir.

Q. I take it the same thing is true about that as the other things that were mentioned this morning; that is, if the gasoline tanks leaked they should not have leaked and if they didn't leak they did not have any casual relation with this fire and explosion; is that right?

A. Yes, sir.

Q. Did I understand you to say that from examination there was not any way of inspecting the tanks to tell whether they were leaking?

A. There was no way of inspecting the tanks in the position where they were more likely to leak.

Q. Was there any way of inspecting to see if you could tell whether they were leaking?

A. A man could determine whether the tanks were leaking by looking under the cradle of the tanks, but you couldn't determine where the leak was.

Q. But you could determine whether or not there was a leak?

A. By looking under the cradle of the tanks, yes.

Q. You speak of the cradle of the tanks. Do you mean by that what the tanks rest on?

A. Yes, sir.

Q. What did they rest on?

A. I don't remember the construction of the cradle.

Q. Did you crawl under the tanks?

A. No, sir.

Q. Do you remember a means of going from the engineroom into the forward compartment of the engineroom?

A. As far as I remember now there was a passageway on the starboard side of the vessel. My memory is refreshed by the blueprint you showed me yesterday.

Q. The blueprint that Mr. Matteson showed you yesterday?

A. Yes, sir.

Q. Do you remember any manhole in the engineroom by which you could get forward of the engineroom?

A. There was a plate attachment in the forward engineroom bulkhead that apparently had been used in installing the tanks.

Q. Did you see the plate; was the manhole plate on the manhole?

A. As far as I remember it was in place, a removable plate.

Q. You say you removed it?

A. No, I said it was a removable plate.

Q. Did you go into the space that gave access to?

A. No, sir.

Q. Do you know whether there were any drain pans under those tanks or not?

A. I don't remember them.

Q. You were not looking to be sure whether there were or not?

A. I wouldn't say for sure.

Q. Might have been and might not have been?

A. That's right.

Q. Now what do you know about the waterline of that vessel, where it was with respect to anything in the engineroom?

A. As far as I remember the waterline was something less than a foot above the bottom of the tanks.

Q. How did you determine that?

A. I determined that by placing a stick on the outside of the vessel, measuring the distance from the gunwale to the water after the vessel was brought afloat, and again placing the stick on the inside of the vessel from the gunwale down?

Q. Did you do that before the body was removed or after?

A. There was nothing whatever done as to removing fittings or determining anything whatsoever until the body was removed.

Q. So that you did that between the time the body was removed that Wednesday morning and noon of the following day; or the day you left the boat?

A. Yes sir.

Q. Did you say there was less than a foot's difference between the bottom of the tank and the waterline?

A. About that.

Q. How many inches would you say; can you recall that?

A. I recall between eight and ten inches.

Q. You didn't mention that in your report?

A. No, I didn't consider it very important.

Q. Do you know what kind of batteries the Seminole had?

A. No, sir.

Q. I think you testified yesterday that in preparing a vessel to be laid up the batteries should be removed, is that right?

A. Yes.

Q. What is the reason for that?

A. To rid the boat of all fire hazards.

Q. Wherein lies the fire hazard in batteries?

A. Dropping a steel object on the battery would cause a spark.

Q. Is that the only reason—

A. If the batteries are hooked up to the system of the vessel there is a great fire hazard in leaky cables and moving switches that should not be moved—

Q. I take it you simply mean that a vessel without electric power aboard is less likely to have a spark than one that has?

A. Yes, sir.

Q. Does it make any difference what kind of batteries they are as to whether they should be removed or not?

A. I consider both dry and wet cell batteries fire hazards when a boat is laid up.

Q. Both of them, dry cell and wet cell too?

A. Yes, sir.

Q. You said something yesterday about it taking a crew of three men two days to lay up such a boat as the Seminole; do you remember that?

A. Approximately, yes.

Q. Of course a great deal would depend on how much work they had to do to get the bilges clean?

A. Exactly.

Q. If the bilges were clean it would not take that much time, would it?

A. No.

Q. What is your testimony as to these cowl ventilators; where do they lead and what space do they ventilate?

A. They ventilated the engineroom as far as I could determine.

Q. You said something to the effect that there was no indication that the ventilators extended below the deck. What did you mean by that? Where did they lead?

A. The only way I can answer that question is to explain what proper ventilators are.

Q. I am interested in your recollection as to what you saw as to the construction of these ventilators; where did they lead?

A. To the engineroom.

Q. Did they lead to anything below the deckhead of the engineroom?

A. There was no indication of it.

Q. How long has it been since you left Miami as a resident?

A. July 18, 1935, two and a half years ago.

Q. You have not lived here since that time?

A. Not permanently.

Q. Have you been in Kentucky all of that time?

A. Not all of that time; I have been here twice since.

Q. Has Kentucky been your residence since that time?

A. Yes, sir.

Q. You have not gone home to Denmark?

A. No, sir.

Q. Did Lowney go to Kentucky with you?

A. No.

Q. When did he go up there?

A. The first time I saw him after I left here was two months ago when he came to my residence in Kentucky.

Q. Since that time has he worked for you there?

A. No.

Q. For whom did he work?

A. Up there?

Q. Yes.

A. The only time he worked was four hours, assisting me in raising a pump—

Q. Did he work for anybody else while he was there?

A. Not that I know of.

Q. Where is his permanent home, do you know?

A. I am sure he has none.

Q. Does he have a wife?

A. Yes.

Q. Where does she live?

A. She travels with him. She was with him there.

Q. What was his address when he lived in Miami?

A. That I don't know.

Q. Do you have any record of that?

A. No, I have no record of it; he didn't work for me for sometime before he left here.

Mr. Underwood:

Will you mark this Exhibit 2 for Identification?

Q. Mr. Holm, I show you Respondents' Exhibit 2 for Identification, a piece of paper—two pieces of paper—does the second one bear your signature?

A. Yes, sir.

Q. Look at it and tell me whether that is a copy of your report or not?

A. Shall I take time to read it?

Q. Look at it as long as it may be necessary for you to answer my question?

A. Yes, I would say that this is a copy of my report.

Q. It is a carbon copy, isn't it?

A. It is a carbon copy, yes, sir.

Mr. Matteson:
May I see the document just identified?

Mr. Underwood:
I haven't offered it yet.

Mr. Matteson:
I think if the witness identified it we are entitled to see it.

Mr. Underwood:
You may see it. (Hands document to counsel.)

Mr. Matteson:
You do not suggest that there is any difference between this one and the one we had here yesterday, do you?

Mr. Underwood:
I do not know. I haven't read the other one, nor have I seen it. That is all.

Re-Direct Examination.

By Mr. Matteson:
Q. At the time that you prepared this report, of which you have identified two copies, did you have your notes which have been referred to in cross examination?
A. Yes, sir.
Q. Is there any difference in your report and the notes that you had?

Mr. Underwood:
I object to that; not the best evidence.

The Commissioner:
Note the objection.

A. Is there any differences?

Q. Any differences between your notes and the reports?

A. The report is a summary of the notes, sir.

Q. You spoke of lending a copy of your report to Mr. Batchelor; was that returned to you, or do you remember?

A. Yes, it was returned.

Q. You were asked a number of questions about vessels that you had designed or constructed and you gave them the names and descriptions of a number of them. Does that include all of the vessels that you owned or operated or worked on?

A. No, not by any means.

Q. Now in the course of your cross examination you were asked about conversations with Mr. Riley, and you were asked if the conversation which was referred to was the only conversation you had with Mr. Riley. At first you said it was and then you corrected that and said there was another one. Will you tell us about the other conversation with Mr. Riley?

A. Mr. Riley presented me with a check for fifty dollars; whether it was by check or in cash I don't remember, but I believe it was a check for fifty dollars, and expressed his appreciation for the assistance that we rendered in removing and searching for the body, and Mr. Riley read the report.

Q. Was that the time you gave him the report or was it at some other time?

A. Whether it was on the second or third conversation I am not able to say, sir, but it wasn't in the first conversation.

Q. Was there a conversation in which Mr. Riley asked you to prepare such a report?

Mr. Underwood:

Objected to on the ground that it is leading.

A. Yes, there was a conversation in which Mr. Riley asked me to prepare a report.

Q. In which conversation was that, do you recall?

A. The first one as I remember it.

Q. Was the report delivered to Mr. Riley in person or not?

A. Yes, sir.

Q. Was that the second conversation, or do you recall?

A. It wasn't the first conversation; there may have been a conversation in between the first conversation and the conversation in which the report was discussed.

Q. Was there a discussion of the report?

A. There was no discussion of the report; there was a remark, as far as I remember, by Mr. Riley that the report was not favorable "to us".

Q. Now about this gasoline that you found springing up in the hull of the vessel, as you described it; while she was being pumped out—something was said about 25 gallons being a large amount. In your judgment would be 25 gallons cover the amount that did come out in the engineroom at that time, or what is your judgment about that, inaccurate as it is bound to be?

A. I don't think that 25 gallons would cover the amount that came out in the engineroom during the process of raising the vessel, but the estimate is approximate.

Q. What is your estimate; that is what I am trying to get at?

A. In other words, I think that it could have been a few gallons more than 25 that came in the engineroom from the tanks. I believe that the exact amount could be determined by measuring the cubic content from the valve in the tanks to the bottom of the tanks. It is bound to be the correct amount of gasoline due to the fact that after the explosion occurred it opened the gas

cocks and the gas drainage valves into the tanks, and the gasoline that was left in the tanks above the valves would escape and naturally be replaced by water, and during the process of raising the boat that amount of gas being up further in the body of the tank would escape from the valves or other connections when the water got low enough in the tanks for the body of the gasoline to escape.

Q. Does gasoline float on water?

A. Yes, sir.

Q. Let me see if I understand you: If the gasoline line was ruptured by the explosion the gasoline would immediately flow out down to the level of the outlets, is that right?

A. Exactly.

Q. If there—

Mr. Underwood:

I object to the leading question, and on the further ground that there has been no proof that there was any gasoline in the tanks.

Q. If there were any gasoline?

A. If there was any gasoline in the tanks that is what would happen.

Q. Then when the vessel filled with water through leaks what would happen in the tanks?

A. The body of the gasoline would rise in the tanks on top of the body of the water.

Q. On top of the water that entered the tanks?

A. Yes, sir.

Q. When the vessel was pumped out what would happen?

A. The water would drain out of the open connections and the gasoline would gradually reach the open connections and escape and water would be contained from the valves down to the bottom of the tank.

Q. So that the amount that would escape in that manner would be the amount left in the tanks below the outlet level?

A. Exactly.

Q. And that would be capable of measurement?

A. Yes, sir.

Q. Now you spoke of a switch being in an arcing position. Will you tell us what you mean by that?

A. The switch is in an arcing position at the time the knives reach the point that an electric spark is formed between the two poles of the switch.

Q. That is, a spark jumps across before the contact is actually made?

A. Yes.

Mr. Underwood:
Don't lead the witness, please.

Q. Does that occur when there is an actual contact between the proper connections?

Mr. Underwood:
Objected to as leading.

A. A spark will not occur without there is actual contact between the two poles but it will occur before and after the contact with the knife-switch.

Q. What causes that?

A. The proximity of two bodies containing different polarities.

Q. Is that or is that not a characteristic of knife-switches?

A. That is a characteristic of knife-switches but the spark is not dangerous at any time in enclosed knife-switches.

Q. Just tell me what you mean between an open and enclosed switch?

A. An open knife-switch is without any covering whatsoever and is in my opinion a dangerous object in an engineroom, which is apt to be full of fumes at times and any movement of the switch might ignite the fumes in the engineroom.

Q. How does the enclosed switch differ?

A. It is entirely enclosed in a metal box that does not allow the fumes to enter.

Q. So the tendency of electric knife-switches to arc is a generally known and recognized fact, or not?

A. It is a generally known fact.

Q. I would like to be a little more clear than we have been on the extent in which or to which the Seminole was sunk. Can you tell us as well as you can how close up to the gunwales of her deck the water came when she was lying sunk there before you started to pump?

A. As far as I remember the after gunwale was just awash.

Q. Would any water enter the vessel in that condition except through holes or openings in her side?

A. Not very much, because we only had a four-inch suction as I remember inside the vessel in order to raise it and if any great amount had been flowing in there through the gunwales or through any openings near the surface of the water at the time the ship was sunk we would not have been able to raise it with as small a pump as we had.

Q. Describe this pumping operation again so that we will be able to understand that.

A. A section of a centrifugal pump was inserted into the deepest part of the vessel--what part I don't know—and as far as I know it was removed several times in order to find the deepest part of the vessel to remove the most possible amount of water.

Q. And where was the pump placed?

A. The pump was placed on the dock.

Q. What kind of a pump was it?

A. Gasoline driven centrifugal pump.

Q. In the course of your testimony you spoke of the gasoline tanks of the Seminole being intact after the accident. Will you explain to us just what you mean by that?

A. By intact I mean the same condition as they were in before the destruction of the vessel.

Q. No evident damage?

A. No evident damage to the tank itself.

Q. Does that mean that they were all in place?

A. No, sir; number 2 tank was distorted from its original position.

Q. By "distorted" you mean out of position?

A. Yes, sir.

Q. The tank itself was not distorted?

A. No, the position of the tank was distorted.

Q. There was one other thing I was going to ask you about these tanks and these connections: The way these tanks were installed and the connections laid out, would there be any strain on those connections in the operation of the vessel?

Mr. Underwood:

I object to that on the ground that the witness is not qualified by observation or experience.

A. Yes, the gasoline fittings could be strained to a great extent, either through motion of the vessel on the seaway or through the grounding of the vessel.

Q. How would the motion of the vessel and the seaway affect it?

Mr. Underwood:

Same objection.

A. The stability of a body of any kind is lowered in a seaway and might create a distortion of the tanks.

Q. Was there anything to keep the tanks rigidly in position?

Mr. Underwood:
Same objection.

A. As well as I remember the tanks were not fastened in the vessel in any way whatsoever.

Q. If the vessel were in a seaway and there was motion of the vessel what would the result of that be on the tanks?

Mr. Underwood:
I object to that as being a hypothetical question and not all facts given.

A. The result would be distortion of the position of the tanks and the straining of all fittings.

Q. You spoke of a removable plate on the forward end of the engineroom bulkhead. Does that appear on this Exhibit number 9; if so, state it.

A. Yes, sir (indicating on photograph).

Q. You are showing us the edge of a plate which appears to be loose from the plate adjacent to it

A. Yes, sir.

Q. I will draw a line here and say "edge of plate".

A. That is right.

Q. How was that plate held in place; does it show there?

A. Yes, this picture shows some of the bolt heads.

Q. Will you point to one of them?

A. There is one and here is another one (indicating).

Q. There appears to be an opening at the bottom of this plate here; do you recall that?

A. Yes, sir.

Q. What is that?

A. I don't know.

Q. Does that lead to the space under the tanks?

A. It leads to the tank compartment, yes.

Q. Can you by comparison with anything else in the photograph say whether that is under the tanks or not?

A. Yes, that is under the tanks.

Q. What did you compare it with?

A. I judged from the relative position of the bottom of the tank; it is very plainly shown on the photograph.

Q. Under number 1?

A. Yes, number 1.

Q. Then that tank that is referred to, which I will mark with the letter "A", leads to the space under the tanks, is that right?

A. Yes, sir.

Q. Now suppose that removable plate were removed, how much access would that give you to the tanks in the tank compartment?

A. Judging from the size of the other objects in the picture I would say approximately 18" square.

Q. That would give you access to that part of the tanks lying immediately beyond the plate, would it not?

A. Yes, sir.

Q. Would that give you access to those parts of the tanks on either side of the opening made when the plate was removed?

A. No, sir; it would not.

Q. Do you know whether there were any plates under any of the tanks?

A. No, I don't know; I didn't inspect the compartment below the tanks.

Q. If there were no plates under any of the tanks, how would that affect the possibility of inspection on the bottom?

Mr. Underwood:

Objected to as speculative.

A. It would prevent it.

Q. Now in a discussion of the ventilators you were attempting to describe this installation by telling us what the proper installation would be. Will you tell us what the proper installation of ventilators of this type—this type of vessel—would be?

Mr. Underwood:

Objected to because he is not qualified.

A. In my opinion the proper installation of ventilators for an engineroom would be to have the lower part of the ventilators leading to a point of approximately 18 inches to two feet above the floor of the engineroom.

Q. Why is that?

A. To absorb all of the gasoline fumes from the bilges.

Q. Can you tell us whether gasoline fumes are lighter or heavier than air?

A. Gasoline fumes of no disturbance are heavier than air but atomized gas is lighter than air.

Q. Where in an enclosed compartment do the gasoline fumes tend to accumulate?

A. Near the floor.

Q. Then if the ventilators were not carried below the deck would they or would they not be adequate to prevent gasoline fumes remaining in an enclosed compartment?

Mr. Underwood:

Objected to on the ground that the witness is not qualified; on the further ground that it is hypothetical and all the facts are not given.

A. Would not be adequate in my opinion.
Q. Would not?
A. No, sir.

Re-Cross Examination.

By Mr. Underwood:

Q. I am not sure whether I understood what you said to Mr. Matteson about the effect of the explosion on the tank valves. Did you tell him that an explosion would have any effect on the tank valves?

A. No, I don't think so.

Q. In reply to one of Mr. Matteson's questions you did say that if the gasoline line were ruptured the gas in the tanks would flow out, is that what you said?

A. Yes.

Q. Of course that depends upon whether or not the valves are open, doesn't it?

A. The gasoline would not flow out if the tank valves were not open.

Q. As I understand the effect of your testimony now about the springs of gasoline, or whatever it was you saw, you are telling us that the amount of gasoline you saw was the same as that which would be in those tanks below the valve level and between that level and the bottom of the tanks, is that right?

A. That is right.

Q. You are telling us that that is as nearly as you can estimate the amount of gasoline that you saw?

A. Yes.

Q. You don't say that you saw any more than that?

A. Not coming out of the tanks and the connections, no.

Q. Or springing up through the water?

A. No, sir.

Q. Now you have spoken about a switch being in an arcing position. I don't suppose you know whether there

was any current in that switch or on that switch at any time, do you?

A. I have no way of knowing that.

Q. Is it your testimony that a knife-switch will arc, or spark, as you close it?

A. Not as much as when you open the switch.

Q. Is it your testimony that it will arc or spark when you close it?

A. Yes, sir.

Q. I assume that it does not arc at that stage as much as when you open it?

A. That is correct.

Q. Isn't it a fact, Mr. Holm, that there is substantially no arc when you close a knife-switch, and that the only arc you receive is when you open it?

A. No.

Q. You don't know that?

A. No, that is not a substantial fact, sir.

Q. Is it your testimony that knife-switches, enclosed and not enclosed, are improper on vessels like the Seminole?

A. Yes, sir; in an engineroom.

Q. That is your testimony?

A. Yes, sir.

Q. How many vessels can you name that have enclosed knife-switches in the engineroom and not exposed knife-switches in their engineroom?

A. Any amount of them.

Q. Just give us a list of all you can name and tell us what type of boat they are on.

A. It will be from memory.

Q. All right.

A. The Poule de Eau, hailing from City Island; the motor vessel Chalena; the Dr. Brinkley--

Q. Dr. Brinkley?

A. Yes; Dr. Brinkley No. 1 and Dr. Brinkley No. 2.

Q. Where are they hailing out of?

A. I think they are hailing out of Houston, Texas. The Vanderbilt—I don't recall the name of that yacht—The Black Eagle.

Q. Where does she hail from?

A. I think she hails out of New York. The Wonder Bird, hailing out of San Francisco; the Espernoza—

Q. Where does she hail from?

A. Tulsa.

Q. Tulsa?

A. Tulsa I believe.

Mr. Matteson:

What Tulsa is that?

A. Oklahoma.

Q. Anymore?

A. The Bolo, hailing out of New York; the Sea Hawk, out of New York; Pieces of Eight, hailing out of Miami. That is all I recall offhand.

Q. What type of vessels are these?

A. Anything from a 50-foot motor "sailer" up to Diesel driven yachts.

Q. How many Diesel driven yachts do you have in that list?

A. One.

Q. The Chalena?

A. Yes, the Chalena,

Q. All the rest are propelled by gasoline motors?

A. The Espernoza has a Diesel engine in her now.

Q. You say you have been aboard all of those others?

A. Yes.

Q. And have seen enclosed switches in the engine-room?

A. Yes, sir.

Q. And they have no open knife-switches in the engineroom?

A. I haven't seen any.

Q. You told me this morning, as I recall it, that when you were diving, before the pumping started, the hull of the Seminole was awash, is that right?

A. Yes, sir.

Q. And the water was up above the level of the engineroom window, is that right?

A. As far as I recall; at any rate, the after gunwale was just awash.

Q. The engineroom of the Seminole was filled as far as it could be filled, was it not—filled up to the level of the windows?

A. I don't remember that the water was level with the bottom of the windows.

Q. You don't recall seeing it that way?

A. No, I don't remember seeing it that way.

Q. You said something about an access of 18 inches when you were looking at this photograph. I didn't understand what you said about that?

A. I said that judging from the size of other objects shown in the picture I would guess that had an opening about 18 inches.

Q. Which opening are you referring to?

A. This one (pointing).

Q. Indicating the opening marked with the arrow and the letter "A"?

A. Exactly.

Mr. Underwood:

That is all.

Re-Re-Direct Examination.

By Mr. Matteson:

Q. Referring to these double valves, Exhibit 11, I think in the course of your testimony you said that they were

turned before you picked them up. What did you mean by that?

A. I meant by that that they were lifted off of their seats.

Q. You mean they were open?

A. They were somewhat open.

Q. Did anyone manipulate them or turn them before you picked them up?

Mr. Underwood:

Let him tell what he saw.

A. I didn't see anyone turn the valves whatsoever before I turned them over to Mr. Miller.

Q. Did your assistant that you spoke of manipulate the valves in any way when he picked them up?

Mr. Underwood:

I object to that; let him say what he saw.

A. I didn't see my assistant move the positions of the handles of the valves at all.

Q. Did you see him pick them up?

A. I saw him pick them up, yes.

Q. When you first picked these valves up, when you tried them to see whether they were open or not, can you tell me how the spindles moved; did they move easily or—

A. They were very, very hard to turn; the reason could be that the packing in the packing nut of the valves was moist at the time, whereas it is dry now, and the valves tend to move easy. I don't think that the position of the valves could be affected in any way by accidentally touching them at that time.

Q. To the best of your observation were they distorted in any way up to the time when you tested them yourself?

A. I didn't see them touched in any way whatsoever.
Q. Were you there?
A. I was there at all times.

Mr. Matteson:
That is all.

Mr. Underwood:
Nothing further at this time.

The Commissioner:
The deposition is closed.

And further deponent saith not.

State of Florida,
County of Dade.

I certify that I recorded the foregoing deposition of Carl Holm, a witness in behalf of the Libelants herein, in shorthand notes at the time and place designated in the caption thereof, and that the foregoing pages, 1 to 142, both inclusive, constitute a true and accurate transcription of said deposition.

In Witness Whereof I have set my hand this 7th day of February, A. D. 1939.

H. E. COLMAN,
Court Reporter.

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269 COMPLETE TRANSCRIPT.

In the United States District Court for the Southern District of Florida. In Admiralty, Miami Division.

Charles Coryell, et al., Libelants,
vs.
George J. Pilkington and John S. Phipps, Respondents.

Transcript of proceedings had and testimony taken in the above-entitled cause before the Honorable John W.

Holland, United States District Judge, in the Courtroom of said Court, Miami, Dade County, Florida, commencing at 10:00 A. M., March 15, 1939, pursuant to notice of hearing.

Appearances:

Bigham, Englar, Jones & Houston, of New York City (By Messrs. Jones and Matteson), and Batchelor & Dyer, of Miami, Florida (By Messrs. Batchelor and Dyer), Proctors for Libelants.

Burlingham, Verder, Clark & Hupper, of New York City (By Mr. Eugene Underwood), and Loftin, Stokes & Calkins, of Miami, Florida (By Mr. John P. Stokes), Proctors for Respondent John S. Phipps.

Botts & Field, of Miami, Florida (By Mr. Fred Botts), Proctors for Respondent Geo. J. Pilkington.

Reported by: Colman and Bryant, 941-935 Seybold Bldg., Miami, Florida.

Mr. Matteson:

I think it is agreed between us, subject to your Honor's approval, that it will not be necessary for us to prove either the ownership or the value of any of the boats at the trial, but we will confine ourselves entirely to questions of liability, and if liability is established—

The Court:

Then go into that question.

Mr. Matteson:

That is correct.

Mr. Underwood:

That is correct. Mr. Matteson has informed me of the names of the vessels that were insured, and in exchange for him giving me that information, which I shall offer at the proper time, I have agreed that he need not during the course of this trial prove ownership of the boats damaged or destroyed or the amount of the damage, reserving that for reference later.

Mr. Matteson:

Mr. Underwood did ask me to furnish him certain information with respect to boats that were insured, which were only a small part of the boats involved in this case; I think it was 13 out of some 45; but I furnished it to him with the express reservation that I did not consider it relevant in this case, and reserved my rights with respect to that.

Mr. Underwood:

Quite so.

The Court:

Do you care to make any statement, Mr. Underwood?

Mr. Underwood:

Not at this point, your Honor; thank you.

Mr. Matteson:

If your Honor please, the deposition of the witness Carl Holm taken in January has been filed with the Clerk of the Court. I assume that is in the record now, but I will formally offer it.

The Court:

It has been handed to the Clerk and he announced that he placed his file mark on it. I assume that with

respect to objections to testimony taken before the Commisisoner who was appointed that he had no power to rule on the objections noted to the testimony.

Mr. Matteson:
I think that is correct.

The Court:
I think it would be more practical to consider the depositions as having been taken and filed subject to those objections being called up and argued later.

Mr. Underwood:
Yes. Reserving, of course, all the objections that I noted at the time.

The Court:
As to the formalities observed in the taking of the deposition you have no specific objection?

Mr. Underwood:
I have no objection on technical grounds. I have however, further objections to the testimony of this witness which relate entirely to the Seminole, that there has been no foundation laid as yet to show that Mr. J. S. Phipps is in any way responsible for the Seminole. I shall make that objection from time to time during the trial, and I assume you will reserve decision on it as well as on the motion to strike.

The Court:
Yes.

Mr. Matteson:
Perhaps I had better formally note on the record that I do formally offer the deposition of Mr. Carl Holm and

the exhibits in connection therewith as evidence in this case, as Libelants' Exhibit 28.

The Court:
The deposition is considered filed in evidence, subject to the remarks of Court and counsel.

Mr. Matteson:
If your Honor please, there is also a deposition of Mr. E. D. Wright, a marine surveyor, with four exhibits attached thereto, and I would like to offer that in evidence on the same basis as the other deposition.

The Court:
Any objection?

Mr. Underwood:
The same objection as stated.

The Court:
Let the deposition be received in evidence under the same ruling made with respect to the Holm deposition. (Wright deposition marked Libelants' Exhibit 29.)

Mr. Matteson:
If your Honor please, there are two yachts whose names will come into this case from time to time and whose ownership and condition are important. I have here certified copies of the certificates of enrollment of the yacht Seminole for 1923, another in 1924, another in 1929, and also certified copy of the certificate of enrollment and yacht license of the yacht Iolanthe, and I would like to offer these in evidence.

The Court:
What is the connection of the yacht Iolanthe?

Mr. Matteson:

That was another yacht which was admittedly owned by Mr. John S. Phipps, and the gentleman who went down to the Seminole on the day of the explosion and turned the switch which caused the explosion was the registered Master of the Iolanthe and employee of Mr. John S. Phipps.

Mr. Underwood:

If your Honor please, I object to the certificate dated April 18, 1923 and the certificate dated November 5, 1934 on the ground that they are immaterial and too remote in time. This accident happened in 1935, and the nearest in point of time of these certificates is the one dated February 16, 1929, which I believe to have been the current one at the time of the fire, and I have no objection to that one, and I have no objection to the one regarding the Iolanthe. The two earlier ones I have objected to on the ground that they do not prove any fact that was in existence at the time of this fire, and they are too remote.

Mr. Matteson:

If your Honor please, our theory in this case as to the liability of John S. Phipps starts way back when the boat belonged or at least was registered as belonging to Mr. John S. Phipps. Many of the defects in this boat go back to the time when she was converted from steam to gas while in the registered ownership of Mr. John S. Phipps. The whole picture of the thing begins there and works down. It is all a part of our theory of the case, and I think, after the evidence is all in, it will be found to be quite relevant and quite pertinent.

The Court:

There may be a possible relevancy. The objection will be overruled. Let the exhibits be filed in evidence.

(Thereupon Certificate of Enrollment and Yacht License of Seminole dated April 18, 1923, marked Libelants' Exhibit 30; certificate of enrollment, Seminole, dated November 5, 1924, marked Libelants' Exhibit 31; certificate of enrollment, Seminole, dated February 16, 1929, marked Libelants' Exhibit 32; certificate of enrollment, Iolanthe, dated July 7, 1926, marked Libelants' Exhibit No. 33.)

Mr. Matteson:

I guess we are ready to call our first witness, if your Honor please—Mr. John Thomas.

289 Thereupon JOHN THOMAS was produced as a witness in behalf of the Libelants, and having been first duly sworn, was examined and testified as follows, to-wit:

Direct Examination.

By Mr. Matteson:

Q. Mr. Thomas, what is your age?

A. 32.

Q. Your occupation?

A. Boat operator.

Q. Where do you live?

A. West Palm Beach.

Q. Were you on the Yacht Seminole at the time of the explosion on June 24, 1935?

A. I was.

Q. You were badly hurt, weren't you?

A. I was.

Q. You were in the hospital some time?

A. Several months.

Q. Will you tell us, Mr. Thomas, whether any of your expenses were paid by Mr. Phipps in connection with this illness?

A. They were paid by the Palm Beach Company.

Q. Were all of your expenses in connection with your illness and your injuries paid by that company?

A. They were.

Q. Have you made claim against that company for Mr. John S. Phipps for your injuries?

A. I haven't.

Q. Have you been paid by them or anyone anything in addition to your expenses?

A. No; just my expenses.

Q. Have you discussed the facts of this case with the opposing counsel, Mr. Underwood and Mr. Alley?

A. I have.

Q. You are here under subpoena, I believe, to testify?

A. Yes, sir.

Q. Will you tell us, Mr. Thomas, how you came to go on the Seminole on June 24, 1935, and who went with you and what the circumstances were?

A. Well, on a Monday morning Captain Abel came up to my house about nine o'clock, maybe a few minutes before nine, and asked me would I come down to Fort Lauderdale and see about some netting that he wanted made, and I told him that I would.

Q. For what purpose did he want this netting?

A. To go around the stern of another boat, and he wanted me to see this one and to make one like it.

Q. What was the other boat?

Mr. Underwood:

If your Honor please, I object to the conversation between this witness and Captain Abel.

The Court:

Subject to it being connected up so as to be binding upon the Respondent Phipps, the objection is overruled.

Q. What was the other boat?

A. The Iolanthe.

Q. Whose boat was that?

A. I have no idea.

Q. What was the nature of this rope work that was required?

A. It was just a netting to go between the rail and the deck, on the after deck.

Q. What arrangement was made with you with respect to this rope work?

A. I was supposed to do the work for $25.00. I don't know who Captain Abel made the arrangement with; all I know is that he told me it was all right, that it was satisfactory.

Q. You gave him a price?

A. Yes.

Q. You gave the price to Captain Abel?

A. Yes.

Q. And he consulted with someone else?

A. Yes.

Q. And told you it was all right?

A. Yes.

Q. Now, go ahead from there, please.

A. When we left my house at nine o'clock we drove over to Palm Beach, where he stopped at the Palm Beach Company for approximately one-half an hour; we drove from there to a filling station and he filled his car with gas, and we drove from there down here to Fort Lauderdale. I had lunch over here in Lauderdale, and then went over to the Pilkington Boatyard. I got out of the car; so did Captain Abel. I walked over to where the boats were and he walked over and talked to Mr.

Pilkington; they exchanged a few words, and then we went aboard the Seminole. We first went to the upper deck—

Q. Did you have any words with Mr. Pilkington?

A. No, sir.

Q. You never heard any of the conversation?

A. Never heard a word of the conversation.

Q. All right; go ahead from there.

A. We went to the upper deck of the Seminole, Captain Abel looked around at the small dinghies and boats aboard there and also at the fishing tackle. We spent approximately ten minutes up there, and then we went down to the lower deck and on into the boat. Captain Avel asked me to go down inside with him; he said he wanted to look the boat over.

Q. Did he examine this rope work you went to examine?

A. Just made a mental sketch of it, a notation of it.

Q. Where was that rope work on the Seminole?

A. It was on the after lower deck.

Q. I show you Libelants' exhibit 7. See if you can locate on there approximately where it was?

A. Right here (indicating).

Q. Around the stern on the lower sketch of this blueprint?

A. Yes, sir.

The Court:

Probably you had better put a mark on there.

Q. You can mark on this blueprint with a white pencil. Will you please put a cross-mark approximately where the rope work was?

A. It was right along there (indicating); is that good enough?

Q. Yes.

A. That's where it was.

Mr. Matteson:

He draws a wavy line around the stern. I will put a line at the end.

Mr. Underwood:

That is quite proper.

Q. When was it that you looked at that; was it after you went up on the upper deck or before?

A. After we came down.

Q. How did you go aboard this boat?

A. We climbed over several other boats. There was a walkway or parkway and boats in between, so we just climbed across these other boats and boarded the Seminole.

Q. Where did you go aboard the Seminole?

A. About amidships, if I remember right.

Q. That would be up on the boat deck?

A. Yes; we just climbed right up on the upper deck.

Q. And you went upon the upper deck with Captain Abel?

A. Yes.

Q. Then when you went down to the next deck, how did you go?

A. Down the companionway steps there.

Q. Whereabouts on the vessel?

A. If I remember right they are on the lefthand side of the vessel and lead to the lower deck.

Q. Forward or aft?

A. Aft.

Q. That brought you down on the stern deck where you investigated the network or rope work?

A. Yes.

Q. How long did you remain there?

A. Oh, just a few minutes.

Q. From there where did you go?

A. Went inside the bow; Captain Abel unlocked the door.

Q. That is the stern door of the house on that deck?

A. Yes.

Q. Where did you go from there and what did you do?

A. Captain Abel said he wanted to look inside the boat to see if everything was all right, and he unlocked the door and we started down through the hallway.

Q. That is the crew's quarters in the after part of the ship?

A. Yes, and the galley is located back there, and the ice-box, from what I could see the little short time I was there.

Q. Were you together at this time?

A. He was just ahead of me.

Q. You were following him?

A. Yes.

Q. Then where did you go from there?

A. Well, he looked in the crew's quarters; just made a routine check-up in each galley and places like that, and went from there to the engine room.

Q. How did you get to the engine-room?

A. Through that same hallway or corridor.

Q. This blueprint seems to show a main saloon between the crew's quarters and the engine-room, but it may have been altered; do you know about that?

A. I don't; no, sir.

Q. Did you pass through the main saloon at that time?

A. I don't remember?

Mr. Matteson:

Is that a fact, Mr. Underwood; do you know whether that main saloon had been altered; have you a plan of the Seminole that we can use which will be more accurate.

Mr. Underwood:

I have a plan of the Seminole which I am advised is reasonably accurate, but unfortunately I cannot vouch

for its complete accuracy in detail; it bears no date or name, and I cannot ascertain when it was made, but I am advised that it is a substantially accurate plan of the Seminole as she was at that time.

curate?

So there can be no confusion, I think I will have this marked for identification at this moment.

The Court:

Let it be marked for identification.

(Thereupon the sketch or plan of the Seminole above referred to was marked Respondents' Exhibit A for identification.)

Q. Will you look at this plan, Mr. Thomas, and see if that looks more natural to you?

A. We went in this door.

Mr. Underwood:

Indicate that with an "X", please.

Q. Indicates with an "X".

A. Right up this passageway here (indicating); we came down off the upper deck here (indicating).

Q. Indicating the—

A. I don't know if these are the companionway steps or not; we came down here and came right over here (indicating).

Q. Draw a line there.

A. (Draws line on map.) On around here. In the meantime I was standing in this passageway when Captain Abel was looking in these different rooms. We came on around here, up to here, (indicating) and there was a window right here (indicating).

Q. Indicate that with another cross-mark.
A. (Witness so indicates.)
Q. Draw a cross-mark on down where you stopped.
A. Right here is where we stopped (indicating).
Q. Draw a circle there.
A. (Witness so indicates.)
Q. When you got there you stopped, you say?
A. Yes.
Q. Tell us what happened there.
A. Captain Abel said he was going in to check up the engine-room and asked me would I go with him, and I told him no; that I would wait here. Captain Abel crawled through this window. You see, it was a window probably three feet off the ground, off the deck, rather, that he crawled through. If I remember right he opened that window and he went back here to the switchboard.

Mr. Underwood:
Will you indicate his course from the window?

The Witness:
As near as I can.

(By Mr. Matteson):
Q. Just draw a line there.
A. Captain Abel climbed over some object here; I don't know what it was; and he made his way back this way (indicating), and he went through this way up to here, as near as I can remember.

Mr. Underwood:
Mark a "Y" there.

A. (Witness so indicates.)

(By Mr. Matteson):

Q. Now, what was there in the engineroom at the point?

A. There was a switchboard there.

Q. What happened when he got near there?

A. Well, when Captain Abel got there the only light that I can remember seeing came in through this window.

Q. On the opposite side of the engineroom?

A. Yes, I remember it very well.

Q. Will you mark that "W" for window?

A. (Witness so indicates.)

Q. All right.

A. After he got there the light was kind of dark; it was just semi-dark, you know.

Q. The light was sort of shut off by this—

A. I don't know what shut it off, but it was kind of dark in there, and Captain Abel lit a match here to see the switchboard. Well, he held the match there for several seconds and pushed on either three or five switches; I don't know which, and then he pushed on a main switch, but the match had gone out before that time, but he had seen enough, I imagine, to know what he was doing, and when he pushed in that bottom switch that is when the explosion occurred.

Q. What did you see when he threw in the switch?

A. I saw some sparks.

Q. About the switch?

A. Some inches of the switch.

Q. Just where?

A. I would say to the left of the switch, about eight or ten inches, maybe one foot.

Q. What was there; was there an electric cable there?

A. I don't have the slightest idea.

Q. The spark wa n't at the switch?

A. No, sir.

Q. Now tell us about the explosion.

A. You mean after the explosion?

Q. Tell us what happened then?

A. Well, when Captain Abel pushed the switch the explosion occurred, and all I saw was these sparks and a flash. Well, that is all I remember until I came to sitting on the deck; I came to right here (indicating).

Mr. Underwood:

Suppose you make a "T" at that point.

A. (Witness so indicates.)

(Mr. Matteson):

Q. That was right inside of the window?

A. Yes, on the starboard side of the vessel. I was looking in this window when this explosion happened; I had one arm propped up on the window, looking at Captain Abel. After the explosion I came over here (indicating). I was sitting up beside the vessel like I would be up against this wall, and this wall here (indicating) was thrown over on top of me; it was shattered, and there was a pile of debris there, and I heard Captain Abel about the time that I came to—I heard him yelling for help. I hollered back to him that I would get to him as soon as I could get the stuff off of me. I didn't realize then that I had a broken leg. It took me probably five minutes to free myself of all of this wreckage, and by that time the fire had gained headway and was all around.

(By Mr. Underwood):

Q. Up through the engine-room?

A. As near as I can remember. I was hurt bad. Things were kind of hazy, but it was right along in here—

Q. Draw a wavy line from the after port corner towards the forward starboard corner of the engine room. Now, would you indicate on which side of that line the fire was; please?

A. This side (indicating).

Mr. Underwood:

That is the starboard after side of the white wavy line?

The Witness:

Yes.

(By Mr. Matteson):

Q. Go ahead from there.

A. After I freed myself I realized that I couldn't help him, because I found then that I had a fractured leg.

Q. He was living at that time,—do you know?

A. I never heard him except a couple of seconds after I regained consciousness.

Q. You did hear him then?

A. I heard him then, yes. So I climbed out of this window as best I could, but how I got through I don't remember the full details of it, but I climbed up here; I just barely was able to reach there; I managed to pull myself up and drop down on a barge that was on this side of the vessel; it had some railroad tracks on it. I dropped down on that; it was approximately eight feet to it; it may have been more, but that's about what I remember. I rolled and dragged across it some way and rolled overboard, and if I remember right there was a little neck of land probably fifty feet from there which I swam to, and I stayed there until the heat was so intense I had to move, and I crawled under a little bridge and laid there, covering myself up with mud

as best I could to keep the heat off; finally that caught on fire and I realized that I had to keep moving, so I moved out to a point of land probably one hundred feet from there, more or less, and I stayed there until they found me. From there they took me to the hospital, I am told, and gave me first aid, and I was conscious, fairly well, for approximately one hour after I arrived there; I don't know whether it was one hour or not; it may have been less.

Q. You say you were conscious for one hour. Were you unconscious for some time then?

A. Well, I was full of dope; I don't know what did happen.

Q. Do you remember anything that did happen that night?

A. Very, very little. I would kind of come out of it and then I would go back again.

Q. When you came to the window of the engineroom on the port side was Abel, and Abel opened the window, did you make any observation at that time?

A. Any observation?

Q. Yes; did you notice anything?

A. Nothing out of the ordinary; no, sir.

Q. Did you smell anything at that time?

A. Yes, I smelled a bilgy musty odor.

Q. The engineroom had been closed for quite awhile?

A. I wouldn't know that.

Q. Did it smell as if it had been?

A. Well, the boat smelled just like a boat would in storage closed up.

Q. Why didn't Abel go down through the engineroom hatch, do you know?

A. I do not.

Q. Did he have any keys?

A. Yes, sir; he unlocked the door on the after deck with a key.

Q. Did he have any other keys?

A. Not that I know of.

Q. Did you see him try the hatch through the engine-room?

A. No, sir.

Q. Now I would like to refresh your recollection some if I can, Mr. Thomas; do you know Mr. Botts who is sitting here beside you?

A. Yes; I just met him about thirty minutes go.

Q. Do you remember Mr. Botts and two other gentlemen coming to see you at the hospital in Fort Lauderdale the night of the fire?

A. Yes, I remember they were there.

Q. And they asked you to tell them what happened, didn't they?

A. I really don't know what they asked me.

Q. Don't you remember telling them as best you could under the circumstances what happened at that time?

A. No, sir.

Mr. Underwood:

I object to this line of cross examination on the ground that it is cross examination. I think his questions ought not to be leading and he ought not to impeach his own witness or attempt to.

Mr. Matteson:

I am attempting at this time to refresh his recollection.

The Court:

In the first place, I think the condition in which the witness was at that time is very strongly against it being competent, and then if it was you would have to ask him the question: Did Mr. Botts say to you a certain thing, repeating what he said, and did you answer so and so?

Mr. Matteson:

That is exactly what I am coming to.

The Court:

Use the words: Did Mr. Botts say so and so, repeating just exactly what was supposed to have been said—

(By Mr. Matteson):

Q. Don't you recollect that Mr. Botts asked you to state at that time what happened and that you at that time said, "Captain Abel crawled through the engine-room window, and I told him I smelled a slight odor of gasoline and for him to be careful". Do you recall making that statement?

A. No, I don't; truthfully I don't.

Q. Was that the fact; is that the fact that you smelled a slight odor of gasoline and told him to be careful?

A. I said that I smelled a bilgy odor; I don't know what I said when I was at the hospital.

Q. What is the difference on a gasoline boat between a bilgy odor and the odor of gasoline?

A. A considerable difference.

Q. On a gasoline boat isn't it a fact that the bilgy odor is very likely to be a mixed odor of water and gasoline?

Mr. Underwood:

If your Honor please, I object on two grounds: In the first place, it is leading; in the second place, it is speculative; furthermore, I object on the ground that this is Mr. Matteson's witness.

The Court:

Do you claim that you are examining an unfriendly witness?

Mr. Matteson:

I do, sir.

May I say that there has been no sign of unfriendliness as yet.

The Court:

I will sustain the objection.

(By Mr. Matteson):

Q. One thing more, Captain Thomas: isn't it a fact that you said to Mr. Botts at that time: "Captain Abel then threw on a knife switch to turn on the lights; I saw the switch arc and there was an immediate explosion"?

A. I don't remember.

Q. Is that a correct statement of what happened?

A. Captain Abel threw the switch and the explosion occurred immediately after that.

Q. You saw the swttch arc, did you not?

A. No, sir; I did not see the switch arc.

Q. Well, that is what I asked you: I asked you whether this was a correct statement: "Captain Abel then threw on a knife switch to turn on the light; I saw the switch arc and there was an immediate explosion"?

The Court:

He has answered that, that he did not remember. You are asking him as to a conversation between him and Mr. Botts, and he said he didn't remember. Then you came back and referred to the hospital conversation and asked him as a matter of fact was that a correct statement.

Mr. Matteson:

That is right; that is what I am asking him now.

The Witness:

When Captain Abel pushed the switch the sparks, or whatever it was, occurred at one side of the switch and the explosion was immediately afterwards.

(By Mr. Matteson):

Q. Did the switch arc?

A. I didn't see the switch arc; no, sir.

Q. You didn't?

A. No.

Mr. Matteson:

Captain Patten, will you stand up?

(By Mr. Matteson):

Q. Do you know Captain Patten?

A. Yes, I do.

Q. Do you remember that Captain Patten was one of the men who came to see you at the hospital that night?

A. I remember that he came to see me at the Palm Beach hospital.

Q. Do you remember that he was there at Fort Lauderdale hospital that night?

A. I heard that he was there, but exactly who was there I haven't any idea; if I had to identify them I couldn't do it.

Q. Do you recall that you stated to Captain Patten at that time: "Captain Abel crawled through the engine-room window and I told him I smelled a slight odor of gasoline and for him to be careful"?

Mr. Underwood:

If your Honor please, that is the same thing, and I renew my objection, and on the additional ground that it has been covered and disposed of.

The Court:

Have you specified the time and the place of the alleged conversation with Captain Patten?

Mr. Matteson:

At the hospital at Fort Lauderdale on the night of the fire.

The Court:

The objection is overruled. Now you may answer the question.

Q. Do you recall making that statement at that time?

A. No, sir.

Q. Did you make that statement?

A. I don't remember.

Q. You know, I believe, the county attorney of Fort Lauderdale, Mr. Miller, Mr. Garry Miller?

A. No, I don't.

Q. Do you recall that he was one of the three men who visited you in the hospital at Fort Lauderdale that night?

A. No, I don't; no, sir.

Q. Did you make this statement to Mr. Miller: "Captain Abel went down toward the engineroom to inspect the boat; I could smell a slight odor of gasoline and warned Captain Abel to be very careful as one always has to be very careful on a boat which is laid up"?

A. I don't remember.

Q. Is that a correct statement?

A. Well, when we were walking down the corridor I did make the statement to Abel to be careful and not light any matches for cigarettes, is what I had in mind.

Q. Why was that?

A. Well, the boat had been closed up and it is not safe to light matches on a boat.

Q. That has been closed up?

A. Well, it has always been my opinion that it wasn't.

Q. Why is that?

A. Well, they don't get the proper ventilation if they have been closed up a considerable length of time.

Q. Does the fact that they are gasoline boats have anything to do with it?

A. On any boats.

Q. Is that any more important in a gasoline boat than any other boat?

A. I would say it would be; of course any boat should be aired out, though; I don't know that that one wasn't.

Q. Did you make this statement to Miller: "When the explosion happened I was looking at Captain Abel through the engine-room window and in order to get lights Captain Abel threw the knife switch located in the engine-room; when he threw the switch the switch arced and there was an immediate explosion"?

The Court:

Is that the same time and place?

The Witness:

At the hospital?

(By Mr. Matteson):

Q. At the hospital.

A. I don't remember what I said at the hospital.

Q. Is that a correct statement?

A. No; the arcing was eight or ten inches to one side of the switch, a little more or a little less; I really don't know.

Q. Now you remember being interviewed at the hospital by reporters while you were recovering from this accident, newspaper reporters?

A. At the Fort Lauderdale Hospital?

Q. Yes.

A. No, I don't remember seeing a reporter there.

Q. In the Daily Tribune of Miami Beach, Florida, Tuesday, June 25, 1935, a signed article by Ben Gaines, Tribune Staff Correspondent, the following statement appears—

Mr. Underwood:

I object to the reading of any statement from a newspaper.

Mr. Matteson:

This is a statement attributed to the witness and I want to know if he made it.

Mr. Underwood:

May I suggest that it might be more proper to mark this paper and let the witness read it, rather than get this into the record in this backhanded way?

Mr. Matteson:

It doesn't make any difference to me, but I don't think it is—

The Court:

Can you indicate that portion you wish to call his attention to and let him read it?

Mr. Matteson:

Yes.

(Thereupon the newspaper article was marked Libelants' Exhibit 34 for identification.)

(By Mr. Matteson):

Q. I will ask you to read this paragraph which begins on the first page and goes over to the back page, which attributes that statement to you.

The Court:

Read it out.

A. "Thomas, who is at the Memorial Hospital, said he smelled a strong gasoline odor from the open engine-room hatch. He warned Abel not to strike a match. Apparently not hearing the warning, Abel turned on the light switch which arced and ignited the gasoline fumes. The explosion followed, igniting the boat. From the Seminole the blaze spread throughout the entire basin, which is approximately eight hundred feet long and more than 200 feet wide."

Q. Did you make that statement to the reporter?

A. I didn't; I don't remember it if I did.

Mr. Underwood:

May we have the time and place of this alleged conversation fixed?

Mr. Matteson:

Of course, I do not know the time and place of the exact conversation, but it must have been—

Mr. Underwood:

Not what it must have been.

Mr. Matteson:

I think it is very obvious. This is an issue of the Daily Tribune, Tuesday, June 25, 1935, which is the day after the fire.

Mr. Underwood:
Is that a morning paper?

Mr. Matteson:
Yes, it was a morning paper.

The Court:
Will you revise your question as to time and place, and ask him did he make such a statement as that to a reporter of the Tribune between the time of the conflagration and the date of the newspaper publication?

Mr. Matteson:
Yes, your Honor.

(By Mr. Matteson):
Q. Did you make that statement to a reporter for the Tribune or to anybody between the time of the fire and the time of the issuing of this paper the next morning after the fire?
A. I don't remember talking to any reporter.
Q. Now, here is another clipping from the Daily News Bureau, Fort Lauderdale, July 11th, which reports recovery of your health. I will ask you to read the final paragraph beginning there with "Thomas went"—

Mr. Matteson:
First, mark this for identification.

(Thereupon the newspaper article above referred to was marked Libelants' Exhibit 35 for identification.)

(Thereupon the witness read Exhibit 35 for identification into the record.)

(By Mr. Matteson):

Q. Did you make that statement to a reporter or to anyone else between the time of the fire and the date of this article, July 11, 1935?

A. No, sir.

The Court:

There has been no objection to that, but if the witness who sponsored that article in the Fort Lauderdale paper is introduced seeking to impeach this testimony I have this present attitude toward his testimony: There is a great deal of uncertainty as to whether that reporter is purporting to state in that article what Mr. Thomas stated in a recent interview, at the time of the writing of the article, or whether he has refreshed his recollection of the entire transaction and going back to the writing of what he understood was in the papers and so forth at the time.

Mr. Matteson:

I think that is correct, if your Honor please. It is not clear from the article, and I made the question broad enough to cover the entire time between the date of the fire and this date.

(By Mr. Matteson):

Q. Do you know Bill McCoy?

A. Yes, I do.

Q. Do you know Ben McCoy?

A. Yes.

Q. Do you recall that they came to visit you in the hospital on July 13, 1935?

A. I recall that they came to visit me but at what date I don't remember.

Q. Do you remember that Bill gave you a copy of his book "The Real McCoy"?

A. I do.

Q. Do you recall saying to Bill and Ben McCoy on that occasion of their visit: "Him (referring to Abel) and I met at the engine-room window and he crawled through. I said don't strike a match as I smell gasoline. From where I stood I could see Abel at the switchboard and also a view of the switchboard. Abel was there for about half a minute and then we saw the glow like a short circuit on the switchboard and then a blue flame". Do you recall making that statement to Bill and Ben McCoy on July 13, 1935?

A. No, I don't recall making that statement to Bill and Ben McCoy.

Q. Is that statement a correct statement?

A. Repeat it again, please.

(Thereupon the preceding question was repeated as above recorded.)

A. Abel and I walked to the engine-room together; I didn't meet him there.

Q. When you met him there did you say to him: "Don't strike a match; I smell gasoline"?

A. No, sir; the only thing I said about a match was while walking down the corridor there.

Q. When did the Palm Beach Company start taking care of your expenses, do you recall?

A. No, I don't.

Q. I notice in all of these reports of those various statements from people who say that they talked to you at the time there is no mention of Abel having scratched a match in the engine-room. When did you first recall that, do you recall; who was the first person you told that, do you recall?

A. I think I told everybody about it that I talked to about it.

Q. Do you say you told that to the two McCoys and to Captain Patten and to Mr. Botts and to Mr. Miller or anyone else that you talked to; is that right?

A. I don't remember that I told it to everybody that I talked to.

Q. Do you recall talking on April 6, 1938 to my partner, Mr. Jones?

A. Yes. At the Sailfish Club Dock?

Q. Yes.

A. Yes, I do.

Q. Did you tell him that you smelled a strong odor of gasoline as if there were gas in the bilges?

A. I don't remember if I did or not.

Q. Did you tell him that you warned Abel not to strike a match or make any light?

A. I don't remember.

Q. Do you deny that you made these statements that were attributed to you at the hospital by Mr. Botts, Mr. Patten and Mr. Miller?

A. I don't know what I said at the hospital.

Q. How badly were you hurt at the time, Mr. Thomas?

A. How badly was I hurt?

Q. Yes.

A. Well, I had no idea how badly I was hurt; I was under the influence of narcotics for several months; they didn't let me know how badly I was hurt.

Q. When you were there in the hospital that night did you think you were going to die?

A. Well, I thought my chances were pretty slim to live.

Q. Do you remember my talking with you in your home in West Palm Beach about a year and a half ago?

A. I remember you being there, yes.

Q. Did you tell me anything about Abel striking a match in the engine-room?

A. I don't remember.

Q. As a matter of fact you didn't, did you?
A. I don't remember.
Q. Who was the first one you told that to?
A. I don't remember that either.
Q. Did you tell that to Mr. Alley?
A. I don't know if I did or not.
Q. Did you tell that to Mr. Underwood?
A. I don't really remember who I told it to.
Q. Do you remember a Mr. Favorite at Palm Beach?
A. Yes, I do.
Q. Did you tell him that the switch arced?
A. No, I don't remember telling him that.
Q. Did you tell him that you smelled gasoline at the engine-room window?
A. I don't remember.

Mr. Matteson:

If your Honor please, it seems to me that we have a very serious and difficult situation here. I have statements from various people that I have mentioned, and I am prepared to put them on the stand to testify to what this man said at the time. These statements were made before this litigation was instituted. Now when we put him on the stand the stories are different. I must say that I am very much perplexed, and the only thing we can do is to leave it as it stands for the time being, because it seems to me that the circumstances are such that I am entitled to regard this witness as a hostile witness and introduce this testimony to impeach him.

The Court:

Well, I can only deal with matters when presented. I see nothing for the Court to rule on at this time.

(By Mr. Matteson):

Q. Do you know anything about Abel looking for some fishing tackle on that boat?

A. Which boat?

Q. On the Seminole the day you were there, the day of the explosion?

A. Yes.

Q. What do you know about that?

A. All I know is that he just went up on the upper deck and looked over the fishing tackle and the dinghies and things that were there.

Q. Did he prepare to take anything away from the Seminole?

A. No, he had not prepared to take anything; he was looking the stuff over.

Q. Just looked it over?

A. Yes.

Q. Did you know that he was there to take some equipment off the Seminole?

A. I didn't know it; he had said something about getting something, but what it was supposed to be, what he was supposed to take, I had no idea.

Q. At the time of the fire he had not gotten it?

A. No, sir.

Q. What were you paid for your work on the Iolanthe? Oh, you didn't do that work, did you?

Mr. Matteson:

That is all I have for the time being.

Cross Examination.

By Mr. Underwood:

Q. Mr. Thomas, this Libelants' Exhibit 85, this little pink clipping from the newpsaper says that you were hurled by the explosion about 50 feet across New River into a bed of water hyacinths. Is that a fact?

A. No, sir.

Q. Before you went with Abel to Fort Lauderdale on the 24th of June, 1935, had you talked with anybody but Abel about the work you were to do?

A. No, sir.

Q. You were to make a rope netting of some sort?

A. Correct.

Q. Who was to decide on the length and the dimensions of the netting?

A. I was.

Q. Who was to decide on the mesh?

A. I was.

Q. The size of the mesh?

A. I was; Captain Abel and I.

Q. Was anybody to supervise your work?

A. Not that I know of.

Q. Had anything been said about precisely when you were to do the job, actually do the work?

A. No, sir.

Q. Had anything been said about where you were to do the work?

A. No, sir.

Q. That was to be at your option?

A. What?

Q. The time and the place and the manner of doing that job you were to decide?

A. Yes, sir.

Q. Without supervision?

A. Yes, sir.

Q. I think you have told Mr. Matteson that you did say something to Abel about not striking a match?

A. I did.

Q. Will you please indicate on Respondents' Exhibit "A" for identification as nearly as you can where you and Abel were when you made that remark?

A. It was right along in here, going down this passageway.

Q. Draw a circle with an X in it there. Have you indicated in the vicinity of the passageway?

A. Yes; approximately in here (indicating) some place.

Q. Suppose you indicate as correctly as you can where you were?

A. As best I can remember it was along in here, probably up to here.

Q. You have made a mark indicating the after-limit, and you have made another mark—

A. That is as near as I can remember.

Q. Mark it a little heavier.

A. (So indicates.)

Q. Mark this "M" and this "N".

A. (So marks.)

Q. At that time did you smell any gasoline?

A. I smelled a bilgy odor, a musty odor, a damp odor like.

Q. When you started out from Palm Beach I think you said you went to a filling station and got gasoline?

A. Yes.

Q. Tell us what you saw transpire during the business of Abel buying the gasoline?

A. While he was buying the gasoline?

Q. Yes.

A. He just drove up to the station and told the attendant to fill the car up and he signed a slip of paper for it.

Q. You saw him sign the slip?

A. I saw him sign a paper; I don't know what he was signing because I didn't see it; I couldn't swear what it was because I didn't look at it, but I presume it was for gasoline.

Q. I think you said that when you got to Pilkington's yacht basin you saw Abel converse with Captain Pilkington?

A. Yes.

Q. Did you see anything pass between them?

A. Yes, sir; if I remember right he got some keys.

Q. Do you remember his giving Captain Pilkington anything?

A. I think it was a piece of paper; what was on it I don't know.

Q. You entered the inside of the vessel through the after door?

A. Yes.

Q. Did Abel unlock that door?

A. If I remember right he did.

Q. Did he unlock any other door before he got into the engine-room?

A. Not that I recall.

Q. Do you recall his unlocking anything before he entered from the corridor into the engineroom?

A. No, sir.

Q. Will you stand up and show us how he lit the match as accurately as you can?

A. Well, as near as I recall he held the match just about like this. He struck the match like that and he looked at the switchboard panel, and if I remember right the match went out in his fingers.

Mr. Underwood:

Indicating that he lit the match at the height of his elbows as his arms hang down normally and then raised the match up about the level of his eyes in front of the switchboard.

Mr. Matteson:

That is correct.

(By Mr. Underwood):

Q. How was the weather that day?

A. It was raining.

Q. Raining hard?

A. Well at times, yes.

Q. Had you ever on any previous occasion been employed by anybody in behalf of the Palm Beach Company or any member of the Phipps family?

A. No, sir.

Q. One more thing, Mr. Thomas: Will you tell us, please, the injuries that you sustained at the time, so that we will have that in the record?

A. I don't believe I know all I have.

Q. Tell us what you do know.

A. Well, to start off with, a fractured leg which left me permanently crippled; my skull was crushed in back here—

Q. Indicating below and behind the right area. Go ahead.

A. This leg was injured.

Q. The right leg.

A. Slightly mashed and crushed. My hair was burned off, and this eye was severely injured—

Q. Indicating the right eye.

A. My chest was crushed; my scalp was cut open in several places; I don't know the exact number of times; I have had several severe burns on the arms and back, and then I had dozens of little minor injuries, scratches and cuts and bruises.

Q. One more thing, Mr. Thomas: When you arrived at Pilkington's basin on the 24th of June where was Captain Pilkington when Abel handed him this paper and received from him the keys?

A. He was about half-way between where our car was parked and his house, or I presume it was his house, as he came from that direction, and I walked over toward the boat shed.

Q. And you saw a paper passed from Abel to Pilkington?

A. Yes, sir.

Q. And you saw keys pass from Pilkington to Abel?

A. Yes, sir.

Q. Thank you very much; that is all.

By Mr. Botts:

Q. Captain Thomas, do you recall, when you saw this paper pass, whether or not Captain Pilkington had the keys in his hand or whether he went into the house to get them?

A. No, sir, I don't recall.

Q. You don't recall that?

A. No.

Q. In other words, he may have received the paper and gone to the house and got the keys and come back? You are not prepared to say one way or the other on that occasion; is that what I am to understand?

A. I just saw them transacting this business there, passing these objects back and forth.

Q. What I am trying to get at is this: Do you recall whether or not, after Captain Pilkington received the paper, he went to the house and got the keys, or whether he seemed to have had the keys on his person at that time?

A. No, I really don't remember.

Q. In other words, he might have gone to the house and got the keys after he received the paper, but you are not prepared to say about that?

A. I am not positive about it; no, sir.

Q. Now how old are you, Captain?

A. 32.

Q. You had been working on boats most of your life, as I understand it?

A. Yes, sir.

Q. You are familiar with these ordinary knife-switches that you pull and throw with a lever?

A. Yes, sir.

Q. You have seen switches of that character arc or throw sparks when they are opened or closed?

A. I have seen them arc when they are opened but never when closed.

Q. What do you understand by a switch arcing?

A. All I know about a switch arcing is when you pull the switch there is always a sign of a small spark.

Q. And that you know by the term "switch arcing", is that it?

A. Yes; when you pull the switch there is a little spark there when it breaks the contact.

Q. But in describing it, Captain, it means that the switch arced?

A. That is the way I would describe it.

Q. Do I understand you to say that that is what you describe by saying that the switch arced?

A. Yes, sir.

Q. That is what I am trying to get at.

A. Yes sir.

Q. Now I understood you to say that someone has paid all of your hospital bills?

A. That is correct.

Q. Who paid these hospital bills for you, do you know?

A. The Palm Beach Company.

Q. And that company paid all of your doctor bills?

A. Everything; yes, sir.

Q. Now do I understand you to say that you are still suffering from injuries that you received?

A. I am not exactly suffering; I am just crippled up, if you understand what I mean.

Q. I don't mean that you are in pain, but you have not completely recovered from those injuries? Is that what I am given to understand?

A. My leg is stiff; I don't know if you could call it as well as it will ever be or not.

Q. At any rate it is not as well as it would have been but for this accident?

A. No, sir.

Q. That is your left leg?

A. Yes.

Q. You say that it is stiff up in the joint or where?

A. It is stiff right between the hip and the knee—

Q. Between the hip and the thigh joint?

A. Yes, sir.

Q. When did you first learn that someone was going to pay your hospital and doctor bills?

A. I really don't remember.

Q. Do you remember who it was that told you that these bills would be paid?

A. My wife did.

Q. Your wife did?

A. Yes.

Q. Did you ever talk to Mr. Riley about your hospital bills?

A. Yes, sir; if I remember right I did after I was taken to Palm Beach.

Q. What did Mr. Riley tell you about your hospital bills being paid?

Mr. Underwood:

If your Honor please, I object to that on the ground that there is no connection shown between Mr. Riley and the respondent I represent.

Mr. Matteson:

There will be plenty of evidence on that before we get through. I suggest that we take it subject to it being connected up.

The Court:

The objection is overruled, subject to it being connected up.

Q. Answer the question.

A. Nothing more than I would be taken—nothing more than that they would be taken care of.

Q. He said they would be taken care of?

A. Yes, sir.

Q. Did you ever talk to Mr. Alley about your hospital bills?

A. No, sir.

Q. You talked to Mr. Riley?

A. Yes, sir.

Q. Now since this occurrence—I am referring to the fire and accident—have you worked for Mr. Phipps?

A. No, sir.

Q. Have you worked for the Palm Beach Company?

A. No, sir.

Q. Have you worked for any one whom you knew to be connected with Mr. Phipps, Mr. Riley, Mr. Alley, the Palm Beach Company or any one associated or connected with Mr. Phipps?

A. Not to my knowledge; no, sir.

Q. Now did you ever make any requests of the Palm Beach Company or any one else to compensate you in any way for these severe injuries that you suffered?

A. No, I didn't.

Q. You never made any attempt to collect any compensation at all and haven't filed any suit?

A. No, sir.

Q. Have you had any intimation from any one that perhaps, after this litigation, something might be done for you by way of gratuity?

A. Absolutely not.

Q. Not a thing?

A. No, sir.

Q. You just voluntarily, without any compensation other than the payment of your hospital bills, relinquished any possible claim that you may have for compensation, is that right?

A. Yes, sir.

Q. Are you still receiving treatment, hospital and medical treatment, for those injuries?

A. Once in a while I do, yes; no hospital treatment; I got to see a doctor once in a while.

Q. Are the bills paid by you now or are they still paid by the Palm Beach Company?

A. I pay them; just little minor things.

Q. You don't go to the Palm Beach Company and ask them to reimburse you for that?

A. No, sir.

Q. Captain Thomas, have you ever at any time discussed with Mr. Alley or Mr. Riley or Mr. Phipps, or anyone representing those gentlemen or either of them, the cause of this explosion and conflagration?

A. Yes, I have talked with them.

Q. Now then who was the first person, so far as you can recall, with whom you discussed the cause of this accident?

A. I really don't remember.

Q. Well, when was the first time you recall discussing the matter with Mr. Riley?

A. I don't remember; it was several months after the accident.

Q. Now did you ever discuss the casualty or accident with Mr. Alley?

A. Yes, I talked with Mr. Alley.

Q. When was the first time that you discussed the matter with Mr. Alley?

A. Well, probably a little over one year ago, something like that.

Q. Now then you have, of course, discussed the matter with counsel in a way, Mr. Underwood?

A. Yes, I talked with Mr. Underwood.

Q. When was the first time, as near as you can place the date, that you first discussed the matter with Mr. Underwood?

A. Oh, a year ago or so.

Q. Did you discuss the matter with Senator Stokes or any of his associates?

A. Senator Stokes?

Q. Yes.

A. I don't believe I know the gentleman.

Q. The gentleman sitting back of Mr. Underwood?

A. No, sir; I never saw the gentleman before to my knowledge.

Q. So far as you know you have not discussed the matter with any of Mr. Stokes' associates in the practice of law?

A. Not to my knowledge.

Q. Not as far as you know?

A. No, sir.

Q. Now then your recollection is that you think it was perhaps several months subsequent to the accident that you first discussed the cause of the accident with Mr. Riley, is that correct?

A. That is correct.

Q. Now then at that time did you tell Mr. Riley about this match that you have so vividly described; did you mention it to him?

A. I think I did; I am not sure of that.

Q. You are not sure?

A. No, I am not.

Q. Now then let me ask you this: You have discussed this accident with a good many people to whom you did not mention the match, haven't you?

A. I don't remember.

Q. All right, you have said that you recall discussing the matter with the two McCoys, Ben and Bill McCoy. You said you recall discussing it with them, didn't you?

A. I said I remember Mr. McCoy being there; I don't remember what I said to him or anything about it.

Q. You don't remember what you said to him?

A. No, sir; the two McCoy brothers were there; I recall that.

Q. Where?

A. Came to the hospital.

Q. At Palm Beach or—

A. Palm Beach.

Q. When were you moved to the hospital at Palm Beach?

A. I don't remember just especially—just exactly when I was moved there; probably two or three weeks after the accident.

Q. Then how long after you moved to that hospital was it that the McCoy brothers came to talk to you?

A. I don't remember.

Q. Don't remember?

A. No, sir.

Q. Some little time, wasn't it?

A. I really don't remember how long it was.

Q. Then it was several weeks after the accident that you discussed this matter with the McCoy brothers, is that right?

A. It was when I was at the Palm Beach hospital; what time elapsed between that and the time I was there at Ft. Lauderdale I don't remember.

Q. I understood you to say that it was several weeks afterwards that you were moved?

A. All right, sir.

Q. Now then you were fully conscious at that time, weren't you?

A. Yes, part of the time I was. I was still under the—they were still giving me narcotics.

Q. Now then you say, as I understand it, that you don't recall anything that you told the McCoy brothers, is that right?

A. No, sir; all I recall is just general conversation, glad to see me, to see that I was getting along so well, and brought me this book.

Q. That came to see you as friends of yours, did they?

A. They did.

Q. Didn't you describe this accident to them?

A. I don't remember if I described the accident or not.

Q. You don't remember if you described the accident to them; you don't have any recollection about that?

A. No, sir, I don't; I might have; if I did I don't remember it.

Q. Well, do you remember anything that you discussed with them?

A. Yes. They were telling about their boat being burned up, and how they had brought it down a few days ahead of time, a few days before the fire.

Q. Well the subject of the fire came up, didn't it; I mean the fire was discussed at any rate, wasn't it?

A. Yes, sir.

Q. They didn't show any curiosity about how the fire had happened by asking you about it?

A. I don't remember.

Q. You don't remember?

A. No, sir.

Q. Whatever you told them was true, wasn't it?

A. Well, I would have no reason to lie about it.

Q. Then if you told the McCoy brothers—whose first names I don't recall—at that time that they visited you in the Palm Beach Hospital that you smelled gasoline, that would have been true, wouldn't it?

A. I don't remember what I told them.

Mr. Botts:

That doesn't answer the question. Read him my question. I want him to answer my question.

(Thereupon the preceding question was read by the Reporter as above recorded.)

Mr. Underwood:

I object to that; it is something that may or may not have occurred. The witness has already answered the question. He said, "I don't remember what I said and I had no reason to lie about it".

Mr. Matteson:

He is on cross examination.

(Extended legal argument.)

The Court:

I think the question is hypothetical. I will sustain the objection. Here is the theory of that ruling: You are examining on cross examination an alleged unfriendly witness to the party who introduced him.

Mr. Botts:

Also unfriendly to my client.

The Court:

It is not in the record what the McCoys would say as to what this witness did say to them.

Mr. Underwood:

I have a statement that I will mark for identification and show to your Honor, and Mr. McCoy will be a witness in the case.

The Court:

I think it is a hypothetical question. The objection is sustained.

We will recess until 1:30.

(Thereupon the Court recessed until 1:30 P. M., March 15, 1939—the same day.)

March 15, 1936, 1:30 o'clock P. M.

Met pursuant to adjournment.
Appearances same as heretofore noted.

333 Thereupon JOHN THOMAS, a witness in behalf of the Libelants, resumed the stand and was examined and testified further as follows:

Cross Examination (Continued.)

By Mr. Botts:

Q. Captain, did you ever talk to the McCoy brothers, or either of them, more than once about this accident?

A. Yes, I have seen them more than once.

Q. Did you ever discuss this accident with them more than once?

A. I don't remember if I discussed it with them at all.

Q. You said that when they came into the hospital the accident was mentioned. Now, Captain, was the accident mentioned between you and Mr. McCoy more than once, whether or not you described it?

A. I don't remember; they were by my house several times, the amount of times I don't know.

Q. Did they come up on a social visit each time?

A. Yes, supposed to be social: I thought it was, at least.

Q. Did the subject of this accident come up at any of these other occasions save and except the one in the hospital?

A. They seemed to be more interested in my condition than anything else.

Q. No, Captain Thomas, you have stated that the subject of this conflagration or occurrence was mentioned and perhaps described with more or less detail between you and the McCoy brothers, with Mr. Jones, with Captain Patten, Mr. Miller and myself on a single occasion, with Mr. Dyer, with Mr. Matteson and with Mr. Favorite, and with some newspaper reporters. Now, Captain Thomas, do you know of other people with whom you have discussed this accident, of course, except Mr. Underwood, the attorney?

A. No, sir.

Q. You do not know of anyone else that you have discussed it with?

A. No, sir.

Q. Other than Mr. Riley?

A. No, sir.

Q. Now then the night when the three men visited you in the hospital that have been referred to as Mr. Patten, Mr. Miller, the county attorney up in Fort Lauderdale, and myself, you were more or less bandaged up on that occasion, weren't you?

A. I don't remember whether I was or not.

Q. I am not trying to trap you, you understand. From what you have said you recall the occasion of this visit but do not recall what was said. Now that is what I understand from what you said. You do recall the occasion of the three men coming to see you don't you?

A. It seems like I have a faint recollection of it; I was told there were three men there; there may have been a dozen for all I know.

Q. Now, Captain, as far as you know you never mentioned the matter of this match being lit to the McCoy brothers, did you?

A. I don't remember what I mentioned to the McCoy brothers.

Q. You don't remember mentioning the match to them, do you?

A. No.

Q. You don't remember mentioning the match to Mr. Jones; you don't remember what took place; you don't remember mentioning the match to Mr. Patten and Mr. Miller and myself, do you?

A. No, sir.

Q. You don't remember mentioning the match to Mr. Dyer, do you?

A. No, sir.

Q. You don't remember mentioning the match to Mr. Matteson, do you?

A. No, sir.

Q. You don't remember mentioning the match to Mr. Favorite, do you?

A. No, sir.

Q. You don't remember mentioning the match to the reporters, do you?

A. No, sir.

Q. Well, then the only other two people that you say you talked the matter over with is Mr. Alley and Mr. Underwood; did you mention the matter to either of those gentlemen?

A. I don't remember whether I did or not.

Q. Then as far as you recollect the first mention of this match was here on the stand this morning, is that what you want me to understand; that this is the first time you recall mentioning the match, Captain Thomas, is that what you want me to understand?

A. No; I just told the story the way it happened.

Q. Wait a minute; that is not what I asked you. You say you have no recollection of mentioning the match to any of these three gentlemen, nor to Mr. Riley, nor to Mr. Underwood, and you have no recollection of mentioning it to them, is that right?

A. Yes, I mentioned the match to Mr. Alley and Mr. Underwood.

Q. I see. Then when did you first mention the match idea to these gentlemen or to either of them?

A. I don't remember the exact time.

Q. Well, when was it when you first mentioned it to Mr. Riley?

A. I don't remember the exact time.

Q. He came down to see you a time or two in Lauderdale, didn't he?

A. He came down but I don't remember speaking with Mr. Riley down there.

Q. He came to see you and talked to you in the hospital at Palm Beach?

A. Yes, he came there several times.

Q. And he discussed the fact that he was going to pay all of your expenses?

A. No, sir; we didn't discuss the fact; he just said that the bills would be taken care of.

Q. Now then was it on this occasion when he told you that the bills would be taken care of—was that when you told him about the lighting of this match?

A. I don't remember if that was the time.

Q. Well, I wish you would make a very strong effort to recall when it was that you thought to mention this match proposition to Mr. Riley which you had not mentioned to any of these other numerous poeple; try to tell us that if you can.

Mr. Underwood:

I object to that because the witness has not said that he did not mention it to these other people; he said that he doesn't remember whether he did or not. The question is unfair and is not a fair statement of the witness' previous testimony.

The Court:

I think the witness can take care of himself on that subject. The objection is overruled.

A. I don't recall who I mentioned it to first.

Q. And you don't know when?

A. No, truthfully I don't.

Q. Now then you stated that you talked to Mr. Underwood about a year ago.

A. I think it was about a year ago, yes.

Q. It was sometime ago?

A. Yes.

Q. Did you tell Mr. Underwood about it the first time you talked to him?

A. I think I did; I am not sure.

Q. I see. Now then did you give Mr. Underwood a written statement?

A. Not that I remember.

Q. Did you ever sign a written statement with reference to this transaction as far as you can now recall?

A. No, not that I recall.

Q. Now, Captain, my recollection of your testimony this morning is that there were a number of switches on this switchboard and that Captain Abel manipulated the switches in some manner, manipulated a number of these switches, and then he seemed to manipulate some particular switch. I am not sure whether you characterized that switch as a master switch or not, but you said he seemed to manipulate one particular switch and that at the time he manipulated that switch the arcing of this electric spark took place, is that right?

A. That is correct.

Q. Now would you be able to recollect the relative position of the switchboard and these various switches?

A. I think I can describe it pretty close.

Q. All right; I wish you would do so.

A. Well, when Captain Abel lit the match he held it up above his head like this (indicating), and he pushed either three or five switches; not less than three nor more than five up in this corner (indicating) of the switchboard.

Q. That would be the right corner?

A. Yes.

Q. All right; go ahead.

A. Then he pushed in this larger switch and that is when the explosion occurred.

Q. Which was the relative position of this switch which you call the larger switch with respect to the other three or five switches which he had manipulated?

A. It looked to be lower than the other switches, because his hand seemed to be in this position (indicating); in other words, about level with his waist when he pushed it, as nearly as I can remember.

Q. Those other switches that he had manipulated, are you able to say whether he had opened or closed those switches?

A. The way I could see it I think he was closing the switches.

Q. That was your best observation there, that he appeared to be closing them?

A. Yes.

Q. Now then do you know whether or not he manipulated more than one switch down at the lower level—

A. No, I don't.

Q. Those other switches that he manipulated was followed by the arcing of the electric spark and the explosion then took place, is that right?

A. Yes.

Q. That is—

A. When he put the larger switch in that is when this arcing, or whatever it was, took place.

Q. As I recall your testimony you said the spark which was omitted at that time was about level with the hand with which he was manipulating it and somewhat to the left of his hand, is that right?

A. As I recall it that is the way it was, yes.

Q. Now the arcing and the explosion, Captain, one followed the other almost instantaneously, didn't it?

A. Yes.

Q. You were impressed more naturally by the explosion than you were by the arcing, weren't you?

A. After the sparks that is all there was to it.

Q. What I am trying to get at is this: would you be able to say whether or not that spark which was emitted was three inches or six inches or a foot to the left of his hand; would you be able to approximate the distance; would you be able to do that?

A. I would say it was about eight or ten inches, something like that; eight or ten inches, more or less.

Q. In other words, it may have been as little as three inches and it may have been as much as fifteen inches?

A. No, I don't think it was as little as three inches; it looked to be about eight or ten inches, something like that.

The Court:

Was this larger switch opened or closed?

The Witness:

The switch—if I am right—anyway, I saw him close the larger switch.

Q. Now, Captain, you were questioned this morning about whether or not you made a particular statement in this language: "I told him (referring to Captain Abel) that I smelled a slight odor of gasoline". Now you stated, as I recall, that you did not make that statement. Now

then I will ask you this: did you make any statement similar, though not in those exact words, to Captain Abel in which the word "gasoline" was used?

Mr. Underwood:

I object to that, if your Honor please, on the grounds stated to the previous question; it is hypothetical.

Mr. Botts:

I would like to be heard on that, your Honor.

The Court:

I think this is a different proposition. The other question was: If he did state that, was he speaking the truth. I will overrule the objection.

A. No, sir; we didn't mention gasoline, as I remember.

Q. Now then, Captain, I want to be entirely fair with you. Do you mean that you did not mention "gasoline" or that you don't recall it now?

A. I don't remember mentioning gasoline.

Q. If I mentioned it you don't recall it now, is that right?

A. I don't remember mentioning it; no, sir.

Q. Then is it possible that you could have mentioned the word "gasoline" and that you do not now recall it; is that possible?

A. I don't think it would be hardly possible unless I smelled the gasoline or saw it.

Q. Wait a minute. I want to find out how clear your recollection now is; that is what I am trying to get at; I am not trying to trap you. Can you say now positively that you did not mention "gasoline", or is it a fact that your memory is not clear whether you mentioned it or not?

A. I don't remember mentioning it.

Q. Are you positive of that; are you positive of your recollection, or could you be mistaken about it?

A. I don't remember mentioning it. I did mention a bilgy odor and to be careful and "let's not strike any matches".

Q. But you are not positive now whether you may or may not have mentioned gasoline, is that right?

A. I don't remember mentioning it.

Q. I understand that; you have already said that a number of times. I know you have said that a number of times, and we will take that for granted, but I am trying to get at this: is there any doubt now in your mind about it; you are mentally clear as to the correctness of your recollection, or is it possible that your recollection which you now have stated may not be accurate; that is what I am trying to get at, so I will ask you the question again, with that explanation: are you positive now that you did not mention gasoline? You can answer that "yes or not". If you are positive, you can say so; if you are not positive, that is another thing; a man cannot always remember, you know.

A. No.

Q. You mean you are not positive?

A. I mean I am positive?

Q. You are positive that you did not mention gasoline?

A. Yes, sir.

Q. I am referring now to your mentioning of gasoline to Captain Abel there on the Seminole at that time.

A. I understand.

Q. Captain Thomas, you have stated quite positively that you have not received anything by way of money or other benefits from Mr. Phipps or the Palm Beach Company, or from Mr. Riley or Mr. Alley or any of those people associated with Mr. Phipps, save and except your hospital and medical expenses. Am I correct in that matter?

A. Yes.

Q. Now, Captain, I will ask you this question: as I understand it, Captain, you have further stated that you have no understanding, express or implied, that you will at any future time receive any benefits from any of the sources that I have mentioned, on account of the serious injuries which you have sustained. Am I right in that, Captain?

A. That is correct; I have had no understanding whatsoever.

Q. Now then I will ask you this question: has your wife or your uncle—what is his name—

A. Captain L. B. Thomas.

Q. Has your wife or your uncle, Captain L. B. Thomas, or anyone else on your behalf, so far as you know, received any benefit or promise of future benefit from any of those people?

A. No, sir; not to my knowledge.

Q. In asking you this question I want to make a preliminary statement, so that you will not misunderstand me; I am aware of the fact, Captain, that I cannot ask you what might have taken place, but I will ask you if you have consulted any attorney about your rights in that respect?

A. No, sir.

Q. Has your uncle L. B. Thomas with your knowledge or consent consulted anyone?

A. Not with my knowledge; he has not with my knowledge; if he has, I don't know anything about it.

Mr. Botts:

That is all.

Re-Direct Examination.

By Mr. Matteson:

Q. Isn't it a fact that you discussed with Mr. McCoy, either Ben or Bill, the matter of bringing a suit against Mr. Phipps or the Palm Beach Company, or someone, for your injuries?

A. I think we mentioned it, but if I recall right, sir, I was in too bad a condition to even talk about it.

Q. Wasn't that quite a number of months after the accident?

A. I don't remember just how long it was afterwards.

Q. Isn't it a fact that you asked them to write to Messrs. Batchelor & Dyer in Miami and have them send someone up to see you?

A. No, sir.

Q. As a matter of fact didn't an occurrence such as I have suggested take place about June 1, 1936?

A. I don't remember.

Q. Well, I should think you would be able to remember about that, Mr. Thomas. You say you don't remember whether you talked with Mr. McCoy and asked him to arrange for attorneys to come up to see you?

A. I don't recall that I did.

Q. Did you ask Mr. McCoy to have attorneys come up to see you?

A. No, I did not.

Q. Did you at that time or at any time contemplate bringing suit; do you understand that question?

A. I had not contemplated bringing suit at any time.

Q. One thing I do not get clear about your testimony; was there more than one explosion while you were on the Seminole?

A. I don't remember if there was or not. After I was in the water I heard several explosions, and while I was

getting out of the boat I heard several, whether they were on the Seminole or not I really don't know.

Q. As a matter of fact, weren't you blown through the window by the second explosion?

A. No, sir; I climbed through the window.

Q. Could you distinguish spark or arc, or whatever it was, and the explosion; weren't they simultaneously?

A. Yes. I saw those sparks and then it seemed like a ball of fire hit me in the face; it was instantaneous.

Q. Did you smell anything at the window of the engineroom?

A. No, I didn't smell anything out of the ordinary?

Q. Did you smell some bilgy smell?

A. Bilgy smell.

Q. Did you observe anything there about the engineroom that could have caused this explosion unless it was gasoline?

A. Well, I don't know; I didn't notice anything.

Q. As a matter of fact, you have no doubt in your mind that it was a gasoline explosion, do you?

Mr. Underwood:

I object to that, if your Honor please—

The Court:

I will let him answer that. The objection is overruled.

A. Repeat the question again.

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. I could not truthfully say what caused the explosion.

Q. Did you smell gasoline after the explosion?

A. No, sir.

Q. Burning gasoline?

A. No.

Q. This force of this explosion blew you from the window against the bulkhead?

A. Yes.

Q. And you found yourself in a sitting position?

A. Sitting position, yes.

Q. Did you ever go back to the window again after that, back to the window to the engineroom?

A. When the explosion occurred it blew all of that over on top of me; it more or less scattered it; I never went that way; I went out of this window right at my back.

Q. You went the quickest way you could?

A. Yes.

Q. How much fire was there in the engine-room at that time?

A. By the time I had gotten out, as I said this morning, it was probably a third filled; it may have been a quarter.

Q. You couldn't see very well where you were, could you?

A. I could see through this same window which had blown over on me, which had blown me against the side of the bulkhead.

Q. Was it blazing in the engineroom at that time?

A. Yes; there was quite a blaze there; there was quite a blaze there when I got out, in fact, when I was going through the window there was fire all around me.

Q. How tall a man was Captain Abel?

A. I would say he was five feet nine.

Q. About your height?

A. No, sir; he is a few inches taller than I am.

Q. Then this switch you said was about the level of his belt, I take it, would be about three feet off the floor of the engineroom?

A. I really don't know.

Q. That would follow, wouldn't it?

Mr. Underwood:
That is speculative; I object to it.

The Court:
I think so. I will sustain the objection.

Q. Now I understood you had a discussion with Abel as you were coming through the passageway, in which discussion you spoke to Abel about the danger of lighting a match, is that right?

A. That is right, sir.

Q. Then you came to the window and Abel went inside and you stayed at the window?

A. I stood on the outside of the window.

Q. You stood there while Abel went to the switchboard and struck the match, is that so?

A. That is right.

Q. Do you want us to understand that you continued to stand at the window of the engineroom after Abel struck the match in the engineroom?

A. Yes, I stood at the window.

Q. Who was Abel working for at that time, do you know?

Mr. Underwood:
I object to that, if your Honor please.

Mr. Matteson:
I asked him if he knew.

Mr. Underwood:
I object to that. I think you should lay the foundation first.

The Court:
I think the question calls for a conclusion. That is a pertinent matter in this inquiry, and I think it ought to

be developed by facts rather than by the conclusion of the witness.

Q. Just go ahead and state what facts you know that bear on Abel's employment at the time he took you down there.

A. Well, I was under the impression that Abel—

Mr. Underwood:
I object to that.

The Court:
Just tell what you know.

Mr. Underwood:
May the witness be instructed not to say what people told him, but state what he observed.

The Court:
You are being asked now about Captain Abel's employment, and you are instructed not to base your answer on anything that Captain Abel told you.

The Witness:
All right, sir.

The Court:
But state any facts you know in connection with his then employment.

The Witness:
Well, I thought—

Mr. Underwood:
I object to what he thought.

The Witness:
That is all I know.

The Court:
What do you base your thought on?

The Witness:
From the boat that he was running; from the boat that I would see him on.

(By Mr. Matteson):
Q. What boat was that?
A. It was a little boat called the Clip.
Q. Clip?

The Reporter:
How do you spell it?

The Witness:
I don't know how you would spell the name.

Mr. Underwood:
C-l-i-p.

Q. What sort of a boat was the Clip?
A. A small fishing boat; probably thirty-two feet in length.
Q. But the work he consulted you about was work in reference to the Iolanthe, wasn't it?
A. Correct.
Q. Can you tell us whether Captain Abel at times worked on the Iolanthe?
A. Yes, he did.
Q. Was he the Master of that boat, do you know?
A. I don't know whether he was the Captain or not.
Q. Have you ever discussed your claim with Mr. Phipps?

A. No, sir.

Q. Do you remember telling Mr. Favorite and Mr. McCoy that you were going to see Phipps with your lawyer about your claim, about March 11, 1937?

A. No, I don't.

Q. Did you tell him that?

A. No, I didn't.

Q. Did you tell him a few days later that everything was all right?

A. Did I tell who a few days later?

Q. McCoy?

A. No, sir.

Q. Or Favorite?

A. I didn't tell either one of them.

Mr. Matteson:

That is all.

Mr. Botts:

There are a couple more questions I would like to ask.

Mr. Underwood:

Go ahead.

By Mr. Botts:

Q. My recollection is that you stated that when you were walking down this passageway, going forward from the stern of the boat toward the engineroom, that you told Captain Abel to be sure not to light a match, or words to that effect.

A. Yes.

Q. You saw him go into this engineroom, didn't you?

A. Yes, sir.

Q. You knew that that was enclosed, where if there was any dangerous gases it would be in an enclosed place, didn't you?

A. Yes.

Q. And when you saw him about to strike the match in there did you protest?

A. I didn't know he was going to strike a match until it was lit.

Q. When you saw him with the lighted match in his hand did you protest or cry out?

A. Nothing happened; I didn't say anything.

Mr. Botts:

That is all.

Re-Cross Examination.

By Mr. Underwood:

Q. You spoke, Mr. Thomas, of the explosion as a ball of fire. Did you hear any explosion?

A. No, I didn't hear any explosion.

Q. After you saw that ball of fire did you know anything until you regained consciousness, sitting up against the bulkhead?

A. No, I didn't feel anything; I just passed out.

Q. You said, in answer to Mr. Matteson's question, that the explosion blew you to the bulkhead; do you know that to be the fact?

A. No, sir.

Q. Do you know where you were when you saw the ball of fire?

A. Standing at the window.

Q. Do you know where you were when you came to?

A. Yes.

Q. But how you got there you don't know?

A. No.

Q. When you regained consciousness and went through that window, Captain, did you have to open any window or was the window open?

A. If I remember right, the window was blown out.

Q. Do you recall observing it prior to the explosion?

A. Yes, I recall it. I recall it because I cut myself severely going through it.

Q. Had you ever seen the switchboard in the Seminole engineroom before?

A. No.

Q. I noticed that in responding to Mr. Matteson's questions when you spoke of Abel's throwing the last switch that he threw, you used your right hand to indicate it.

A. Yes.

Q. Did Abel use his right hand as he faced the board?

A. As nearly as I can recall he did.

Q. Did you have regular employment at that time?

A. Yes, sir.

Q. Will you tell us the name of your employer?

A. Mr. H. H. Windsor, Jr., of Chicago.

Q. Are you employed now?

A. Yes.

Q. By whom?

A. By Mr. Windsor.

Q. You have been employed by him for a number of years?

A. Yes.

Q. You were asked by Mr. Botts whether or not you received any benefits from the Palm Beach Company or from Mr. Riley. Let me ask you about the money that you have received. Will you please tell us what payments have been made to you, including amounts you obtained and how often, as well as you can recall?

A. Whatever the hospital bills cost I have no idea; I have never heard. After I was able to be moved home they sent me a check for $225.00 a month, which took care of my house rent and an orderly and such things. Since then I have received a check for $75.00, but there has been no understanding how long it will go on, how long it will last.

Q. Up to the current month you have been receiving $75.00 a month?

A. Yes, up to the first of this past month.

Q. And you say that is not based upon any understanding whatever?

A. No, it is not.

Q. You were asked whether you had relinquished your claim. Have you signed any leases of any sort?

A. Absolutely none.

Q. Now has the fact that you have received money from the Palm Beach Company, or whatever source it came from, influenced your testimony in any way?

A. Not a bit.

Mr. Underwood:

That is all.

By Mr. Botts:

Q. Captain, when I asked you expressly about such payments, why didn't you tell me about that instead of waiting until you were questioned by Mr. Underwood?

Mr. Underwood:

We object to that; he wasn't so asked.

The Court:

The objection is overruled.

A. I told you as nearly as I could.

Q. Isn't it a fact that the reason that you did not tell me was because you didn't know until he questioned you that Mr. Underwood wanted you to tell the truth about this matter?

A. No, sir.

By Mr. Matteson:

Q. When was the change made from $225.00 rate to the $75.00 rate?

A. Several months after I had gone home.

Q. And you have been receiving that $75.00 rate ever since?

A. Every month, yes.

Q. Regardless of whether you worked for anyone else or not?

A. Yes, sir.

Mr. Matteson:

That is all.

By Mr. Underwood:

Do you recall who it was that suggested the reduction?

A. Yes.

Q. Who?

A. Mr. Riley.

Q. As your expenses for your fare and treatment diminished, is it a fact that the payments made diminished in proportion?

A. That is right.

Mr. Underwood:

That is all.

By the Court:

Q. Let me ask you this: did you ever go into the engineroom?

A. No, your Honor, I didn't.

Q. You spoke about being blown through the window.

A. Well, I crawled through the window.

Q. What window was that?

A. That was the window that I was sitting under when I came to, that one on the outside, to the outside of the boat.

Q. It was the window between the companionway and the outside of the boat?

A. Yes.

Mr. Underwood:

May I ask him to indicate the window on this plan?

The Court:

Yes.

(By Mr. Underwood):

Q. Indicate on this plan the window through which you crawled.

A. This (indicating) was the window I was looking in, and this is the window into the engineroom. I marked this window this morning.

The Court:

That is the one you crawled through?

The Witness:

Yes.

Mr. Underwood:

Does your Honor want to look at this blueprint?

The Court:

No; I think I have it pretty well in mind.

Mr. Matteson:

That is all.

The Court:

Are you through with this witness now?

Mr. Botts:

No, if the Court please. He had better remain in attendance, as we might want him further.

The Court:

Well, this hearing is scheduled to go on for some time.

Mr. Botts:

We have no objection to him going now, provided he is subject to coming back.

The Witness:

May I go back to Palm Beach?

Mr. Botts:

Subject to coming back here again, we have no objection.

The Witness:

Will you give me a little notice, a day's notice?

Mr. Botts:

We will be reasonable about that. Of course we will give you notice.

The Court:

You have his address, do you?

Mr. Botts:

No, I haven't but I guess the Marshal has it; the marshal served him. By the way, do you live with your uncle?

The Witness:

I will give you my address.

(Witness excused.)

357 Thereupon J. W. BRYANT was produced as a witness in behalf of the Libelants, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Captain Bryant, what is your occupation?
A. I a: captain of a private yacht.
Q. What yacht is that?
A. It is the yacht Marlin.
Q. Whose yacht is that?
A. Mr. Louis S. Rosenstein's.
Q. You are down here under subpoena, are you not?
A. Yes, sir.
Q. You came down from Palm Beach?
A. Yes.
Q. Where the boat is now?
A. Yes, sir.
Q. Captain Bryant, did you ever work for John S. Phipps?
A. Yes, sir.

Mr. Underwood:

I object to that as calling for a conclusion. I think the nature of any person's employment in this case is of the utmost importance. He should ask the witness for the facts and not for his opinion.

Mr. Matteson:

We will certainly develop the facts for you.

The Court:

The objection is overruled.

Q. Did you subsequently serve as Master of the yacht Seminole?

A. Yes, sir.

Q. Now will you tell us from the beginning how you came to work for Mr. Phipps and how you came to be Master of the Seminole?

A. Yes. It was the first of 1929; Mr. Phipps hired me to run his fishing boat; he had a 32-foot fishing boat, and he hired me as a fishing guide and also as a hunting guide out in the Everglades where he had a game preserve, and in the Spring of 1929 he had the Seminole chartered here in Miami and he asked me to come down and take charge of the boat.

Q. Mr. Phipps asked you to do that?

A. Yes, Mr. Phipps.

Q. When you say "Mr. Phipps" you are referring to Mr. John S. Phipps?

A. Yes, Mr. John S. Phipps.

Q. What was the approximate time that he asked you to take charge of the Seminole?

A. Why, it was in the Spring of 1929, if I remember right; the Spring of 1929.

Q. Do you know what Master you relieved?

A. Yes; his name was Captain Webber.

Q. He was captain immediately before you took over?

A. Yes.

Q. Were you advised or informed by Mr. Phipps or anyone else as to where you would get your wages and the money to run the boat with?

A. Well not at present when I came down here, no, but after I took charge of the boat and had orders to take the boat to New York I got my expense money from the Miami Shores Company—at that time I think it was—or the Biscayne Boulevard Company; they furnished me tne expense money to take the boat up north with.

Q. Who told you to draw that money from the Miami Shores Co.?

A. I don't remember who it was; it was someone connected with Mr. Phipps' interests through the Palm Beach office; I just don't remember who it was.

Q. Was anything said by Mr. Phipps about that at the time he asked you to take charge of the Seminole?

A. No, not personally Mr. Phipps. I got my orders through different companies; through the Biscayne Boulevard Company and the Palm Beach Company; practically all of my orders came through them.

Q. After Mr. Phipps told you to take charge of the Seminole you received work from someone else connected with one of his companies?

A. Yes, sir, as I very seldom ever saw Mr. Phipps personally except when he was on the boat; maybe months at a time I didn't see him personally at all.

Q. How long were you Master of the Seminole?

A. At different times when she was in condition, practically couple—practically four years.

Q. How did you receive your expense money and wages during that time?

A. When we went to New York our expense money came from the Pittsburgh Building Corporation in New York; when I was at Palm Beach our expense money came from the Palm Beach Company.

Q. How did you come to make the trip to New York?

A. Mr. Phipps used the boat up there that summer.

Q. Mr. John S. Phipps?

A. Yes.

Q. What summer was that?

A. That was in 1929.

Q. Did you have any conversations with Mr. Phipps about matters connected with the yacht at that time?

A. Nothing more than generally what might go on, about the general upkeep and so on about the boat.

Q. Did you have any conversation with him about the upkeep of the boat at that time?

A. We do that at all times; I did that at all times I was employed by him if any work had to be done or anything like that. I would always take it up with the owner if it had to be done and when and how it should be done, which is customary.

Q. When you said "take up with the owner of the boat" whom do you mean?

A. Well the man who was using the boat at the time.

Q. Do you remember any specific matters which you took up with Mr. John S. Phipps?

A. No, sir; just the general upkeep of the boat and things of that kind.

Q. By "general upkeep" of the boat do you mean repairs?

A. Yes, repairs, painting or anything about a boat; anything about that was taken up with him.

Q. Repairs or alterations?

A. Yes.

Q. Can you tell us what the capacity of the gasoline tanks of the Seminole was?

A. Approximately two thousand gallons.

Q. There were four of them, were there not?

A. Four tanks, yes.

Q. Do you know what the gas consumption per hour was when running?

A. About 30 gallons.

Q. When you took over as Master did you make any trip right away at that time, do you recall?

A. A short time after I took it over, within a month, we went to Key West.

Q. Captain Bryant, can you tell us whether during the period you were connected with the Seminole—which I take was from 1929 to 1933, is that right?

A. Approximately that, at different times.

Q. During that period of time was there a draw-off valve for gasoline in the engineroom?

A. Yes, there was.

Q. And what was that used for?

A. Well for drawing gas to operate the launches and to take care of the auxiliary engines there was on deck and the outboard motors which we used and things like that.

Q. How was it used for that purpose?

A. It was used to put in tanks?

Q. I mean how did you get it from the draw-off valves to the various tenders?

A. We had a can we filled it from.

Q. What kind of a can?

A. Regular gasoline-oil can, the same as they have in filling stations.

Q. How big?

A. Five gallon.

Q. Would that be filled in the engineroom?

A. Yes, sir.

Q. Then would it be taken on deck; how would it be taken on deck?

A. Either through the hatch in the engineroom and sometimes would take the boat alongside of the window in the engineroom and pass the can out through the window to the launch.

Q. These launches when they were filled, were they on the boat deck of the Seminole?

A. Yes.

Q. In plain sight?

A. In plain sight on the top of the deck.

Q. Can you tell us whether Mr. John S. Phipps was familiar with this custom of filling the launches and tenders and fishing boats with that five-gallon can?

A. I suppose he was; I suppose he had seen it done. He had it a number of years and I think it was always done that way as far as I know.

Q. Could anybody very well be on the boat for any length of time without observing that?

A. No, I don't think so.

Mr. Underwood:

I object to that, your Honor.

The Court:

He has already answered it. I will overrule the objection.

Q. Were these gasoline tanks on the Seminole arranged in such a way that all of the gasoline could be drawn out of them?

A. That I really don't know; I never examined them that close, but if I remember right I don't think that it all would go out of the bottom of the tank.

Q. Why was that?

A. Well, the line was tapped up a little higher than the bottom of the tank.

Q. So that there was a part of the tank that was below the outlet?

A. Yes, sir. What I mean is that the gasoline would not be drawn from the bottom of the tank; there would be some left in it.

Q. I show you Exhibit 13 and ask you if this is the type of can that was used on the Seminole?

A. It was that type of can, yes.

Q. Of course you couldn't say whether this is the one or not?

A. It was that type of can that was used, yes.

Q. Did you see a funnel of the type of this one, Exhibit 14, used on the Seminole?

A. Well we had a funnel there that we used for filling tanks of the launches with.

Q. Was it like this one?

A. It was that type of funnel, yes.

Q. Captain, can you tell us what the practice was with respect to making the boat ready for storage when she was delivered at Pilkington's yard?

A. Well, the boat was taken in there and all of the furnishings inside was taken out, you know, and wrapped up in mothballs, such as pillows, curtains, bedding and everything like that, and the linens had to be looked after and the silverware and dishes cleaned; and the engineroom had to be cleaned out and everything in it and the engines greased and oiled.

Q. Who did all of that; who prepared the boat for laying up?

A. We had a crew on the boat.

Q. The master and the crew did that?

A. Yes.

Q. That was the custom?

A. Yes, that was the custom.

Q. About how long would it ordinarily take to lay up a boat like the Seminole?

A. Sometimes after a trip it would be four or five days or a week, maybe longer.

Q. Do you think a boat like the Seminole could be laid up properly within a period of two or three hours after arrival at Pilkington's boatyard?

Mr. Underwood:

I object to that; it is speculative.

The Court:

I think the objection is well taken.

Q. Do you think that when the boat arrived at Pilkington's yard under its own power that the necessary steps to lay up the boat properly could be done within two or three hours?

Mr. Underwood:

Objected to as calling for a conclusion.

The Court:

The objection is overruled. Captain Bryant, in answering the question you are instructed to take into consideration the factual condition of the mechanical equipment of the boat at the time the question calls for.

A. All right. Of course the laying up of a boat depends on how long the boat is going to be laid up, or whether it is to be taken out shortly afterwards, or going to be laid up for a definite length of time; if it is going to be laid up for a definite length of time, say several months, it will take quite a lot of work, but if the boat is going to be taken out in a period of two or three weeks it doesn't take so much.

(By Mr. Matteson):

Q. Let's add this to the question: Assume that she gets there around the middle of April and is going to be laid up for at least two months.

A. Well, that is a hard question to answer, because not knowing the conditions that the boat was laid up under. Sometimes the boat will be laid up—which I have done when I was on the boat—we would take the boat into storage and she would lay there and perhaps she had to have a lot of work done on her, and perhaps she would lay there two or three weeks before the work started—

Q. I don't want to press this, Captain, if it is so speculative. Perhaps we can go into it further after we hear from the witness on the other side as to exactly what her condition was at the time. Let me ask you some other things. While this boat was laid up at Pilkington's while you were there what was the custom with respect to visiting the boat and looking after her while she was in storage?

A. When we laid the boat up there it was understood that Mr. Pilkington had charge of the boat; he was supposed to look after the boat; the keys were turned over to him, and I understand he would go over the boat weekly or every ten days and inspect the boat to see that she wasn't leaking or anything like that.

Q. Was it the custom while you were Master to leave the keys to the boat with Mr. Pilkington?

A. Yes, sir.

Q. Did that include the keys to the engineroom?

A. Included all keys.

Q. Was it your custom to visit the boat while she was in storage at Pilkington's while you were Master?

A. I used to go down and look her over and inspect her and work on her when I was in Florida; part of the time I was in New York; when I was there in the summer, in New York, I don't know whether anybody went down to the boat or not.

Q. How important is the matter of ventilation in the engineroom of a boat of the type of the Semihole?

A. What do you mean?

Q. Read him the question.

(Question repeated by the Reporter as above recorded.)

A. It is very important that you should have ventilation.

Q. Important to have ventilation?

A. Yes, sir.

Q. Is that more important while she is laid up?

A. Yes, sir.

Q. Why is that important?

A. Well, you let fresh air go into the boat and that keeps it from mildewing and takes out the bilgy fumes which you get when boats are closed up tight.

Q. If the Seminole is laid up with her hatch and skylight and windows closed in hot weather for a period of a couple of months would there be a tendency of gasoline fumes accumulating in her?

A. There should not be unless there is leaks, because the vents from the tanks is all overboard, and of course the tanks are tight and below the deck, and of course if there was no leakage it would go overboard.

Q. And leakage would depend upon whether there was any seepage from the gasoline connections?

A. Of course.

Q. If there was any possibility of that would that be important?

A. Yes, sir.

Q. While you were Master of the Seminole did Mr. John S. Phipps ever visit the engineroom to your knowledge?

A. I think it—I think he was in the engineroom one time in the four years that I was on the boat.

Q. You remember him being there once?

A. One time.

Q. Did he go into the engineroom at that time?

A. Yes, he was down in the engineroom one time.

Q. Did he look around?

A. Not so very much.

Q. Can you tell me what sort of gauge was used on the tanks of the Seminole?

A. Glass gauge.

Q. What type of gauge was that?

A. I think you would call it a steam gauge or water gauge.

Q. Like a steam gauge or water gauge on a boiler?

A. Yes.

Q. Round glass tube?

A. Round glass tube, yes.

Q. How tall was that gauge?

A. It went the full length of the tank.

Q. Do you know how tall those tanks were?

A. No, sir.

Q. If they were 72 inches tall then the gauges were 72 inches tall?

A. Yes.

Q. You were not the engineer of the boat, I take it?

A. No, sir.

Q. Now how did you come to give up your job as Master of the Seminole?

A. Well, they really didn't have anything more for me to do at the time they laid me off; they were not going to use the Seminole any more right away and he didn't have a need for me any longer, so that is the reason.

Q. Was there any reduction made in your wages before you left the Seminole?

A. Oh, yes.

Q. Who talked with you about that?

A. Mr. Riley.

Q. Did you have a talk with Mr. Phipps about the reduction of your wages?

A. No, sir.

Q. Who is Mr. Riley?

A. Why, at that time he was kind of manager of the Palm Beach Company, assistant manager of the Palm Beach Company; he had charge of the—

Mr. Underwood:

He had charge of what?

The Witness:

Of the boats at that time.

(By Mr. Matteson):

Q. His office was in the Palm Beach Company?

A. Yes.

Q. What do you mean by "he had charge of the boats"?

A. When Mr. Phipps wasn't there he gave orders for the boat; at least I got orders for the boat; I got my orders from him when Mr. Phipps wasn't there.

Q. When Mr. Phipps was there who did you get the orders from?

A. Some of them came from him and some through the office.

Q. What sort of orders?

A. That they were going to use the boat, or something like that, and I would get orders sometimes that Mr. Phipps would be there at a certain time and to get the boat ready, such orders as that.

Q. You are referring now to Mr. John S. Phipps?

A. John S. Phipps.

Q. Do you know what kind of "washers" there were on the gasoline gauge?

A. No, sir.

Q. Do you know whether it had a petcock at the top or bottom?

A. No, sir.

Q. Or shutoff valves?

A. No, I couldn't tell.

Q. Tell me this: in laying up the Seminole at Pilkington's Yard, where she was going to be there for some length of time, say two months or more, was it customary to disconnect her batteries?

A. We never did except in one year when we took the batteries out; we took the batteries out one year that I was there and had them overhauled and put back in. The batteries were always connected.

Q. Captain Bryant, I would like to refresh your recollection if I can: do you recall a conversation with Mr. Phipps during the year 1932 with respect to times getting hard and it being necessary to reduce your wages?

A. Yes, he told me that in New York.

Q. Just tell me all about that.

A. Well, that was when hard times was coming on and the depression had started. Of course everybody was getting their wages cut at that time. I was getting a fairly good salary, and of course I expected a cut. Mr. Phipps spoke to me one day and said he thought he was going to have to reduce my wages and that he was sorry he had to do it, and I told him I understood the situation and that I supposed I would have to take a cut with the rest of them, so he reduced my wages.

Q. Was your wages reduced more than once?

A. Twice.

Q. How did you come to leave the Seminole?

A. As I say, Mr. Phipps—they told me that they were not going to use the boat any more and would not have any use for me; they were practically giving up boating altogether, so that is the reason I left.

Q. This conversation in New York, in what year was that?

A. I don't remember what year it was.

Q. Was that shortly before you left the boat?

A. It was one year before I left the boat.

Q. You left the boat in 1933?

A. Yes.

Q. What month, do you remember?

A. I think it was in March.

Q. March of 1933?

A. March or April.

Q. So this conversation would be somewhere between March 1932, and March 1933?

A. Yes.

Q. What arrangements did they have for filling the tanks of the Seminole?

A. Well, they had a filler-pipe on the main deck of the boat.

Q. Did that stand above the deck?

A. Yes.

Q. Was it fastened to the deck?

A. I don't remember whether it was fastened to the deck or not, but I know that it went down through the deck into the top of the tanks; it stood about two feet high from the deck.

Q. You don't remember what kind of connection there was for that pipe?

A. No, sir.

Q. Did your tanks ever overflow in filling them?

A. If they had overflowed it would go overboard.

Q. That was an air vent?

A. Yes.

Q. What size pipe was that?

A. I don't remember; I would say about a half-inch pipe.

Q. Do you remember any occasion when the tanks overflowed and the overflow was not taken care of by that pipe?

A. No.

Mr. Matteson:

That is all.

By Mr. Botts:

Q. Captain, I would like to have you explain just a little more as to how those vent pipes operated. Where did they enter those tanks?

A. Well, I couldn't tell you just how they were made fast to the tank, because I never inspected the top of the tanks, but they came up to the top of the tanks, leading up through the side of the boat; there was one that went over the side of the boat and one to the tanks; when you got the tanks full you could see the gas overflowing out through the vent pipe on the side.

Q. That was about a half-inch pipe?

A. I would say so.

Q. And there was a separate vent for each tank?

A. No. There was only one vent; I imagine they were made into a manifold, or something of that type, and worked across.

Q. In other words, there was one pipe that ran down to the separate tank; in other words, as I understand it, it was sort of a manifold, is that what you mean?

A. I never went down and inspected it.

Q. But in other words, there was just one vent pipe for all four tanks?

A. Yes, sir.

Q. And that run out through the side of the boat?

A. That is right.

Q. Now this filler-pipe, was there a filler-pipe for each tank, or was that in the form of a manifold pipe running down to each tank?

A. That was in the form of a manifold.

Q. When you wanted to fill the tanks did you have any cutoff valve from this filler-pipe so that you could run the gasoline into only one tank, or did you run it into all at the same time?

A. I don't remember.

Q. You don't know whether there was a diversion connection there to divert it from this pipe into one tank only?

A. No.

Q. When you wanted to fill the tanks you just run gasoline into this one pipe until you had as much gasoline in all the tanks you desired?

A. I suppose that is the way it was; I wasn't the engineer. I know they used to fill the tanks up, but I don't know all about the valves.

Q. What was the size of this filler-pipe?

A. I don't know the size; I would say it was about two inches.

Q. It was very much larger than the vent pipe?

A. Much larger.

Q. If you had an excess of gasoline in there the vent pipe would not have been able to take care of all of the gas that got into the filler-pipe, is that right?

A. Yes.

Q. Now, Captain, what month in 1929 did you say your employment started?

A. I started on New Years.

Q. That was the first of January, 1929?

A. Yes.

Q. And continued until sometime in April or March of 1933?

A. Yes.

Q. As I understand it, Captain, during your entire employment you would on occasions receive orders directly from Mr. Phipps and on other occasions would receive them from the Palm Beach Company or some other company with which he was connected, is that right?

Mr. Underwood:

If your Honor please, I object to that. I think he ought to be more specific about that. The purpose, of course, is to tie up Mr. John S. Phipps. I think I am entitled to have the time and the place and the nature of the conversation stated above.

The Court:

The objection is overruled.

(By Mr. Botts):

Q. Do you want the question read to you again?

A. Yes.

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. Now, does that mean that the orders were for the Seminole or general?

Q. With reference to the Seminole.

A. Well, I can't say that I remember—I can't say that I ever did have direct orders from Mr. Phipps, no more than to say "we are going to use the boat", or such and such, or "you must get the boat ready"—

Q. During that period whenever he wanted the Seminole he told you to get the boat ready and you would do so?

A. Yes.

Q. Sometimes you would be told by others to get the boat ready?

A. Yes.

Mr. Botts:

That is all.

Cross Examination.

By Mr. Underwood:

Q. Let me see if I get this straight. There are three of us you have to contend with: you can't say that you ever had any orders from Mr. John S. Phipps relative to the Seminole except something, as, "I am going to use the boat", or "I am going to use the boat next Tuesday; let's have it ready"?

A. Something of that sort.

Q. And nothing more?

A. No.

Q. Now, Captain, what other boats did you work on up at Palm Beach for various members of the Phipps' family?

A. Well, I never worked with anybody excepting J. S. Phipps.

Q. What other boats did you work on of his?

A. We had the Iolanthe, which was a 75-foot boat.

Q. Which boat was it that you took to New York?
A. The Seminole.
Q. What year was that?
A. That was 1929, the first year I was with him.
Q. When did you become Captain of the Iolanthe?
A. I think it was that fall when we came back that I took the Iolanthe up?
Q. The fall of 1929?
A. Yes, or the early winter of 1930.
Q. On what boat were you first employed for the "Phippses".
A. I was employed on the boat called the Clip, a small fishing boat that he had.
Q. Was that in 1929?
A. Yes.
Q. You went to work on the Clip on January 1, 1929, is that right?
A. That is right.
Q. You were hired by J. S. Phipps for that?
A. Yes.
Q. And not the Seminole on January 1, 1929?
A. No, sir.
Q. Now you said that you had with Mr. J. S. Phipps certain conversations about the general up-keep of the boat which referred to the Clip and the Iolanthe.
A. All of the boats.
Q. It didn't include the Seminole, did it?
A. Why, there were small things we had done, like painting and there was the upkeep of the boat, and things like that, something like that. Of course I would sometimes say to Mr. Phipps, "we need such and such", or something for the boat.
Q. When you say "such and such" what do you refer to?
A. Such as painting; maybe we would have to have the bottom of the boat painted, or something like that.

and I would tell him that I would have to have a certain amount of work done, or something like that, like hauling the boat out and painting the bottom.

Q. Do you remember any occasion when you ever talked to Mr. J. S. Phipps about hauling out the Seminole to have its bottom painted. I want you to be sure about that.

A. Yes, there was one time.

Q. What year?

A. Let's see if I can remember the year. I can't remember the year, but I know that was when we were to take a trip on the boat here; I know that when I was coming down here I bent a rudder coming down the river and I had to go to the Coconut Boat Yard to have it fixed up. I remember that because they were waiting on the dock for me when I got in here.

Q. What year was that?

A. I don't know what year it was; it must have been 1932; it was not 1933.

Q. You say that you were bringing the Seminole to Miami?

A. Yes.

Q. To meet Mr. Phipps and a party?

A. Yes.

Q. To go on a cruise, is that right?

A. Yes.

Q. And on your way down you bent a rudder?

A. Yes.

Q. And Mr. Phipps was on the dock when you got there?

A. Yes, waiting for me.

Q. You told him you couldn't go right away because you had bent a rudder, is that correct?

A. Yes.

Q. You told him you had to go out to the Coconut Grove Boat Yard to get it fixed, and he said "go ahead and get back as quick as you can"?

A. Something like that.

Q. Did you ever discuss with anybody ashore, anybody apart from the engineer of the boat, any requirements in the engineroom?

A. Nothing more than the crew.

Q. Any conversation that you ever had about conditions or requirements in the engineroom of that boat was confined to the members of the crew of the boat, wasn't it?

A. Yes, to a certain extent.

Q. The engineroom was not your job?

A. I had charge of the engineroom as well as any other part of the ship.

Q. In the same capacity as a Master usually has?

A. Yes.

Q. But the primary responsibility was for the engineer?

A. Yes, but it was on me if it wasn't done right.

Q. In other words, you had the responsibility but you didn't do the work down there?

A. Yes, sir; absolutely.

Q. You never saw Mr. Phipps operate those engines, did you?

A. No.

Q. You don't know whether he knew there was a drawoff valve in there or not?

A. No, sir.

Q. You don't know what he knew about the engineroom, do you?

A. I don't think it interested him so long as he had somebody there to take care of it. He had hired a man for that purpose and had a good man, so I don't know why he should have.

Q. Did you have good engineers?

A. Yes.

Q. Competent men?

A. The best I could get.

Q. Who hired the crew when you were on that boat?

A. I did.

Q. Who paid them; I mean who actually handed them the money?

A. I did.

Q. You never got that money from John S. Phipps, did you?

A. No.

Q. You got it either from Mr. Jim Riley in Palm Beach or Roy Hawkins in Miami, didn't you?

A. Yes; it came from one of the three offices.

Q. You were asked something about laying up a boat and about how long it might take, or some rather indefinite set of circumstances. Let me ask you this question: how long does it take to shut off the four gasoline valves to the tanks in the engineroom of the Seminole?

A. I don't know; it wouldn't take very long.

Q. Two minutes?

A. It might; about two minutes.

Q. Not more than two minutes?

A. I should say not more.

Q. The thing that takes the time is the hotel work, so to speak, the mattresses and the blankets and the curtains and the linens and the silver and washing down the bulkheads, if you do that, and so on, is that right?

A. That all has to be done.

Q. If you do a thorough and complete housecleaning job?

A. If you are going to lay up it should be done; you should not go off and leave dirty clothes lying around.

Q. You could though, couldn't you?

A. Yes, but it is not very customary.

Q. Now you said something about a conversation with Mr. Phipps about reducing your salary. Do you remember when that was?

A. I don't just remember.

Q. What year?

A. I think it was in 1932.

Q. What month?

A. I can't tell you; I can't remember what month it was; it was in the spring or summer; it was when I was at Westbury, Connecticut, and he came to me one day and told me that things were getting kind of tough, kind of hard to get money, and that he had to cut down his expenses all around and wanted to give me a cut in wages.

Q. What was the nature of your work at that time?

A. I was kind of an assistant superintendent of the estate at that time.

Q. Were you working on the Seminole at that time?

A. No.

Q. The Seminole wasn't in the north at that time, was it?

A. No, it wasn't in the north at that time.

Q. How many times do you suppose you have laid that boat up?

A. I don't remember?

Q. Half a dozen?

A. Yes, I should say I have. I kept a log of all of that stuff, but of course I don't have it.

Q. Did you ever drain the tanks—the gasoline tanks—of the Seminole?

A. No.

Q. Did you ever draw off that gasoline you could draw off before you laid her up?

A. No.

Q. You never did?

A. No.

Q. Pilkington knew that, didn't he?

A. I suppose he did; I don't know.

Q. You have spoken about some vent pipes from the gasoline tanks. Were there vent pipes that you know about on the Seminole?

A. From the tanks.

Q. Any other vent pipes that you know about?

A. You have to have vents to all tanks. Fresh water tanks have to have vents, and the gas tanks have vents.

Q. What other vents?

A. That is all the vents we had in there.

Q. Do you know about any vents apart from the tank vents?

A. Ventilators.

Q. Any other vents or venilators that you know about?

A. She and two big ventilators in the engine-room.

Q. How big were they?

A. I don't know how big they were.

Q. I show you a photograph. Do you recognize that as a familiar object; is that a fair generai representation of the Seminole?

A. A very good picture of it.

Mr. Underwood:

I offer that in evidence.

Mr. Matteson:

No objection.

The Court:

Let it be admitted.

(Thereupon the photograph above referred to was marked Respondents' Exhibit "B").

Q. The venilators that you spoke about had cowls on them, did they not?

A. Yes, they did.

Q. This object right behind the white stanchion and slightly abaft of the center is one of the cowls?

A. Yes.

Q. That let down into the engineroom?

A. Yes.

Q. And there was a corresponding one on the other side?

A. Yes.

Q. What other vents or ventilators do you know about on the Seminole?

A. I don't really know of any excepting the windows.

Q. You do not know remember any other vents?

A. There were some small pipes coming up back of the after-house which was a vent down in the after-quarters, or the crew's quarters.

Q. How many of those do you remember?

A. Four of them.

Q. Where were they?

A. Two aft of the dining salon and two just forward of those ventilators there that was on the deck; just about a three-inch gooseneck pipe.

Q. Did you ever trace those down?

A. No.

Q. Do you know how far down they went?

A. No.

Q. Isn't it a fact that there were eight, four on each side?

A. There might have been; I don't remember. I do remember that there were four; there was four that I know of; I know that all right; I remember four.

The Court:

Do they show on the picture?

Mr. Underwood:

No, your Honor.

The Court:
What do you call them?

The Witness:
I would call them bilge ventilators, because they went down through the ceiling of the boat so they couldn't be seen; they came to the top of the deck and had wire screen over the ends.

Q. The purpose was to force air down in the engine-room through the cowl ventilators and pass down in the bilges and up through—
A. I imagine so.
Q. That is what air would do if you got a good force of air down these funnels, is that right?
A. Yes, sir.
Q. How many methods of entering the engineroom of the Seminole were there?
A. Really only one,
Q. Which is that?
A. One hatch from the deck; it could be gotten into from the window in the side of the alley-way—
Q. How big was that window?
A. I would say about three feet square.
Q. A man could climb through that easily?
A. Yes.
Q. Beneath that window there was a work-bench?
Q. And the bottom of the window—
A. That was the outside window you are referring to?
Q. I am talking about the window that led in the engineroom, into the four-foot alley-way.
A. No bench in there.
Q. Are you sure about that?
A. Yes.
Q. I am talking about a bench on the inside of the engine-room under that window.
A. Not coming from the alley-way.

Q. Well, there was one under the port window?

A. Yes.

Q. How high was the bottom of that wnidow, the one that led into the alley-way; how far from the alley-way floor?

A. About waist high.

Q. Between three and four feet?

A. Yes.

Q. It was a window three feet square?

A. I would say that it was; it had one pane of glass in it.

Q. That window swung on hinges forward, did it?

A. Yes.

Q. Back up against the bulkhead?

A. Yes.

Q. It swung back up against the bulkhead and hooked there?

A. Yes.

Q. And that was a window about three feet square?

A. About that.

Q. That window from the alley-way was a perfectly normal and frequent method of access in the engine-room?

A. Very seldom used.

Q. You mean while the boat was in operation?

A. Very seldom used anyway, because it went into the main cabin; there was no steps from it to go into the engineroom; that was merely for ventilation; it was more for ventilation than anything else, and gave light on that side; it was never used except for that.

Q. You could go in that way?

A. Yes.

Q. You don't remember any lock on that window, do you?

A. Nothing more than a hook.

Q. It didn't require a key to open or shut it?

A. No.

Q. Access to the engineroom through that window was had from this four-foot alley-way and you got into that alley-way by coming in the after door on the lower deck?

A. Yes.

Q. Is that right?

A. Yes.

Q. So that if you got to that after-door you would go into the engine-room?

A. If it was hooked on the inside; that hook was on the inside of the window.

Q. Isn't it a fact that the hook was on the outside?

A. No, the hook was on the inside.

Q. When did you last see the hook on the inside?

A. That swung in, and you could open it from the engine-room side.

Q. Do you know where the hook was in the spring and summer of 1935?

A. No. I am talking about when I was there.

Q. I am not clear whether I have asked you this before, Captain Bryant, or not: you got your money from the Palm Beach Company or the Biscayne Boulevard Company or one of the companies?

A. One of the companies.

Q. By check?

A. By check.

Q. And Mr. J. S. Phipps never paid you personally?

A. No, sir.

Q. Your salary was paid you by check?

A. Yes.

Q. And how your salary was charged you of course don't know?

A. No.

Q. Now do you remember a man by the name of Simmon in the Miami office?

A. Yes.

Q. What did he have to do with the Seminole?

A. I don't know what his capacity was.

Q. What did he have to do with the Seminole?

A. When I took the Seminole over here I was sent from the Palm Beach office and told to go down and report to Mr. Simmon and Mr. Simmon took me over to the Seminole and turned it over to me.

Q. It was Simmon who turned the boat over to you?

A. Yes.

Q. It was Simmon who gave you the keys?

A. The captain of the boat did. I relieved another captain on the boat.

Q. Was it Simmon after that who gave you your checks?

A. No; Mr. Simmon gave me money to take the boat to New York with and I believe that's all the dealings I had with him; I don't think I had any more dealings with him after that.

Q. When did you bring the boat back?

A. That fall.

Q. Did you ever have any dealings with Mr. Simmon that fall?

A. I don't remember having any.

Q. You had a revolving fund of expense money?

A. Yes, I had for a time, while the boat was in condition and we used it.

Q. You would spend some of the money that Simmon gave you to pay expenses and you would make a report of it?

A. Yes.

Q. Showing the balance on hand?

A. Yes.

Q. And you would receive a check for some money to bring it back up to the original amount?

A. Yes.

Q. From whom did you receive that money?

A. I got the original money from Mr. Simmon and when I got to New York I turned my expense account over to Mr. Peterson of the Pittsburg Building Company.

Q. And for none of that did you account to Mr. John S. Phipps?

A. No.

Q. You accounted to Simmon or Peterson?

A. Absolutely.

Q. And got your instructions from them?

A. Absolutely, except there might have been some remarks made like, "we are going to use the boat; get the boat ready".

Q. Just the same kind of remarks that a characterer might make who had chartered the boat, is that right?

A. I suppose so.

Q. You had been captain of boats that have been chartered?

A. Yes.

Q. You know what a charterer says: "I want to go fishing down on the Keys; I want to leave Tuesday morning." That is the sort of thing that J. S. Phipps told you, isn't it?

A. About the same thing.

Q. And in truth, Captain Bryant, his instructions to you were confined to just about that sort of thing, isn't that true?

A. Yes.

Mr. Underwood:

That is all.

The Court:

We will take a five-minute recess.

(Recess.)

The Court:

Proceed.

By Mr. Botts:

Q. Captain Bryant, this boat, the Clip—is "Clip" the name?

A. It really never did have any name on it; it didn't have any name written on it, but that is what they called it. I don't know how they spelled it.

Q. Whose boat was that?

A. J. S. Phipps'.

Q. You operated this Clip in going on fishing trips and so forth?

A. Yes.

Q. And the Iolanthe you operated also, didn't you?

A. Yes, sir.

Q. And you operated the Seminole?

A. Yes, sir.

Q. And whenever you received instructions from some source that you recognized as being authoritative you operated whichever boat you were told to operate?

A. Yes.

Q. A great many times you received instructions from the Palm Beach Company or from Mr. Riley, or from Mr. Hawkins or from Mr. Simmon and sometimes you received instructions from Mr. Phipps, is that right?

A. Yes.

Q. Now your pay was the same and it came from the same source no matter what boat you were operating on, is that so?

A. Yes.

Q. Now, Captain, did you ever take Mr. J. S. Phipps on any extended trips, I mean like a week or two at a time?

A. Yes.

Q. Would you take along a fishing boat like the Clip, or some similar boat and go on day-time fishing expeditions?

A. No, we never took the Clip; we sometimes chartered a boat with a fishing guide on it.

Q. Sometimes accompanied by another boat?

A. Yes.

Q. And sometimes you used outboard motor boats from the Seminole, did you?

A. Yes.

Q. When you took along any other boat or boats did you furnish the gasoline for those other boats to operate on from the tanks of the Seminole?

A. Yes.

Q. Mr. Phipps was aware of that, wasn't he?

A. Yes, I suppose so.

Mr. Underwood:

I object to that, as to what Mr. Phipps was aware of.

The Court:

The objection is sustained.

(By Mr. Botts):

Q. How would you remove this gasoline from the seminole?

A. If we wanted to use any gas from the boat we would draw it out in cans and put it in the boats.

Q. And that gas was taken out openly where anybody on the Seminole could observe it?

A. Yes.

Mr. Underwood:

I presume you mean anybody who was on deck who was in position to see what was being done?

Mr. Botts:

Certainly.

(By Mr. Botts):

Q. Now you have given us this cut in your wages as in the summer of 1932 when you were working up on Mr. Phipps' estate in Connecticut.

A. New York.

Q. In New York?

A. Yes.

Q. And that was the estate of Mr. J. S. Phipps that you were working on?

A. Yes.

Q. And the Seminole was laid up at that time, was she?

A. Yes.

Q. When you laid her up was that done under your supervision?

A. Yes.

Q. When you came back down here did you put the Seminole back in condition?

A. Yes.

Q. And that was done by you or under your supervision?

A. Under my supervision.

Q. When Mr. Phipps up there told you that your salary would be reduced, Captain, was it reduced?

A. Yes.

Q. And you still got your salary from the same sources that you had been getting it?

A. Yes.

Mr. Botts:

That is all.

Re-Cross Examination.

By Mr. Underwood:

Q. By "source" you mean the same person handed you the check or mailed it to you?

A. Yes, I suppose it came from the same source.

Q. But the source of the money you don't know?

A. I don't know where the money came from.

Q. You don't know whether the money came from Mr. John S. Phipps or the Seminole Boat Company or what company, do you?

A. No.

Mr. Underwood:

That is all.

Re-Direct Examination.

By Mr. Matteson:

Q. After your wages were reduced did you again operate the Seminole?

A. Yes.

Q. At the reduced rate?

A. Yes.

Q. Now, Captain, you spoke of logs being kept on the Seminole; did you keep logs during the period you were master of the Seminole?

A. Yes.

Q. What was done with those logs?

A. We left them on the boat; they were left on the boat.

Q. Were any of them turned over to anyone while you were there?

A. No.

Q. These cowl ventilators led from the deck into the engine-room, did they?

A. Yes.

Q. Did they go below the deck of the engine-room or just to the—

A. I don't remember; they were not very far down.

Q. When you say "deck" you mean the top of the engine-room?

A. Yes, the top of the engine-room.

Q. Did the engine-room have steel floors?

A. No, sir.

Q. What sort of floors did they have in the engine-room?

A. Wooden floors.

Q. Wooden floors?

A. Yes.

Q. Do you want to leave the Court with the impression that all of the engineering, so far as laying up a boat of that type is concerned, was to shut four valves off?

A. Well, I don't know the circumstances of how the boat was laid up or anything like that, or the period of time or anything else.

Q. Assume that she is laid up for a period of two months or more.

A. There is a lot more to do than that; a lot more to do than to shut off the valves; I always used to take more time than that.

Mr. Matteson:

That is all.

Re-Cross Examination.

By Mr. Underwood:

Q. Mr. Botts asked you if you laid the Seminole up in 1932, the year you stood the cut, and you said you did, is that right?

A. Well, I was working on the boat at different times; I can't say just exactly the date that I laid her up, but I used to go down on the boat—I don't remember whether we had her up that fall before or not, or that spring rather—1932.

Q. Do you remember whether you were in charge of the boat when she was laid up that spring?

A. Yes, I was in charge of the boat all of the time, every time she was laid up, until the time I was discharged.

Q. Until the time you were discharged?

A. Yes.

Q. Do you say that you are the one who was in charge of the boat when she was put back into condition that fall?

A. I don't remember whether we used it that fall or not.

Q. You don't remember that?

A. No, sir.

Q. Do you remember how much gasoline there was in the tanks of the boat when you laid her up that spring?

A. No.

Q. Do you have any recollection of that?

A. How much there was in there I don't know; I don't have any idea how much.

Q. Do you remember looking at the gauge and seeing the level of the gasoline?

A. No, I don't.

Q. No recollection at all on that?

A. I know there was gas enough in the boat to take her to the yard and we never took any out when we left; I couldn't tell you how much there was left in there, because I never read the gauge; I couldn't tell you whether it was five hundred gallons or three hundred gallons.

The Court:

You are asking him about the spring of 1933?

Mr. Underwood:

1932, your Honor, when they laid her up.

(By Mr. Underwood):

Q. Do you remember how much gasoline there was in the tanks when you came to take her out in the fall?

A. No, I don't remember; that was left up to the engineer. If the engineer told me he needed gas I would buy it; I don't remember how much was in there. Of

course the engineer kept a log in the engine-room which I very seldom saw, unless I had reason to go down and look at something on it.

Mr. Underwood:

That is all.

Re-Direct Examination.

By Mr. Matteson:

Q. When you took the boat north that summer, after you became Master, whose flag did you fly on that trip, do you remember?

A. J. S. Phipps'.

Q. Was he on board at the time?

A. No, he did not make the trip.

Q. I understood you to say that you discussed with Mr. Phipps such matters as varnishing the boat and—

A. Yes.

Q. Or painting the bottom?

A. Yes, when the boat was in condition and I thought there was need of some work being done I would tell him about it; I would tell him about it and allow a period of time so that he could make his plans for his trip. I couldn't take the boat out to paint the bottom without notifying him.

Q. Did he ever authorize you to make—

Mr. Underwood:

I object to that as calling for a conclusion, if your Honor please; we ought to have the conversation.

(By Mr. Matteson):

Q. Did you ever have a conversation with him about authority to make such repairs or alterations?

Mr. Underwood:
May we have him answer yes or no?

The Court:
The question calls for a yes or no answer.

A. Yes.

Mr. Matteson:
That is all.

Re-Cross Examination.

By Mr. Underwood:

Q. When you were discussing varnishing the boat with Mr. J. S. Phipps, Captain, your purpose was to find out whether it was convenient for him to have you varnish something or other so that it would not interfere with the use of the boat?

A. Yes.

Q. And the same thing applies to painting, doesn't it?

A. Yes.

Q. Who told you to fly J. S. Phipps' flag?

A. I don't know where I got the authority from, but it is customary.

Q. I don't want "customary"—

A. I don't remember where I got the authority from.

Q. You don't remember who told you to do it; you don't remember whether anybody told you to do it, do you?

A. No, I don't.

Q. You have done it entirely on your own, is that right?

A. That is right.

Mr. Underwood:
That is all.

Mr. Matteson:
That is all.

Mr. Botts:
You can come down, Captain.

(Witness excused.)

402 Thereupon: GEORGE WHITTING was called as a witness in behalf of the Libelants, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Mr. Whitting, what is your occupation?

A. Proprietor of a machine shop.

Q. Where is that shop located?

A. At West Palm Beach.

Q. How long have you operated a machine shop up there?

A. Since 1915.

Q. Do you do yacht work there?

A. Yes.

Q. Did you have anything to do with the conversion of the Yacht Seminole from a steam yacht to a gasoline yacht?

A. Yes.

Q. Would you tell us what you had to do with that?

A. Well, some of our men were there on the boat—to start with, there was a steam plant originally in the yacht and the equipment and everything in connection with that was removed and gasoline equipment installed in place of it. Some of our equipment was there for removing this material, cutting it off and so forth, and also

there was quite a lot of repair work on the hull outside, such as rusty plates.

Q. Did you do that work?

A. Yes.

Q. Did you have anything to do with the installation of the tanks in the gasoline engineroom?

A. In a way we did.

Q. Tell us how much you had to do with that.

A. Where the tanks were located the place was originally used for coal bunkers, and we had quite a bit of cutting and fitting of these plates for installing the tanks in this place that was originally used for the coal bunks.

Q. What do you mean by "cutting and fitting plates"?

A. Well, as near as I can recall it was like a bulkhead across the boat, and this made a container to hold this coal; that compartment was probably four feet wide and the width of the boat, that is, four feet in length, and set up from the bottom of the hull probably 36 inches. These tanks were set in that compartment. After the tanks were setting in there this compartment had to be closed off, so these plates were removed to put the tanks in there.

Q. Did you put the plates back?

A. Yes.

Q. Did you do some cutting of holes in the plates, if you recall?

A. That I don't know. The original plates that were in there were for holding the coal.

Q. Did you have charge of the installation of the tanks in the gasoline engines?

A. No.

Q. Who did that work?

A. We did under the direction of the captain of the boat.

Q. Under his direction you did just the tanks you mentioned to us?

A. Not the complete installation of the tanks.

Q. You just did specific things you were asked to do?

A. Yes.

Q. You did not install the tanks?

A. Well, this happened some eighteen years ago. As far as finishing the complete installation, sir, we didn't do that; we might have had some of our men there helping to put the tanks in place.

Q. Who did the job; who had charge of it; who was doing the work?

A. The captain of the boat was in charge of the work and he had a crew on the boat; a great deal of the work was done by the crew.

Q. Was it a contract job?

A. What?

Q. Was it a contract job?

A. No, sir.

Q. It was done by the captain and the crew, is that right?

A. Yes.

Q. With such assistance as they got from you?

A. Yes, in the way of cutting material or anything of that sort; we were called upon to do that.

Mr. Matteson:

That is all.

Mr. Botts:

I do not have any questions.

Cross Examination.

By Mr. Underwood:

Q. Do you remember the captain's name?

A. I do.

Q. What was it?

A. Captain Fred Nelson.

Q. Do you know anything about him?

A. I don't exactly understand why you mean.

Q. Do you know anything about his experience as a sailor?

Mr. Matteson:

If your Honor please, I have called this man only as a fact witness to show who it was that made the changes. I haven't asked him opinions or anything, and I don't think this is cross examination.

Mr. Underwood:

May we have the question read?

(Thereupon the preceding question was read by the Reporter as above recorded).

Mr. Underwood:

I will withdraw the question.

(By Mr. Underwood):

Q. Your only contract in that work was with Captain Nelson, is that right?

A. What?

Q. Your only contract in that work was with Captain Nelson?

A. Yes.

Q. You did whatever you did on a time and material basis?

A. That is right.

Q. How much did you participate yourself in the work that was done?

A. I was there most of the time.

Q. Did you see the gasoline tanks being installed?

A. We were working in the hull there, and this was adjoining the enginercom at the time, and we were there about the job while the tanks were being put in.

Q. Did you men put the tanks in?

A. No.

Q. You simply built the compartment?

A. No, the compartment was already there.

Q. Perhaps I should say you opened it up and closed it up?

A. Yes.

Q. What have you examined to refresh your recollection before testifying here today?

A. What?

Q. What have you examined to refresh your recollection before testifying here today?

A. Nothing.

Q. Have you got any records of that job left?

A. I don't think so.

Q. You have looked for them, haven't you?

A. No, sir.

Q. You have not looked for them?

A. No.

Q. What other contractors were working there at the time; do you remember what others were there?

A. I don't think there were any others there.

Q. You are not sure about that?

A. No, but not in connection with the part we were doing; I am quite positive there was no one else there.

Q. You said something about the tanks being a certain height above something. What is your recollection about that?

A. Well, this is of course as near as I can remember,—the tanks set about 36 inches above the bottom of the hull.

Q. You mean above the floor of the engineroom?

A. No, the actual bottom of the boat.

Q. The skin of the boat?

A. Yes; that is as near as I remember those measurements; I never measured it at any time that I know of.

Q. How do you happen to remember the dimensions after eighteen years?

A. Well, the tanks were, as near as I can recall, about five hundred gallons capacity tanks and about 36 inches in diameter, or something like that, and eight feet in height, or probably seven feet, and the compartment where they went in there, where these tanks were placed, was something about four feet wide, that is, the length of the boat where the coal bunks were located, because we had considerable work to do in that part of the boat. These figures which I am giving you are approximate figures.

Q. After that elapse of time you really can't be very definite about that, can you?

A. No, I can not.

Mr. Underwood:

That is all.

Re-Direct Examination.

By Mr. Matteson:

Q. Were there any plans drawn up for the work that you did?

A. Not that I remember.

409 Thereupon: THOMAS JOSEPH ANDERSON was called as a witness in behalf of the Libelants, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Your name is Thomas Joseph Anderson, Jr.?

A. Yes, sir.

Q. Where do you live?

A. Pompano, Florida.

Q. What is your occupation?

A. Seaman.

Q. Were you at Fort Lauderdale, Florida at the time of the fire in Pilkington Shipyard?

A. Yes, sir.

Q. What were you doing there?

A. Well, I was working on a boat up on the lakes and I came home for four days and this happened during the time I was at home.

Q. You were visiting your father?

A. Yes; he worked at the yacht basin.

Q. He was working at the yacht basin at the time?

A. Yes.

Q. Your father is related to Mr. Pilkington—to Mrs. Pilkington, is he?

A. Yes, sir. Mrs. Pilkington's brother and Captain Pilkington's brother-in-law.

Q. Is that your father you are speaking of?

A. I am speaking of my father, yes.

Q. In other words, you are Mrs. Pilkington's nephew, is that right?

A. Yes.

Q. Where were you when the fire broke out?

A. I was right on the place.

Q. Do you remember whereabouts?

A. Well, I was in my father's house.

Q. Just tell us what you remember about it and what happened. Speak up loud, so we can all hear you.

A. I just came back from Miami, back to Fort Lauderdale, and it was around noon time and I was eating dinner at the time when I heard the explosion, and I went out—my wife and I went down to the waterfront, which is about one hundred and fifty yards from the house, about one hundred and fifty yards from the house down to the waterfront, and after we got down there we saw the yacht Seminole in flames and my aunt—first I tried to get across the Seminole; I went across another boat to get to the

Seminole, and the flames were coming out all over her deck and I couldn't make it to the Seminole, so I came across on this other boat and got back ashore again.

Q. What was the other boat you went across; do you remember what that was; was it the Blue Lagoon?

A. Yes.

Q. Was it lying alongside the Seminole?

A. Yes, on the port side.

Q. When you saw the flames coming out of the Seminole, Mr. Anderson, where were they coming out?

A. Amidships, sir.

Q. To what extent were they coming out?

A. Well, after the explosion the funnel had dropped aft and was laying fore and aft.

Q. On the deck?

A. It crashed just as I came aboard the Blue Lagoon, and I saw then I couldn't make it, so I came back in.

Q. Where were the flames coming out with reference to the funnel?

A. Amidships from the funnel had been, where the funnel had crashed out, coming right out of the deck.

Q. Coming out of the deck around the funnel?

A. Yes, over the engineroom hatchway; through the engineroom hatch.

Q. How large a flame was it?

A. Well, there was quite a bit, mostly smoke and everything was coming out.

Q. Could you tell from the smoke what was burning?

A. No, sir; I couldn't tell from the smoke; it was just a thick smoke.

Q. What color smoke?

A. It was kind of black; I didn't take very much notice to the smoke.

Q. So you couldn't make it and you went back?

A. Yes.

Q. Then what did you do?

A. I went back and helped my aunt—we were afraid at that time, the flames were spreading from boat to boat, that they would spread over and the house would catch fire, and they wanted to save all of the papers we could out of the house, and I helped my aunt take out all of the valuable papers that they had in there and moved them to a place where they wouldn't catch fire.

Q. What did you do after that?

A. After that?

Q. Yes.

A. My wife was standing by the waterfront and heard someone call for help; I couldn't place the call for help; I heard it myself, but I couldn't place it; I knew it was in the yard somewheres around the boats, and I went overboard after the man that was overboard.

Q. Was that John Thomas?

A. Yes, sir.

Q. Did you swim out and get him?

A. Yes.

Q. Where did you find him?

A. I found him on the other side of the slip; on the other side of the basin.

Q. How did you get him back?

A. I couldn't get him back to the land, so I kept him afloat, holding him up—he was already in water that he wouldn't sink in; but I held him up until somebody got out there to help us.

Q. Then somebody came to you?

A. Yes.

Q. What did you do after that?

A. I helped fight the fire with the regular fire department.

Q. The fire department arrived?

A. Yes.

Q. What did they do?

A. Well, all they did was just to spread, spray water on the Seminole. Their only idea was to preserve—they

knew they couldn't save the boat, but they wanted to save the man's body that was already lost in there, or whatever was left of it.

Q. They placed water in the Seminole?

A. Yes.

Q. Do you know how long the Seminole remained afloat?

A. I don't; I imagine it was over one hour after the fire started.

Q. After you got back from getting Thomas, did you see the Seminole burning at that time; was the Seminole burning then?

A. Yes, it was.

Q. What sort of falmes were coming out of her then?

A. All of her super-structure was burned off; all of the woodwork was burned off.

Q. Do you know anything about gasoline on the Seminole; do you know whether or not there was any gasoline on the Seminole?

A. Yes.

Q. What do you know?

A. I know that the night that we pumped her out I worked on the salvage gang—I know that when we were raising the Seminole she had gasoline on her, because we had to shut off our pumps after we got her raised above the water on account we were afraid of igniting the fumes again, or igniting the gas again.

Q. Where did you see the gasoline then?

A. Gasoline was all over the bilges.

Q. How much gasoline was there, much or little?

A. There was quite a lot because the fumes was so bad we had to shut down our engines.

Q. Where did that gasoline come from, could you tell?

A. Out of her tanks.

Q. Is there any way that you know it came out of the tanks?

A. No, I couldn't say; that was the only place that it could have come out of; there was nothing else left to hold any gas.

Q. Do you know anything about Captain Pilkington's rules with respect to having gasoline on the boats that were stored there?

Mr. Underwood:

I object to the rules, if your Honor please, unless there is some connection with the Rsepondent I represent.

Mr. Matteson:

I want to show the general practice. We have a claim against Pilkington as well as against you.

The Court:

Is there not a better way of proving rules; were there printed rules?

Mr. Matteson:

No printed rules.

The Court:

Isn't there a better way of establishing the rules rather than by this witness.

Mr. Matteson:

I think we will have to ask several witnesses as to what the rules were. This is the only way we will ever get to the bottom of it.

The Court:

Your objection is that it was not brought home to the Respondent you represent?

Mr. Underwood:

That is right; no connection whatsoever.

The Court:

I will overrule the objection subject to it being connected up with the objecting Respondent. He can answer the question:

A. No, I don't know anything about his rules.

Q. Do you know whether the Seminole had any drain line in her engineroom compartment from which gasoline could be drawn?

A. Yes, sir. Not at the time it caught fire, however.

Q. What is that?

A. I know that when I worked on the Seminole about a year and a half before it caught fire—I worked in the engineroom and at that time it had a spigot leading into the engine-room, and you could turn it on and draw your gas out.

Q. It was the practice to use that on the boat, was it?

Mr. Underwood:

I object to that; there is no foundation for that.

Q. How long were you on the boat?

A. I was on the boat about a month; I was not working on the boat for the company doing the repair work; they had hired a man in Fort Lauderdale to do that and he subcontracted it; and I worked for the man who subcontracted the job.

The Court:

He wasn't on the boat any time the boat was being operated?

Mr. Matteson:

No.

Q. This boat was laid up at that time?
A. Yes.

The Court:
I think the objection is well taken.

(By Mr. Matteson):
Q. Did you ever work on any other boat that you could draw gasoline out of the tanks in the engineroom?
A. No, sir.

Mr. Underwood:
I object to that as immaterial.

The Court:
What is the materiality of that?

Mr. Matteson:
It is simply corroborative of a lot of other evidence that has been put in that should not be there.

The Court:
I think the objection is well taken.

Q. Now, do you know where her tanks were located?
A. Yes.
Q. Where were they located?
A. They were located forward of her engineroom.
Q. You saw the gasoline drawn from the tanks into the engine-room?
A. How was it drawn?
Q. Yes, how were the tanks connected up?
A. They were upright and they were standing on end; there were four tanks and they were built on a platform about as high as that table there, I suppose.
Q. That was in the old coal bunker?
A. Yes.

Q. Where were the outlets from the tanks?

A. Well, I don't know just where the outlets were; I know that each tank had an outlet from it.

Q. Was there a space under the tanks?

A. Yes.

Q. Did you go into that space at any time?

A. No, sir; I never went under there. The only thing I know is that there was a little alleyway into the old bunker space, and there was about, I guess, a foot high—

Q. Tell us in feet how high it was.

A. It wasn't quite three feet; it was probably close to three feet high and maybe eighteen inches or two feet wide.

Q. You are speaking of the opening into the—

A. Into the old bunker space.

Q. Did you look in there while you were there?

A. Yes; I just took a look in there.

Q. What was that space used for?

A. Just for the tanks is all.

Q. This space was under the tanks, wasn't it?

A. No, sir; this was opening into the old bunker; I just looked in there to see what was in there, and I saw that there was tanks in there, and there wasn't room for anything else.

Q. The tanks were above the bottom of the vessel?

A. Yes, they were above the bottom.

Q. When you say you looked in there and saw tanks, are you referring to gasoline tanks?

A. Yes, sir.

Q. What was the space under the gasoline tanks used for, do you know?

A. Well, it didn't seem to be any more than just bracing, platforms and things for the tanks.

Q. You were employed by Mr. Crabtree for this job?

A. Yes.

Q. Do you know who employed him, or anything about that?

A. Mr. Johnson.

Q. Mr. Johnson was Mr. Crabtree's associate, was he?

A. No, sir. Johnson, from what I understood, had taken the job and Crabtree had subcontracted it.

Q. Who gave Johnson the job; state whether or not you know anything about that.

A. From what I heard him talk about.

The Court:

Not what you heard; just what you know.

Q. You say you don't know?

A. No.

By Mr. Botts:

Q. How long after the explosion was it that you reached Mr. Thomas and rescued him, took him in this skiff?

A. I imagine it must have been fifteen or twenty minutes, I guess.

Mr. Scott:

That is all.

Cross Examination.

By Mr. Underwood:

Q. This shed had sides on it?

A. No, sir.

Q. No sides at all?

A. Well, it had slabs with openings four inches apart, and that was only along certain parts of the Basin; that was only alongside where the Seminole was tied up, just to keep the sun off.

Q. It had a roof on it?

A. Yes.

Q. Which way did the shed face; if you were in the shed and wanted to take a boat out in which direction would you go?

A. Well, I think it faces about northeast, I imagine.

Q. On which side of the Basis was the Seminole?

A. She was on the—wait a minute; if I could get the Basin straight I could tell you. It is facing about northeast, judging from the way the streets run around there.

Q. It was divided into two halves, wasn't it?

A. Yes, sir.

Q. A cat-walk down the middle?

A. A main Basin like this (indicating), and then it had cat-walks on each side of the main Basin.

Q. Two cat-walks?

A. One cat-walk that I know of; I never was in the place before the explosion; I just looked around and didn't take very much notice as to just how it was.

Q. Now assuming the shed faced east, that is, as one stood in the shed and wanted to take a boat out, he would move the boat east—the Seminole was on which side, north, south, or—

A. South side.

Q. How near the southern wall was the Seminole, do you remember?

A. It was right up against the southern wall.

Q. And the Blue Lagoon, how far from the Seminole was she?

A. She was laying right beside her.

Q. Right up against her?

A. Yes, on the port side.

Q. The Seminole was brought in the shed?

A. Yes.

Q. The starboard side against the wall of the shed?

A. No, her starboard side was against the port side of the Seminole.

Q. Was the Seminole's bow in?

A. Yes.

Q. And her starboard side was against the wall of the shed?

A. Yes.

Q. How far in from the outer end of the shed was the Seminole's stern?

A. Her stern was just underneath the shed; just clear of the shed.

The Court:

As I understand, the Blue Lagoon was on the Starboard side of the Seminole?

The Witness:

No; she was on the Seminole's port side.

Mr. Underwood:

That is all.

Re-Direct Examination.

By Mr. Matteson:

Q. In whose house were you when you heard the first explosion?

A. I was in dad's house; it belonged to the place, though, but dad was just living there.

Q. How far from the shed is that?

A. Between one hundred and one hundred and fifty yards.

Q. On which side of the dredged channel is that?

A. That is on the northeast side.

Q. The side opposite from which the Seminole was on?

A. No.

Q. The shed was between you and the Seminole?

A. Yes, on the shore; built out from the shore.

Q. So that when you came out of the house because of the explosion you had to go down and into the shed before you could see the Seminole, is that right?

A. Yes.

Q. How many boats were burning at that time?

A. The Seminole was the only one was the only one that was on fire.

Q. Any fire on the Blue LaGoon at that time?

A. No.

Q. What boat was ahead of the Seminole?

A. I don't know what boat was ahead of the Seminole, for the reason I didn't see how—

Q. How many explosions did you hear altogether?

A. Only heard one.

Q. Was that the only explosion you heard?

A. I heard several after that, but that was the first one I heard.

Q. Do you know how many altogether you heard?

A. I don't know.

Q. For a long time did you continue to hear explosions?

A. For about forty-five minutes or an hour; I never paid any particular attention to it.

Q. Every now and then an explosion would happen as the fire would reach some new boat?

A. Yes.

Q. Of course you know that the Seminole's gasoline tanks did not explode?

A. I am not sure.

Q. You saw them when they were pumping them out?

A. Yes.

Q. Didn't you see that they were not exploded?

A. I didn't see all of them. From what I could see, sir, I didn't see any exploded tanks.

Q. Would you describe the fire on the Seminole as a hot fire or—

A. It was a dangerous looking fire; it was kind of hot too.

Q. A big fire?

A. Yes, sir.

Q. You saw flames coming out around the place where the stack had been, did you?

A. Yes.

Q. Did you see flames coming up from other places too, do you remember?

A. No, sir.

Q. Just through the opening where the stack had been?

A. Yes, sir.

Q. Did you see any flames coming out of her windows?

A. No, I didn't.

Q. You saw no flames coming out of the Seminole except above the stack hole?

A. Just above the stack hole, and at her engine-room companion-way, just beyond the stack hole, about that square (indicating), there were flames and smoke coming out of there.

Q. Out of the engine-room hatch?

A. Yes.

Q. All that you saw apart from those flames was the smoke?

A. Just the smoke and flames. I saw the whole thing, and I thought you were talking about that one particular thing.

Q. I am talking just about the Seminole.

A. I saw the thing burn down.

Q. After you got back from helping Thomas then she was flaming from stem to stern, was she?

A. She was flaming all over.

Q. The flames you saw from the stack hole and the engine-room hatch was just the flame you saw the first time?

A. Yes.

Q. What time did the pumping begin that night; what time did they start pumping her out that night, if you know?

A. No, sir; I have forgotten now just what time it did start.

Q. Do you know what time it stopped?

A. We stopped pumping when—

Q. When something happened to stop you from pumping what time was that?

A. What time did we stop?

Q. Yes.

A. It was around twelve or one o'clock.

Q. The following morning?

A. I am not sure whether it was the following morning or the morning after that; it was the morning after we started pumping; I don't know what the exact time is.

Q. Now where was the pumping when the pumping was going on?

A. It was on the starboard side.

Q. Was it on the Seminole or on something else?

A. No, it was on a barge; it was mounted on a small barge.

Q. Where was the barge with respect to the Seminole?

A. It was on the Seminole's starboard side, right alongside the engine-room.

Q. Was there room for the barge between the Seminole and the—

A. Yes.

Q. And the barge was there?

A. Yes, it was a small barge about twenty by eight or ten.

Q. What kind of pump was it?

A. Six-inch centrifugal pump, or four inch.

Q. You spoke about seeing gasoline in the Seminole at that time.

A. I didn't see any gasoline.

Q. In the Seminole?

A. I smelled it though; the fumes were awfully strong and we had to shut down.

Q. You did not see any gasoline at all but you smelled it?

A. That is correct; the fumes were so strong that you could tell gasoline was there.

Q. Where you when you smelled the gasoline?

A. Alongside the Seminole; the Seminole was raised so that we could look down—the Seminole was raised enough so we could look around for the man's body.

Q. When you were on the barge you smelled gasoline?

A. No, sir.

Q. Where were you?

A. On the Seminole.

Q. What part of the Seminole?

A. Near the engine-room.

Q. Down in the engine-room?

A. No; on the wreckage on top of the engine-room.

Q. On what remained of her deck?

A. Yes.

Q. You didn't see any gasoline down in here?

A. No, sir.

Q. It was just the general odor of gasoline?

By Mr. Underwood:

Q. Now you said that this gasoline came from the Seminole's tanks in response to Mr. Matteson's question, but I think you also said that the reason you said it came from her tanks is because you didn't know of any other place where it could have come from, is that right?

Q. You did not see any gas come from her tanks as that time, did you?

A. I didn't see any gas, but I could smell it.

Q. I would like for you to describe for me a little better the hole that you spoke of, the opening in the forward hulkhead of the engine-room, the square opening.

A. Well, the engine-room—

The Court:
Do you want to use this?

Q. I show you Libelants' Exhibit 9 which is a photograph taken sometime after the fire. Point out the square opening you marked with the letter "A". Is that the hole you refer to?

A. If this is the forward bulkhead in the engine-room, it is.

Q. This is intended to represent the forward bulkhead of the engine-room?

A. Yes, and that is the hole.

Q. Is that the one you refer to?

A. Yes, and on the outside of the bulkhead was the tanks.

The Court:
Where are the tanks?

The Witness:
Just on the other side of this bulkhead, right under here (indicating); the tanks were upright tanks.

(By Mr. Underwood):

Q. Where did you say the bottom of the tanks was with respect to the top of that opening?

A. Well, I suppose they were just on a level with the top of the opening.

Q. Mr. Botts asked me to make it clear that this opening that we are speaking of is more or less rectangular, the opening shown on Exhibit 9, which is marked with a line and the letter "A". That is what we have been talking about, is it?

A. Yes.

The Court:
Where is that with reference to this blue-print?

Mr. Underwood:

This is the engineroom forward bulkhead and that hole is in the middle of the bulkhead, the square hole.

(By Mr. Underwood):

Q. I am not clear whether you remember what was immediately beneath these gasoline tanks; do you remember?

A. Only the bracing and the framing.

Q. Do you remember that they set in pans?

A. No, sir.

Q. You don't remember whether they did or not?

A. No, sir.

Mr. Underwood:

That is all.

Re-Direct Examination.

By Mr. Matteson:

Q. Let me show you this photograph and see if you recognize it; do you recognize that paper?

A. Yes, I recognize the picture but I don't know what position it was taken from.

Q. What is it a picture of?

A. It is a picture of the fire after everything was burned up; it is of the Yacht Basin.

Q. Can you see the Seminole in that picture?

A. Not unless this is the Seminole here (indicating) she is the only—

Q. Are you able to say whether that is the Seminole or not?

A. I couldn't say whether this is the Seminole or not.

Mr. Matteson:

Let me mark that photograph for identification.

(Thereupon the photograph above referred to was marked Libelants' Exhibit 36 for identification.)

(By Mr. Matteson):

Q. I show you this other picture and ask if you recognize that?

A. Yes, I recognize it.

Q. What is it a picture of?

A. It is a picture of the yacht basin.

Q. Apparently the fire is still blazing in that picture?

A. Yes.

Q. But you cannot identify the boats there?

A. No, sir.

Mr. Matteson:

We will mark this one for identification.

(Thereupon the photograph above referred to was marked Libelants' Exhibit No. 37 for identification.)

Mr. Matteson:

That is all I want to ask him.

The Court:

The witness was asked about seeing gasoline during the pumping operation. I understood him to say that he didn't see it but that he smelled it. I am a bit confused there as to whether or not the Seminole was partially saturated with gasoline—

(By Mr. Matteson):

Q. Will you explain that to us?

A. The Seminole had upright tanks and the outlet for the gasoline was at the bottom of the tanks, and while she was sunk the pressure of the water, I imagine, held the gasoline in the tanks from coming up, and after pumping the water out of her it decreased the pressure on the

tanks and gradually the gas started coming out, and when we were pumping we were pumping a mixture of gasoline and water; we pumped bilge water and gasoline out of her; that is all until we got all of the water out.

Q. Do you know that you were pumping a mixture of gasoline and water in the pumping operation?

A. I would not be sure and I could not prove it, but there was a terribly strong odor, in fact, it was so strong that we were afraid that the exhaust from our pumping engine would ignite it again.

Q. You went entirely by the odor as far as you were concerned?

A. Yes, and the rest of them did too.

Re-Cross Examination.

By Mr. Underwood:

Q. I want this clear: you told me, as I understood, that you went entirely by the smell, is that right?

A. Yes, by the smell.

Q. And you told me definitely that you did not see any gasoline, is that right?

A. Yes, I did not see any gasoline.

Q. You don't actually know whether there was any gasoline in the Seminole's tanks at that time or not, do you?

A. I do not.

Q. You do not know that?

A. No.

Q. You knew there was the smell of gasoline and you say it was because of gasoline that the pumping was stopped?

A. Yes, sir.

Q. And that is all you know on that subject, is that right?

A. Yes.

The Court:

We will recess until tomorrow morning at 9:30.

(Thereupon the hearing was recessed until 9:30 A. M. March 16, 1937.)

March 16, 1939; 9:30 A. M.

431 Thereupon: WILLIAM A. MINTER was produced as a witness in behalf of the Libelants, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Mr. Minter, what is your full name?

A. William A. Minter.

Q. What is your occupation?

A. I am now Master of the vessel Marpatcha.

Q. You are a Master of yachts?

A. Yes, sir.

Q. Did you serve on the Yacht Seminole for a time?

A. Yes, about the 3rd of 4th of March, if I am not mistaken, until the 23rd day of December, 1929.

Q. In 1929?

A. Yes.

Q. Who was Captain of the yacht at that time?

A. There was a Master there; the first one was Captain William Webber, and he only remained there a few days after I accepted the position as engineer, and then Captain Bryant.

Q. In what year was this?

A. 1929.

Q. In what capacity did you serve on the yacht Seminole?

A. I served as Chief Engineer.

Q. Who employed you as Chief Engineer?

A. Captain Webber.

Q. Will you tell us the circumstances under which you were employed?

A. Well, I had just gotten off the Serrano, which was owned by Rodman Wanamaker, Sr., and Captain Webber came to the house.

Q. Who came with him?

A. Mr. Phipps.

Q. Which Mr. Phipps?

A. Mr. John Phipps, I think.

Q. What happened when they came to your house?

A. They just asked me would I accept a position as engineer on the Seminole, and that there was a charter aboard.

Q. Who asked you that?

A. Captain Weber.

Q. Did Mr. Phipps take part in the conversation?

A. No, sir.

Q. You talked to me in Palm Beach on Saturday, was it, or Friday?

A. No, sir; I talked with you on Sunday; I arrived there Sunday afternoon.

Q. Sunday afternoon at Palm Beach?

A. Yes.

Q. To refresh your recollection, Mr. Minter, didn't you tell me at that time that Mr. John S. Phipps employed you as engineer of the Seminole?

A. I don't remember saying that; Captain Webber was the man who employed me.

Q. Mr. John S. Phipps did come with Mr. Webber when you were employed?

A. Yes, sir.

Q. I wish you would recall and refresh your recollection as well as you can what part, if any, Mr. John S. Phipps had in your employment.

A. He had none whatever; he was just with Captain Webber, and Captain Webber asked me would I take the position, which I accepted.

Q. Mr. John S. Phipps came with him?

A. Yes.

Q. You were on the Seminole for the full part of the year, I take it?

A. From about the 3rd or 4th of March until the 23rd of December.

Q. What were you doing during the time; what was the Seminole doing?

A. When I accepted the job she was chartered by Mrs. Williams; her name was Mrs. Williams then, but she was formerly known as Ann Murdock.

Q. How long did that last?

A. She had the boat the remainder of March, that is, the month of March.

Q. After that what did you do with the Seminole?

A. We went up north to Port Washington.

Q. For what purpose was that?

A. It was for the family to use it; I presume they did.

Q. Who did use it during that summer?

A. The Phipps family.

Q. When you say "Phipps family" who do you mean?

A. John S. Phipps' family.

Q. It was used during that summer by him?

A. By his family, yes: I never saw him aboard, though.

Q. Was he or any other member of his family on the boat on the trip north?

A. On the trip north, no, sir.

Q. What flag did the Seminole fly?

A. She was flying John S. Phipps' flag at that time, that is, after we arrived in Port Washington.

Q. Now I would like to ask you about the arrangements in the engineroom of the Seminole. How many gasoline tanks did she have?

A. There were four.

Q. And where were they located?

A. Located in the old fire room just forward of the engines.

Q. How were they placed in there?

A. They were placed on a big platform with a lead tray.

Q. There was a platform in there, was there?

A. Yes, sir.

Q. How was that with respect to the engineroom floor?

A. Oh, I should say it was about a foot above.

Q. Was the tray that you speak of on the platform?

A. Yes, and the tanks set in that.

Q. The tanks set in the tray?

A. Yes, sir.

Q. Was there any drain from that tray?

A. No, sir.

Q. Was there any covering on the tray?

A. No covering, no, sir; the tanks just set in there the same as you would set something in a box; that is all.

Q. Now how were the tanks connected in the engineroom?

A. They were connected by a manifold, all four were connected together, and all four were operated at the same time, although you could fill them independently by closing the valves.

Q. Where was the filling line located?

A. Up on the deck.

Q. What did the filling-line consist of?

A. Let's see; about a two and a half inch pipe.

Q. How was it connected with the tanks?

A. By a manifold.

Q. And the filling pipe, did that come down in the engineroom?

A. The filling pipe came down on the other side; in other words, it entered the port tank first.

Q. It had a filler manifold?

A. Yes, and also a drain manifold.

Q. These valves that you speak of for the filling manifold, were they on the engineroom side of the bulkhead?

A. Yes, as a matter of fact, the whole manifold was on that side.

Q. How did it go to the tanks?

A. By a nipple going right through the bulkhead.

Q. There was a hole in the bulkhead?

A. Yes.

Q. And a valve on each tank?

A. Yes.

Q. Then there was a similar manifold connected to the tanks at the bottom?

A. At the bottom, yes.

Q. Did the valves come through the bulkhead?

A. Yes; the valves were all on the inside of the engineroom.

Q. Was there a drain valve from which you could draw gasoline in the engineroom?

A. Yes.

Q. What use was made of that?

A. It was to draw gasoline for the small boats.

Q. How was it fed from the drainline to the small boats?

A. By cans.

Q. I show you this can, Exhibit 13, and ask you if that is the type of can that was used?

A. No, sir. I never saw any can like that on the boat; all I had was these ordinary oil cans, the same as you get lubricating oil in, with a screw-top on it.

Q. Square can?

A. Yes; that is all I used.

Q. After drawing it into this can in the engineroom, how would you get it up on deck?

A. I would have one of the boys lower a line and make it fast and bring it up.

Q. Through the hatch?

A. Yes, and if the boat was alongside I could pass it through the engineroom window.

Q. Did you use a funnel or something in filling these cans that you speak of?

A. Yes.

Q. I show you exhibit No. 14, is that the type of funnel?

A. That is the type, yes.

Q. About that size?

A. Just about.

Q. Was there a gauge or something by which you could determine the gasoline in the tank?

A. Yes, there was a glass tube.

Q. How was that hooked up?

A. That was hooked to the manifold where you could check each tank.

Q. How big was the gauge?

A. The gauge that went directly from the manifold up to the deck was, I would say, about two or three inches from the deck.

Q. As high as the tanks?

A. Higher than the tanks.

Q. That was a glass tube?

A. Yes.

Q. Did this guage have valves on it?

A. Yes, sir.

Q. At the top and bottom?

A. Not on the top; just on the bottom.

Q. At the top was it connected up with the tanks on the manifold line?

A. No, sir; the gauge was in a piece of pipe and the whole front of it was cut out, and then there was a capscrew on top of the pipe, with a little hole in it for a vent.

Q. For a vent at the top?

A. Yes.

Q. Was there a petcock or something of that kind at the bottom of the gauge?

A. That I don't remember.

Q. How were the gasoline feedlines connected for the engines?

A. They were connected by a brass pipe right to the manifold and down to the carburettor.

Q. Where were they connected to the manifold?

A. Well, I would say about a foot and a half or two feet from amidships on either side.

Q. Were there any strainers or traps on these feedlines?

A. Next to the carburettors, yes.

Q. Next to the carburettors or next to the manifold?

A. Connected to the manifold and then to the carburettor.

Q. Physically, where was the trap?

A. The trap was, I would say, a foot forward of the carburettor.

Q. Wasn't it close to the manifold?

A. No, not when I was on it.

Q. What sort of floor was there in the engineroom of the Seminole?

A. Wooden floor.

Q. Was that over steel?

A. No, sir.

Q. A solid floor, was it?

A. Well, it was removable, that is, by different hatches; you could take the whole floor up there in ten or fifteen minutes.

Q. What means of ventilation was there in the engineroom?

A. I had two windows on the port side; then you had a big three-foot hatch above, and then I had a fan in there.

Q. Were there some cowl ventilators?

A. No, sir.

Q. No cowl ventilators?

A. Wait a minute; there was one up on deck.

Q. That came down upon the deck, did it?

A. Yes, it came down; it was just a hole through the deck.

Q. What type of carburettors did you have?

A. Now you have asked me a question; if I am not mistaken I think they were Schebiers.

Q. I show you this contrivance which has been marked Libelants' Exhibit 17; is that what you call a trap?

A. Yes, sir; strainer.

Q. Strainer?

A. Yes.

Q. Can you tell us whether this is the one that was on the Seminole when you were there?

A. No, sir; the one that I had when I was there was four inches in diameter, I think.

Q. Four inches in diameter?

A. Yes.

Q. Was there a shut-off valve on the feedlines near the manifold?

A. Yes; there were two shut-off valves; there was one right there at the manifold and another one just forward of this trap that I am explaining.

Q. What sort of valves did you have on these drainlines?

A. When I was on her she had Jenkins valves.

Q. One or two?

A. Two.

Q. Can you recognize whether this Exhibit No. 11—

A. No, sir.

Q. You can't recognize that?

A. No, sir.

Q. Were the valves that you had on the drainlines similar to those?

A. It had an enclosed head.

Q. What do you mean by that?

A. In other words, it was absolutely enclosed and the thing came out of the bottom; in other words, you could take a plug off the bottom and you could remove this with a screwdriver and go ahead and operate your—

Q. Is that a better type of valve than this?

A. Yes.

Q. Is that a valve that is constructed for gasoline?

A. Yes.

Q. The Jenkins valves are made for that purpose?

A. Yes.

Q. What kind of valves are these?

A. They look like a Crane.

Q. It has the name of Crane on it.

A. I see.

Q. What sort of seat did the Jenkins valves have that you had there?

A. It had a renewable seat on this plug that you took out at the bottom.

Q. A flat seat?

A. No, it was a round seat; I would say about 40 degrees.

Q. Conical shaped?

A. Yes.

Q. With about a 40-degree taper?

A. Yes, about a 40-degree taper.

Q. I show you this connection of pipes—

The Court:

Before you get off of that drain valve, is that drain valve attached to—

The Witness:

To drain gasoline.

The Court:

From the tank?

The Witness:
From the tanks to the engine.

The Court:
You don't call that a feed pipe?

The Witness:
Yes, it is a feed pipe.

A. Yes, it is a feed pipe.

Q. I don't want any confusion; when we were talking about the engine valves and comparing them with Exhibit 11, I understood we were referring to the drawoff lines which were used for drawing gasoline into the engineroom; is that right?

A. Yes, that is true too; as a matter of fact all the valves I had, I think, were Jenkins valves, every one of them.

Q. We have talked about all kinds of valves?

A. Yes.

Q. We have talked about the valves on the drainline for drawing off gasoline in the engineroom?

A. Yes, sir.

Q. Also talked about the shutoff valves in the feed line?

A. Yes, sir.

Q. You say the valves which were on the drawoff line were Jenkins valves?

A. Yes, all of them.

Q. Gasoline valves "A" all of them.

Q. Now I show you this connection of piping, Libelants' Exhibit No. 2, which is said to have been a part of the manifold line on the Seminole. Do you recognize that?

A. No, sir, because the manifold, if I am not mistaken, was much larger than that; that might have been one that connected down from the manifold, down through that little auxiliary generator.

Q. Your recollection is that the manifold was larger than that?

A. Yes.

Q. The manifold, as you recall it, was all connected with connections similar to this?

A. Similar, yes.

Q. Referring to Exhibit 2?

A. Yes.

Q. Did it have angles, joints and unions in it?

A. Yes, plenty of them.

Q. There was some space under the tanks, was there?

A. Yes.

Q. How did you get into that space?

A. You got down on your knees and hands and crawled in there.

Q. What was that space used for?

A. Used to use it for carrying odds and ends, outboard motors.

Q. How much outboard motor equipment did you have?

A. I think there was ten or eleven.

Q. Ten or eleven what?

A. Outboard motors.

Q. Would they be kept in this storage space under the tanks?

A. In that compartment.

Q. What would you use them for?

A. Used them for the outboard boats.

Q. For fishing?

A. Yes.

Q. Did you use them for anything else?

A. No.

Q. Getting back to this filling line for a moment, did they stand above the deck?

A. They stood up about two feet above the deck.

Q. Where did that pipe end?

A. It ended in the manifold.

Q. Connected there by a right angle—

A. By an elbow.

Q. On these gas traps that you spoke of, what provision was made for draining them?

A. There was a petcock under the under side of it; you could also remove the top of it and take the strainer out and dump it; there were two ways of cleaning it.

Q. And that was true of all these strainers that you speak of?

A. Yes.

Q. You were employed on the Seminole for a number of months. What did you do after that?

A. After I left the Seminole?

Q. Yes.

A. I went to work for myself.

Q. That was about what time?

A. That was just after Christmas, or the first of the year.

Q. Did you work again on the Seminole at any time?

A. No, sir.

Q. During that period of time from March until about the first of the year were you on the Seminole all of the time?

A. Yes. Not to the first of the year, but to the 23rd of December.

Q. You were on there all of that time?

A. Yes.

Q. Was she laid up any part of that time?

A. No, sir.

Q. This was all in 1929?

A. 1929, yes.

Q. Now you are attending here under subpoena, are you not?

A. Yes, sir.

Q. And you talked with me on Sunday afternoon in Palm Beach?

A. Yes.

Q. Have you talked with the lawyers for Mr. Phipps or any of his representatives since that time?

A. Only a gentleman came up and asked me what I knew and I told him I knew no more than what I have told here.

Q. When was that?

A. Either Friday or Saturday of last week.

Q. Was that before I saw you or afterwards?

A. Yes.

Q. It was before?

A. Yes.

Q. Who was it that came up to see you at that time?

A. Mr. Underwood.

Q. Have you talked with Mr. Underwood since that time?

A. Only said "Good morning" to him this morning; that is all.

Q. Did you discuss the question of your testimony, as to your employment, with Mr. Underwood?

A. Yes, sir.

Q. Did you tell him that you had told me that Mr. John S. Phipps was your employer?

A. No, sir.

Mr. Underwood:

I object to that, if your Honor please; there is no proof that he made that statement to Mr. Matteson. He is trying to cross examine his own witness; furthermore, that couldn't have happened because my conversation with this gentleman was prior to Mr. Matteson's conversation with him.

The Court:

It is not in evidence as to when he talked with Mr. Underwood about the employment. He said he talked with him since Sunday, just to say "Good morning". When

he talked with him about the employment is not clear; it is not clear whether he talked with him then or after.

Q. Was it this morning that you talked with Mr. Underwood about your employment?

A. No, sir.

The Court:

I will sustain the objection.

Q. Do you deny that you told me that you were employed by John S. Phipps?

Mr. Underwood:

I object to that; this is his own witness.

The Court:

I don't think the basis for a hostile witness has been laid, Mr. Matteson.

Mr. Matteson:

If your Honor please, if you talk with a witness and he tells you one thing and then goes on the stand and says something else, you are entitled to go into that.

The Court:

You covered it, and he expressly answered it. Now you are asking that question again.

Mr. Matteson:

He simply said that he didn't remember it.

The Court:

I think he was very explicit about it. I think the answer was to the effect that Mr. Phipps did not participate in the conversation.

Mr. Underwood:

That is the way I understood it.

Mr. Matteson:

Other than by his presence.

The Court:

I will sustain the objection.

Mr. Matteson:

That is all.

By Mr. Botts:

Q. Captain, I want to ask you some questions, and probably some of them will not sound sensible. I do not understand a lot about these things, and I do not know whether the Court does or not, but I want to try to get some information about some of these things; This article here, Exhibit 17, that is a bullet-shaped thing; what is that?

A. It is a gasoline filter.

Q. One of these would be the intake and the other would be the outlet line?

A. Yes.

Q. And between these two there would be a—

A. Screen.

Q. A screen?

A. Yes.

Q. Then on the intake side of this device there should be a cutoff valve?

A. Yes.

Q. So that trash or anything which got into this could be cut off and cleaned out?

A. Yes, and this top removed to take the screen out. There is a petcock in there too.

Q. Now referring to Exhibit 11, these two Crane valves, did I understand you to say that these are not gasoline valves?

A. I never saw these valves before.

Q. What are those; are they water valves?

A. That is what they are supposed to be.

Q. You made the statement that the Jenkins valves which were on the gasoline lines when you were in charge were superior for purposes of gasoline lines to the Crane valves.

A. Yes.

Q. Will you explain why that is true?

A. It is a differently constructed valve; it is a much tighter valve, and these other valves might start leaking most any time.

Q. That is what I want to get at; in other words, a valve of this kind is subject to leakage whereas the other one is not?

A. That is right.

Q. With reference to the engineroom floors, those were removable in sections?

A. In sections, yes.

Q. What was the purpose of removable floors in the engineroom?

A. To get down to the pipeline and clean the valves and that stuff.

Q. In other words, those removable sections enabled a person, if they were so disposed, to get down and keep the valves clean and make any adjustments in pipelines and so forth that might be necessary; is that right?

A. Yes, sir.

Q. What pipe lines were underneath that floor?

A. Water pipe lines.

Q. Not gasoline?

A. One on each side of the motor; two little gas pipes going to the carburettors.

Q. They were above the floor?

A. Below the floor, made fast to the engine bed.

Q. You stated that there was a larger filter in there when you were on the boat. Where was that filter in rela-

tion to the gasoline feed lines that supplied the carburettor?

A. About one foot or a foot and a half forward of the carburettor, under the floor and screwed up to the engine bed.

Q. And you say the filter was also underneath the flooring?

A. Yes.

Q. Then, as I understand it, the gasoline would flow out of the tanks through the supply manifold and then the line would split, one going to one engine and one to the other?

A. No, sir; we had two lines, one on either side; one went to the starboard motor and the other to the port motor.

Q. Both of them came out of the supply manifold?

A. Yes.

Q. Was there a separate filter for each of these gasoline lines?

A. Yes, sir.

Q. Now were there any vales, cutoff valves, or anything underneath the floor?

A. One on each side and they was just forward of that filter.

Q. Forward of the filter?

A. Yes.

Q. That would put them between the tanks and the filter, would it?

A. That is right.

Q. That would be the valve that would be shutoff to cut off the gasoline supply when it was supposed to clean this filter?

A. Yes.

Q. Or if for any other reason you wanted to cut off the gasoline line it was cut off between the filter and the tanks?

A. Yes. As I told you, there was one cutoff valve just below the manifold and the other one just forward of the filter; making two cutoffs.

Q. So that you could cut off the gasoline from the filter between the filter and the tanks?

A. Yes.

Q. You could also cut off the gasoline from the carburettor between the filter and the carburettor, am I right?

A. That is right.

Q. This second cutoff valve, was that above or below the floor?

A. It was below, but the handle of the valve was above the floor.

Q. So that it could be manipulated by—

A. Raising the floor.

Q. Was that also true of the cutoff valve between the filter and the tanks?

A. Yes, sir.

Q. Both of them could be manipulated by removing the floor and they were actually located below the floor?

A. That is right.

Q. Both of those cutoff valves were the Jenkins cutoff valves, were they?

A. Yes.

Mr. Botts:

That is all.

By Mr. Matteson:

Q. What has become of Captain Webber?

A. Captain Webber is dead.

Q. Your boat had just arrived at Palm Beach the Sunday when I saw you there?

A. Yes.

Q. Where had you been before that?

A. Miami; I just left Miami Sunday morning.

Q. Was it in Miami that you talked to Mr. Underwood?
A. Yes.

Mr Matteson:
That is all.

By Mr. Botts:
Q. This strainer that is on this trap, or whatever you call it, has a fine mesh wire on it?
A. Yes.
Q. Copper?
A. Yes.
Q. Now then suppose the strainer in the trap should become ruptured or broken or worn out and had holes in it, what would happen?
A. You could get sediment and all of that stuff in your carburettor.
Q. What is the ordinary practice with reference to cleaning those traps; how often would it normally be done?
A. I always did it once a week.
Q. Should there be any defect in the screen you renew the screen?
A. I tore it off and soldered a new screen on it.

Mr. Botts:
That is all.

Cross Examination.

By Mr. Underwood:
Q. Captain, will you draw me a picture of a Jenkins valve?
A. I am not a very good draftsman.
Q. Do the best you can for me.
A. The type I had on—

Q. The type you have been speaking about, and maybe Mr. Botts and I will understand it.

(Witness makes diagram.) There is supposed to be a hole here and a hole here (indicating).

(By Mr. Underwood):

Q. Mark "hole" there.

A. (Witness indicates on diagram).

Q. That is where the gas comes in and goes out?

A. Yes. Now this was removable, this plug (indicating).

Q. Draw a line from there and write the word "plug".

A. All right.

Q. That up there (pointing) is the handle?

A. Yes.

Q. Draw a line from that and write the word "handle".

A. All right.

Q. Show me the direction of the flow of the gasoline through that valve.

A. Well, this hole was down here; I misplaced the holes.

Mr. Underwood:

He drew at the left of the diagram a second hole and scratched out with a pencil the first one. The witness indicates on the left side with a line between this hole, the intake, and writes the word "intake". Witness indicates the intake side by the word "hole", and below writes the word "outlet".

Will you draw a line through that, a wavy line, showing the flow of the gas from one hole to the other?

A. (Witness indicates).

Mr. Underwood:

Witness draws a line from the lefthand hole through the plug and on over to the righthand hole.

(By Mr. Underwood):

Q. Is this piece from the bottom to the top indicating the piece that is at the bottom of the stem, all one piece or does it separate when you open the valve?

A. It separates.

Q. Is this (indicating) the plug?

A. No, here is the plug (indicating).

Mr. Underwood:

Witness indicates that the plug, the thing in which I write the letter "X" and mark with a line "X", is the plug.

A. That is right.

Q. What do you call this piece here (indicating)?

A. That is the seat.

Q. Draw a line from that and write the word "seat".

A. (Witness indicates).

Q. So the thing we have marked "seat" permits the gasoline to pass from the left hand inlet to the righthand outlet?

A. Yes.

Q. And what you call the valve seat fits in the plug?

A. Yes.

Q. And the angle on the seat is about 40 degrees?

A. Yes.

Mr. Underwood:

I offer the diagram in evidence.

Mr. Matteson:

No objection.

The Court:

Let it be admitted.

(The diagram above referred to was marked Respondent's Exhibit "C".)

(By Mr. Underwood):

Q. Captain, the seat in the plug is of metal?

A. Yes.

Q. That is what you call a ground seat valve?

A. Yes, sir.

Q. Now, you spoke, Captain, of the time in 1929 when the Seminole was in Port Washington. You said that it was for the use of the Phipps' family?

A. Yes, sir.

Q. What members of the Phipps' family do you recall using the boat?

A. Well, Mrs. Phipps used it two or three times.

Q. Mrs. Henry Phipps?

A. No, Mrs. John Phipps, and the boys were aboard a number of times.

Q. Which boys?

A. Mr. Phipps' boys.

Q. Can you name them?

A. Michael and I think Herbert; I don't recall the other one's name.

Q. Do you remember Mrs. Henry Phipps being aboard?

A. No, sir.

Q. You wouldn't say she wasn't aboard, would you?

A. No, because I don't know; my place was below.

Q. Do you remember Mrs. H. C. Phipps being aboard?

A. No, sir.

Q. Would you say she wasn't aboard?

A. I wouldn't say.

Q. Do you remember Mrs. Guest being aboard?

A. No, sir.

Q. Would you say she wasn't aboard?

A. No, sir. As I told you, my place was below, and I didn't have any business up on deck to see who the guests were.

Q. Is it a fact that you do not know what members of the Phipps' family were using the boat?

A. The only thing I can say is that we went up and followed Mrs. Phipps' family.

Q. Did anybody ever tell you why the boat went up north?

A. For the family to use it.

Q. Did anybody ever tell you?

A. No.

Q. That is a conclusion that you reached in your mind?

A. Yes.

Mr. Underwood:

I move to strike out his evidence as to the reason why the boat went to New York in 1929.

The Court:

Yes, I think as it developed he had certain facts to which he testified, and I think the objection goes to the qualify of the testimony rather than to its competency. I shall deny the motion and consider it in that limited way.

Q. You got your orders from the Captain of the boat?

A. Always, yes.

Q. Do you know who it was that decided to fly the pennant of John S. Phipps at Port Washington?

A. That I could not say; that is up to the Master.

Q. You don't know about that?

A. I had nothing to do with that; no, sir.

Q. What was that penant?

A. It was the penant of Mr. John S. Phipps.

Q. Do you remember the color and the shapes?

A. Black and yellow.

Q. What part was black?

A. I don't know.

Q. Do you remember the shape?

A. Well, it was like this and like that (indicating).

Q. It was a regular pennant with—

A. In other words, it was a square flag with a cut in the end of it.

Q. What part was black and what part was yellow?

A. That I don't know; both of them had the same colors; one was one way and the other was reversed.

Q. Do you remember that H. C. and J. S. Phipps had identical flags except that the colors were reversed?

A. Yes, sir.

Q. One was yellow and black and the other was black and yellow, but you don't remember which was which?

A. I don't remember which was which; no, sir.

The Court:

In getting back to your objection, I think the independent facts that the witness testified to should remain in the record, and I think the conclusion that he did reach technically is incorrect, so I shall reverse my ruling on that and let it remain in the record. I think the record will be freerer of error if technically the motion is sustained, simply striking the conclusion.

Mr. Matteson:

I take it that this is simply a general statement and we will have to go over the record and find out what in particular is objectionable?

The Court:

Yes. He testified to independent facts in regard to flying the Phipps' flag, and also testified what members of the Phipps' family used the boat. That certainly should remain in the record.

(By Mr. Underwood):

Q. How many boats have you been the Captain on since you left?

A. That is hard to say.

Q. A good many?

A. A good many, yes.

Q. How clear is your recollection about these gasoline tanks?

A. How clear?

Q. Yes.

A. What do you mean by that?

Q. Your recollection about their construction.

A. They were steel tanks; they were round and they were setting upright.

Q. How were they fastened?

A. They were fastened by brackets.

Q. Securely to the bulkhead?

A. Yes.

Q. Securely?

A. That I won't admit.

Q. Do you remember?

A. No, I don't.

Q. You don't remember?

A. No, sir; I never had occasion to crawl up in there to find out.

Q. Now these pans that were under the tank, how many were there?

A. One.

Q. Are you sure about that?

A. One large pan.

Q. Your recollection is quite clear about that?

A. To my recollection there was only one pan. I know I was in there a dozen of times to mop it out.

Q. You say they didn't drain overboard?

A. No, sir; I never found any drain overboard.

Mr. Underwood:

Will you mark this paper for identification?

(Paper marked Respondents' Exhibit "D" for identification.)

(By Mr. Underwood):

Q. Captain, I show you Respondents' Exhibit D for identification and ask you if the sketch at the bottom refreshes your recollection as to the construction of those drain pans, and whether or not they drained overboard. I want you to look at that—

Mr. Botts:

Let me see that.

Mr. Underwood:

Just a moment:

Mr. Botts:

You have no right to cross examine the witness until you show it to me.

A. This is where the tanks were (indicating).

Mr. Botts:

I object to him questioning the witness about a diagram which is not in evidence.

Mr. Underwood:

I am asking him first to refresh his recollection. If it refreshes his recollection about a particular thing and he says, "yes", I think if I go further that possibly Mr. Botts is correct.

The Court:

I think counsel is entitled to view it.

Mr. Underwood:

At this point?

Mr. Botts:

At any point before the witness is questioned about it.

Q. Now, Captain, do you notice the legend here "tanks standing in drip pans and leading overboard." Do you notice that?

A. I do.

Q. Does that refresh your recollection as to how these pans drained?

A. No, it doesn't; I never found any drains—

Q. You never saw the drains?

A. No, sir.

Q. And your recollection today is that there was but one tank?

A. No, there was four tanks.

Q. I am sorry; I meant "pan".

A. One pan, that is right.

Q. Captain, this glass gauge—there is one thing I didn't quite understand about this glass gauge. You say it was inside of a pipe?

A. It was in a tube.

Q. It was inside of a brass tube?

A. Brass pipe.

Q. With a slit cut in it?

A. With a slit cut all the way down.

Q. Do you remember what sort of a connection there was between the pipe, the gasoline line and the glass gauge?

A. There was some nipples and elbow on the valve.

Q. This wooden floor of the engineroom was made up in small sections, wasn't it?

A. Yes, sir.

Q. Perhaps two feet by two?

A. No; some of them were larger.

Q. But small and easily manageable sections?

A. Yes.

Q. With a single hole?

A. Yes.

Q. Where you could pull them up?

A. Yes.

Q. Do you remember the pasageway that led alongside the engineroom on the starboard side?

A. Yes.

Q. There wasn't any floor covering in the bilge there, was there?

A. No, sir.

Q. Completely open?

A. Yes, that is, under that passageway floor.

Q. Under the passageway floor?

A. Yes.

Q. There wasn't any particular bulkhead between the bottom of that passageway and the engineroom floor, was there?

A. No, it was all open.

Q. You could stand in the engineroom and look right in there and by leaning down, and with a little crawling, you could get right in there?

A. Yes.

Q. There was a number of pipes there?

A. Yes, water pipes.

Q. Plainly open to view?

A. Yes, sir.

Q. You have spoken about cowl ventilators. Isn't it a fact that there were two cowl ventilators that led down into the engineroom, one on each side?

A. I won't be sure, but I think you are right; I remember one distinctly.

Q. You do not deny that there were two?

A. No, sir.

Q. And there was a skylight above the engineroom?

A. Yes, sir.

Q. Which of course could be opened to allow air pass through?

A. Yes, sir.

Q. Just how sure are you that these were Schebler carburettors?

A. I won't be sure because I have handled quite a number of engines; some of them had Schebler's and some different makes.

Q. You might be mistaken about that?

A. I might be mistaken on the make.

Q. Now I am going to ask you the same question about this trap or strainer, Exhibit 17. Just how sure are you that on the Seminole, when you were aboard her, the traps were larger and of different type?

A. I am positive.

Q. You are positive of that?

A. Absolutely; they were larger than that.

Q. You are absolutely certain that when you were on the Seminole Exhibit 17 doesn't represent the type of trap you had?

A. I am sure of it.

Q. About these Jenkins valves. As I understand it, you say that there were Jenkins valves of the type that you have indicated to me on a handsome sketch at each tank?

A. One at each tank.

Q. And that there were two drain valves to each Jenkins valve?

A. Yes.

Q. How clear is your recollection about that?

A. I am positive about that.

Q. You are positive about that?

A. Yes; this was in 1929, and I don't know what things happened after I left.

Q. But in 1929 you are positive that that was the type?

A. Yes.

Q. When the boat was in operation I take it you had occasion frequently to enter this space under the gasoline tanks?

A. Quite a number of times.

Q. You kept fittings under there?

A. Fittings and the outboard motors.

Q. What did you keep in the bilge of the boat?

A. Nothing.

Q. Nothing at all?

A. The only thing in the bilges would be the fresh water tanks.

Q. Captain, you said something about this line, Exhibit 2.

A. Yes, I said that that possibly might have been the feedline to the little auxiliary generator.

Q. Now do you notice that the pipe which is attached to Exhibit 17 is the same size as the pipe attached to Exhibit 2?

A. Yes, sir.

Q. Is it possible that the trap on Exhibit 17 was the trap on the line to the auxiliary?

A. If I remember right, which I won't be positive now, I think that there was a trap on the auxiliary.

Q. But you are not sure?

A. No, sir.

Mr. Underwood:

That is all.

Re-Direct Examination.

By Mr. Botts:

Q. Captain, I want to ask you about this gauge just a little bit more: as I understand it, this gauge was enclosed within a slit copper tube?

A. No; brass tube.

Q. Brass tube?

A. Yes.

Q. That was merely for the purpose of protecting it against accidental breakage?

A. Yes.

Q. And the slit was made in it so you could look in there and see the head of the gasoline?

A. Yes.

Q. You could adjust those so as to get the amount of gasoline in each tank separately?

A. Yes.

Q. There was a cut-off valve at the bottom of this gauge, I take it?

A. Yes.

Q. Which connected to each tank?

A. Yes.

Q. Now ordinarily when the boat was in operation did you leave the gauge so that the gasoline shut off the amount standing in some particular tank, or did you keep it cut off until you wanted to—

Mr. Underwood:

I object to what he did in 1929.

The Court:

I think that is correct. The objection is sustained.

(By Mr. Botts):

Q. This pan that has been mentioned underneath the gas tanks. I will ask you to describe that pan a little bit more; what was it made of?

A. The main part of it was wood, of course; it had a piece around it, about that high (indicating), all the way around it, and there was a lead cover at the bottom.

Q. It was a wooden frame sheathed in lead?

A. Yes.

Q. It was a solid pan that wouldn't leak?

A. Yes.

Q. Lead sheathed the whole thing?

A. Yes.

Q. The tanks themselves rested on this lead or did they rest on the wooden—

A. They rested on a piece of wood.

Q. There was a piece of wood placed on top of the lead and upon that wooden platform or frame the tanks rested on?

A. Yes.

Q. You stated you went in there dozens of times and mopped out that pan?

A. Yes; just water; just water condensation, and that stuff.

Q. Did you ever mop any gasoline out of that pan?

A. No, sir.

Mr. Botts:

That is all.

By Mr. Matteson:

Q. This survey report, Respondents' Exhibit "D" for identification, shown to you by Mr. Underwood, is signed by Fred H. Nelson, Master; do you know who he was?

A. Yes, I remember him very well.

Q. Who was he?

A. He was a Swede.

Q. What connection did he have with the Seminole, if you know?

A. He used to be Master of it.

Q. What sort of fuel did they use for cooking appliances on the Seminole?

A. Kerosene. That was in 1929. I don't what they used then. In other words, it was a coal stove which had been converted to use an Oliver burner.

Q. Using gasoline?

A. Kerosene.

Q. Were there some water-tight bulkheads on the Seminole?

A. Yes.

Q. Where were they located?

A. One forward of the gas tanks.

Q. They were water-tight bulkheads?

A. Yes.

Q. How about the bulkhead that separated the tank compartment from the engineroom?

A. That was a steel bulkhead and there was a hole in it, the hole that I told you I had to crawl through.

Q. Did it go straight to the skin of the ship?

A. It went down to the bottom, yes.

Q. What size brass pipe would you call this Exhibit 2?

A. One-quarter inch.

Q. Now I wish you would look at this Exhibit "D" for identification, down here in the middle, and see if that refreshes your recollection as to the size of the feed-lines from the tanks.

A. It is one-quarter inch brass pipe.

Mr. Underwood:

Is that what you read from the paper?

The Witness:

Yes, that is what I read from this.

(By Mr. Matteson):

Q. Does that refresh your recollection about that?

A. No; there was a three-eighth inch in there then.

Q. As you recall, Captain, it was three-eighth?

A. It was three-eighths reduced down to one-quarter to the carburettor.

Q. Now with respect to this diagram, Respondents' Exhibit "D", there is one thing that I do not get clear: I understood you to say that there was a plug in the bottom of the valve that you took out and then you removed the seat with a screw-driver, is that right?

A. Yes, I replaced it with a new seat and put that plug back in there.

Q. What do you call the seat?

A. I will show you. Here is the seat here (indicating). There is a seat here and one here (indicating). You raise your valve until you open that hole.

Q. I want to know whether there are three pieces here or two pieces?

A. Two pieces.

Q. Well the plug is the thing that the seat fits against?

A. Yes, the seat on the plug.

Q. And the plug comes out with a screwdriver?

A. No.

Q. How do you take that out?

A. With a big wrench.

Q. Did these tanks pretty well fill the tank space?

A. Yes.

Q. And the only way you could get at them was from underneath?

A. Yes, and it took a small man to get in there at that.

Q. Was there much facility for examining the tanks or seeing what was in the tank compartment?

A. Certainly you could examine it.

Q. You would have to get in this underneath space to do it?

A. Yes.

Q. And look up around the edges of the tray?

A. Yes.

Q. How would you see; would there be any light in there?

A. Carry an extension light in there with you.

Q. An extension light?

A. Yes.

Q. Or a flashlight?

A. You could use a flashlight either.

Q. You could use an extension light in there?

A. I have used an extension light in there.

Q. And all you could see would be what you could see by looking from the bottom up.

Mr. Underwood:
I object to this; this is his witness.

The Court:
Don't lead the witness,

Mr. Matteson:
That is all.

Re-Cross Examination.

By Mr. Underwood:

Q. Could you tell with reasonable ease whether the tanks leaked?

A. There wasn't a drop of gasoline that leaked out of them all of the time I saw them.

Q. When you looked through the hole could you tell whether or not they leaked by looking at the pan?

A. Certainly.

Q. Was there anything difficult about that?

A. No. If any spilled you could have smelled it

Q. Did any of the gasoline fixtures leak?

A. No, sir.

Mr. Underwood.
That is all.

Re-Direct Examination.

By Mr. Matteson:

Q. How deep was the tray?

A. I would say about six inches.

Mr. Matteson:
I have no further questions.

Mr. Botts:

Day before yesterday counsel served on me notice to produce some letters. They are letters sent to Captain Pilkington, and Captain Pilkington gave me what purported to be all of his correspondence previous to this, but I had him make another search on yesterday to be sure; we have here documents and records numbered 2, 3, 5, 6, and 7. We have no record of ever having received documents numbered 1, 4 and 8. These are all we have, and we will leave them with the clerk here pursuant to the notice.

Mr. Underwood:

Are you offering those in evidence?

Mr. Botts:

No. You served notice to produce them.

(Witness excused.)

473 Thereupon, ELLIOTT BRYANT, was produced as a witness by the Libelants, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Your name is Elliott Bryant?

A. Yes, sir.

Q. Are you the son of Mr. Bryant who testified here yesterday?

A. Yes.

Q. What is your occupation?

A. Captain on a boat.

Q. What boat are you on now?

A. I am on the boat Skow, 38-foot fishing boat.

Q. Where is that located?

A. Palm Beach.

Q. You came here under a subpoena, did you?

A. Yes, sir.

Q. Did you ever work on the Seminole?

A. Yes, sir.

Q. Well, will you tell us when and how long you worked on the Seminole?

A. I went on it first in 1929 as messman, and I worked on it off and on for about six years.

Q. When you say "off and on", you mean the Seminole was sometimes out of condition?

A. Yes, sir. And at other times I was on other boats.

Q. Did you work as messman during all of that time or sometimes in other capacities?

A. No, sir; I was a sailor on deck practically the whole time, outside of the first three months.

Q. Were you on the Seminole in 1935?

A. If that was the last time she was out I was.

Q. That was the year of the fire?

A. Yes.

Q. Were you on her then?

A. I was on her the whole of the last trip.

Q. Were you on her when she came from Fort Lauderdale?

A. To Miami?

Q. Yes.

A. Yes.

Q. Were you on her while she was in Miami?

A. Yes, sir.

Q. You spoke something about a trip. Will you tell us what that trip was that she made?

A. Well, we left Miami and went down to the Keys, Matecumbe and from there to No Name Key and over to Sawyer Key, and then the trip back over practically the same route.

Q. Do you remember the date of the trip?
A. No, sir.
Q. Can you tell us who made the trip?
A. I couldn't tell you all of the party; Mr. Phipps was along but I can't remember who else was in the party.
Q. When you say Mr. Phipps do you mean Mr. John S. Phipps?
A. That is right.
Q. Whose party was it, do you know?
A. No.

Mr. Underwood:
I object to that. Calls for a conclusion.

The Court:
I think it calls for the conclusion of the witness; the objection is sustained.

Q. Was there any other Mr. Phipps on board besides Mr. John S. Phipps?
A. I am not sure, sir.
Q. You know that Mr. John S. Phipps was on board?
A. Yes, sir.
Q. Do you know Mr. H. C. Phipps?
A. Yes, sir.
Q. Was he on board?
A. Not on that trip, sir.

Mr. Court:
Speak louder, Mr. Witness.

Q. Do you know what flag the Seminole flew on that trip?
A. No, I couldn't definitely say that.
Q. Do you know what flag she carried?
A. We had two flags on board, sir; Mr. John S. Phipps' flag and Mr. H. C. Phipps' flag, and they were both identi-

cal in color, but the colors were reversed, so I wouldn't know which flag was flying at the time.

Q. Do you know what date you got back to Miami?

A. No, sir.

Q. Where did the guests leave the yacht?

A. I don't remember, sir.

Q. When you got back to Miami do you remember how long the boat was here then?

A. No, sir.

Q. When or where did she go after the time it returned to Miami?

A. Well, there was one period of time that we laid in Miami; whether it was before or after the trip I don't know, but from Miami it went directly to Fort Lauderdale.

Q. Did you go with her?

A. Yes, sir.

Q. Who was on the boat on the trip from Miami to Lauderdale?

A. Captain Baker, Rawleigh Schlappi and the cook's first name was Toni; I don't remember his last time, and the others I can't remember; there were a couple more of them but I can't remember their names.

Q. Was Captain Baker's son on that trip?

A. I can't remember whether he went up with us or not.

Q. Did you make any stops on the way to Fort Lauderdale?

A. We stopped the boat for lunch at the mouth of the River;

Q. At the mouth of what river?

A. New River at Fort Lauderdale; we had lunch and then proceeded right on up to the Yard.

Q. When you say you stopped the boat, what do you mean?

A. We ran the boat into one of the little creeks that are just outside of the mouth of the River; just put her

nose up on the bank, and then proceeded right up the River.

Q. Were the engines stopped?

A. No, sir.

Q. The engines were kept running?

A. Yes, sir.

Q. While you had your lunch?

A. Yes, sir.

Q. How long were you laying there like that?

A. About 15 minutes.

Q. Then you continued to Fort Lauderdale?

A. Yes, sir.

Q. And continued on to Pilkington's yard?

A. Yes, sir.

Q. Who were on board when you arrived at Pilkington's?

A. The whole crew was on board that left Miami.

Q. What time did you get there?

A. Right about two o'clock I believe.

Q. What did you do after you got there?

A. Well, there was a little cleaning up to do and we worked on the boat. Now I don't remember how much we did, because that was all four years ago.

Q. What time did you leave?

A. About five of five-thirty, something like that, sir.

Q. Was it as late as that?

A. It was right around there, sir.

Q. Do you have any distinct recollection about what time you left?

A. No, sir.

Q. Did you have anything to do with the engineroom?

A. No, sir.

Q. Do you know whether there was a drain valve in the engineroom for drawing off gasoline?

A. Yes, there was.

Q. Do you know what use was made of it on the Seminole?

A. No, sir.
Q. Did everybody leave the Seminole at the same time?
A. I don't remember, sir.
Q. Did the engineer leave at the same time you did?
A. Yes, I drove him back.
Q. That was Schlappi?
A. Yes, sir.
Q. Where does he live?
A. He lives in West Palm Beach.
Q. Did he go back there with you?
A. Yes, sir.
Q. That is where your home is too?
A. Yes, sir.

Mr. Matteson:
That is all.

Mr. Botts:
I don't think I have any questions at this time.

Cross Examination.

By Mr. Underwood:
Q. Before you joined the Seminole in the early part of 1935 do you remember going down to the office of the Palm Beach Company and asking Jim Riley whether he had a job for you?
A. Yes, I have been to the office several times in the past six or eight years.
Q. And do you remember that it was that time that Riley said he had a job for you and said, "I am going to send the Seminole down to Miami"?
A. I don't remember that, sir.
Q. I am sorry I can't hear you.
A. I said I didn't remember that, sir.
Q. Do you remember how you came to join the Seminole on that occasion?

A. No, sir.

Q. You got paid by the Captain of the boat, did you?

A. Yes, sir.

Q. The Captain of the boat supervised your work, did he?

A. That's right.

Q. After the Seminole got down to Miami you did some work on her, didn't you?

A. Yes, sir.

Q. You were down in the bilges?

A. Yes, sir.

Q. Tell us what you did in the bilges?

A. Red-leading.

Q. How much of the bilge did you cover?

A. All of the bilge aft of her engineroom.

Q. From the after engine room bulkhead to the stern of the boat?

A. Yes, sir.

Q. Were the bilges dry?

A. Yes, sir.

Q. Clean?

A. Yes.

Q. Were they sweet-smelling?

A. They were the cleanest bilges I found on any boat.

Q. When you left the boat at Pilkington's after the cruise were the bilges left the same way?

A. Yes, sir; they never leaked.

Q. Did you ever smell any gasoline in the bilges of the Seminole?

A. No, sir.

Q. Mrs. Guest was abroad on that cruise, was she?

A. I believe so.

Q. Captain Stark's boat accompanied you, did it not?

A. Yes, sir.

Q. And Mr. Herbert Phipps was aboard, was he not?

A. On Captain Stark's boat?

Q. Yes.

A. Yes.

Q. And the Clip was along?

A. Yes, sir.

Q. That is Mr. J. S. Phipps' boat as far as you know?

A. Yes, sir.

Q. Abel was in charge of the Clip on that cruise, wasn't he?

A. Yes, sir.

Q. And not the Seminole?

A. No, sir. Captain Abel never had charge of the Seminole.

Q. Billy Baker was captain of the Seminole on that cruise?

A. Right.

Q. Don't you remember that the guests left the boat at Lower Matecumbe?

A. I don't remember much about the people leaving on that trip, sir.

Q. When you got to Miami do you remember when the servants left the boat at Miami?

A. I can't remember.

Q. Do you remember that it was foggy that day?

A. No, sir.

Q. Do you remember coming into Miami and tying up at the Royal Palm Dock?

A. I remember coming in and tying up, yes.

Q. Your memory is foggy?

A. That's right.

Q. The only people that you remember distinctly going from Miami to Fort Lauderdale on the yacht to lay her up was Captain Baker, Schlappi, the engineer, Toni, the cook, and yourself?

A. Yes, sir.

Q. You had no part in preparing the engineroom for her lay-up?

A. No, sir.

Q. Your work was on deck?

A. On deck, yes.

Q. Now you were asked about stopping in the river for lunch.

A. Yes, sir.

Q. Do you remember any conversation between Captain Baker and Schlappi about that time?

A. I remember them talking about the gasoline supply being low and that they thought they were going to run out.

Q. Do you remember anything more of that conversation?

A. No, sir.

Q. Just that much?

A. That's right.

Q. Is your memory clear that the motors were allowed to run while you had your lunch that day?

A. Yes, because we put her nose up on this bank and the motor was running slow to hold the nose on the bank instead of dropping an anchor.

Q. This conversation between Baker and Schlappi about the gasoline supply being low occurred about lunch time?

A. Yes, sir.

Q. And where was the boat then; just at the mouth of the River?

A. Yes, sir.

Q. Had you passed through any of the bridges?

A. Not going up the river.

Q. You were in New River?

A. Just before you get to New River there are a lot of little canals that run in from the inland waterways, and it was the first little canal before you get into the River, possibly 75 yards from New River.

The Court:

That conversation was between—

Mr. Underwood:

The Master and the Engineer, your Honor.

(By Mr. Underwood):

Q. While you were on the Seminole prior to the cruise in 1935 did she go up to Cocoanut Grove, the repair yard?

A. Yes.

Q. Was she hauled out?

A. Yes.

Q. Was she surveyed?

A. She was surveyed at the Royal Palm Dock before we went down there.

Q. Who made that survey?

A. Mr. Bernard.

Q. What did you see him do?

A. He inspected every part of the boat, in the bilges, up forward and through every section of the boat; he made a list of the motors, where they were located, the feed-lines and how everything was, and then he went off the boat and lost his records and he came back about three hours later when he went over the boat the second time, making a complete investigation the second time.

Mr. Matteson:

Of course this is not cross-examination. It is not with respect to anything that we have dealt with at all.

The Court:

I think the objection is well taken.

Mr. Underwood:

For the convenience of the witness may I be permitted to go ahead with the subject?

The Court:
Make him your own witness?

Mr. Underwood:
Yes.

The Court:
Let the question and answer stand for that purpose.

Mr. Matteson:
No objection.

(By Mr. Underwood):
Q. Where were you when Mr. Bernard was going through the boat?
A. I was with him.
Q. All of the time?
A. Yes, sir.
Q. Did you go through all of the bilges?
A. Yes, sir.

Mr. Underwood:
That is all.

Re-Direct Examination.

By Mr. Matteson:
Q. Did you ever discuss your testimony with Mr. Underwood or any attorney for the other side before you took the stand?
A. Mr. Underwood saw me just once; I only saw him once in my life.
Q. When was that?
A. About three days ago.
Q. That was since you received your subpoena to attend as a witness in this case?
A. Yes.

Q. Where did you have that conversation with him?
A. In West Palm Beach.
Q. Did you discuss this matter of Mr. Bernard, the surveyor, with him at that time?
A. I told him about it but I didn't discuss it.

Mr. Matteson:
That is all.

Mr. Underwood:
That is all.

(Witness excused.)

488 Thereupon: GEORGE P. PILKINGTON was produced as a witness in behalf of Libelants, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Matteson:
Q. Your name is—

Mr. Underwood:
Of course I will object to anything in the nature of cross-examinatnon of this witness by Mr. Botts.

Mr. Botts:
I think we will concede that in the circumstances that would be a fair request, and I will govern myself accordingly.

(By Mr. Matteson):
Q. What is your full name, Captain?
A. George J. Pilkington.

Q. You are the proprietor of Pilkington's Shipyard at Fort Lauderdale, Florida.

A. Yes, sir.

Q. You had a fire there in 1935, did you?

A. Yes, sir.

Q. About how many boats were stored in your shed at that time?

A. Somewhere in the neighborhood of 150. What I mean to say is 62 that year.

Q. 62 that year?

A. Yes, sir.

Q. Where were you when the fire started?

A. I was about 20 feet off the boat.

Q. Where was that?

A. Under the shed.

Q. Where did the fire start?

A. When the explosion happened I was getting in my small boat about 20 feet off the Seminole.

Q. On what boat was the explosion?

A. The Seminole.

Q. Now what happened when the explosion took place?

A. It blew up and tore up—not only tore all of the front of the Seminole off but it blew half of the cabin off of the boat next to it, the boat called the Flamingo; it blew off half of the cabin of Mr. McCoy's boat, and another lady had a boat there pretty close to it and it blew half of the cabin off of that.

Q. Was Mr. McCoy's boat the Blue Lagoon?

A. It blew half of the cabin off and when the fire started, when it started to burn, I run down the platform and took the lines off to take it away, but the fire was so great and the heat was so great I had to stop.

Q. What did you do then?

A. I didn't do anything; I couldn't do anything.

Q. Did the Fire Department come?

A. It came in about five minutes afterwards.

Q. What did they do?

A. They threw water over onto the Seminole, did the best they could but they couldn't do anything.

Q. Were any of the boats in the shed saved?

A. Partly one, a little one.

Q. Which one was that?

A. It was the 24-foot one where the roof fell down on top of it.

Q. Do you remember the name of that one?

A. It belonged to a Mr. Hennessy.

Q. Were all of the other boats burned up?

A. Yes; not all of them; there were a couple out in the front of the building where the wind was blowing from the east to the west, and those boats out there were saved.

Q. What happened to the shed?

A. The shed all went down.

Q. Did you lose any boats in the fire?

A. I did; I lost mine; it was right inside of the door; it was a 42-foot boat and I couldn't get it out because the heat was so great.

Q. Did you lose any other boat besides that one?

A. I lost two barges, a small barge and a large barge.

Q. How long had the Seminole been stored there; how long had she been coming there?

A. In the neighborhood of seven or eight years.

Q. When did she come there?

A. She came there, I think, about the 11th of June, 1928, somewheres around there.

Q. Who made the arrangements for her to come there at that time?

A. Mr. Simmon, down at the Boulevard Mortgage Company.

Q. In Miami?

A. Yes.

Q. How did he get in touch with you?

A. Phoned me.

Q. Just tell us what took place; what the arrangement consisted of?

A. Mr. Simmon called me up and—

Mr. Underwood:

Just a minute. I object to that question on the ground that there is no connection shown and no foundation laid to show any connection between Mr. Simmon and the respondent Phipps, and on the ground that it is too remote in point of time, and on the further ground that the record already shows the ownership of the boat had changed between the time of any alleged agreement in June, 1928 and the time of the fire.

Mr. Matteson:

I think that by the time the witness' testimony is finished the connection will be perfectly clear, and I ask that it be taken subject to being connected up.

The Court:

All right.

Mr. Underwood:

I stated in my objection another ground, namely, that it is too remote. Here is a conversation that purports to have taken place in 1928, in the month of June, at a time when, according to the evidence introduced by the respondents (Libelants) the vessel was registered in the name of J. S. Phipps; they have also offered in evidence Certificate of Registry which shows that subsequent to this conversation the ship was registered in the name of the Seminole Boat Company; secondly, even if it be assumed that Mr. Simmon represented Mr. Phipps, there is no connection between that contract and any contract that might have been made with the Seminole Boat Company subsequently.

The Court:

I think we had better view it as a whole. Subject to it being properly connected up, I will overrule the objection.

(By Mr. Matteson):

Q. I think you said, Captain Pilkington, that Mr. Simmon was connected with the Boulevard Mortgage Company. Was that the Biscayne Boulevard Company; is that what you mean?

A. I don't know exactly the name it went under, but I think it was the Boulevard Mortgage Company.

Q. Now just tell us what took place when Mr. Simmons called up and arranged for the storage of this boat, what he said to you and what you said to him?

A. He called me up and wanted to know if I could take care of a 110-foot boat, and I told him yes, and I asked him who the boat belonged to, as I have to take the name of the owner and the name of the Captain before I will take a boat, and he told me it belonged to John S. Phipps, and I asked him who the Captain was, and he said that it didn't have a captain right at that time, as they had let their captain go, but that somebody would bring it up if they decided to bring it up there.

Q. Now what was said about the arrangements for storage?

A. Mr. Simmon told me to send the bills, which was $75 a month, for the Seminole up to him at the "Biscayne" (or whatever it is) Boulevard Company; Boulevard Mortgage Company I think it was at that time.

Q. Did you tell him anything about—

Mr. Underwood:

I object to him leading the witness. Let him ask what the conversation was. I don't think we ought to have Mr. Matteson suggesting topics to the witness. He is an intelligent person.

The Court:

I have not heard the entire question. Mr. Matteson has not completed his question.

(By Mr. Matteson).

Q. I will rephrase it: was or was not anything said about what was necessary to put the boat in storage there?

A. I told him that the owners laid their own boats up, which was the custom everywhere; that I didn't have nothing to do with laying any boat up whatever; that I charged for storage, and if I turned the engines over or kept the water out of the boats or cleaned them, that I never made any charge for it.

Q. Was that part of this conversation with Mr. Simmon; did you tell that to Mr. Simmon?

A. Yes.

Q. Was the boat afterwards sent there?

A. Yes.

Q. When was that?

A. That was about the eleventh—somewheres around the 11th of June, 1928.

Q. And from that time until the time of the fire was she stored there at different times all through that period?

A. Yes, sir.

Q. From that time until the time of the fire did anyone tell you of any change in the ownership of the Seminole?

A. No, sir.

The Court:

We will take a recess until two o'clock.

(Recess.)

495 Afternoon Session.

March 16, 1939—2:00 P. M.

GEORGE J. PILKINGTON, a witness produced in behalf of the Libelants, resumed the stand and was examined and testified further as follows:

Direct Examination (Cont'd).

By Mr. Matteson:

Q. Captain, this morning you had finished telling me about the arrangement with Mr. Simmon, the arrangement made by Mr. Simmon with you for storing the Seminole. Now after that arrangement, Captain, did he arrange for the storage of any other boats there?

A. Yes.

Mr. Underwood:

I object to what he did about any other boats, if your Honor please.

The Court:

What is the materiality of that?

Mr. Matteson:

If your Honor please, I think that the network relations between Mr. Phipps and his representatives and Captain Pilkington is highly important; they all dovetail in together and show a complete picture. Incidentally, your Honor, it will show that boats admittedly personally owned by Mr. Phipps were dealt with in the same manner and through the same channels that the Seminole was handled; so I think that when we piece it all together you will have a complete picture that will be very significant.

The Court:

Subject to that being shown, the objection is overruled.

(By Mr. Matteson):

Q. The question was about any other boats that Mr. Simmon arranged to store with you?

A. He arranged to store the Iolanthe and Mr. Phipps' fishing boat, and the boat called the Dorthea that belonged to his sister, Mrs. Guest.

Q. Did the fishing boat have a name?

A. I don't remember; I went by the number.

Q. Did Mr. Simmon tell you whose boat the Iolanthe was?

Mr. Underwood:

If your Honor please, may all such questions be taken subject to my objection on two grounds: one, that the Iolanthe is immaterial, and the other ground that there is no proof in the record yet to connect Simmon with the respondent Phipps.

The Court:

Yes. To this line of questioning these objections may be considered as having been made.

(By Mr. Matteson):

Q. The question was, Captain Pilkington, what, if anything, Mr. Simmon told you about the ownership of the Iolanthe?

A. He told me it belonged to John S. Phipps.

Q. What about the fishing boat?

A. That that belonged to him too.

Q. How do you know that?

A. Because we entered it on the books as Mr. Phipps' boat.

Q. I mean who told you that?

A. Mr. Simmon.

Q. Now was there afterwards someone appointed to look after those boats?

A. Yes.

Q. Who was that?

A. Mr. Riley.

Q. Before Mr. Riley was there someone else?

A. Just Mr. Simmon, and Mr. Huff was appointed later and afterwards withdrawn; he was withdrawn and Mr. Riley was appointed in his stead.

Q. I show you this letter. Do you remember that letter?

A. Yes, sir.

Q. Did you receive that letter from Mr. Simmon whose name is signed to it?

A. Yes, sir.

Q. And this says "Mr. Huff is appointed to have complete charge of our boats", is that right?

A. That is right.

Q. What boats did that refer to?

A. All of them.

Q. All of those you mentioned?

A. Yes, sir.

Mr. Underwood:

I object to this witness stating what the letter says the boats referred to were. The letter is the best evidence. Is Mr. Matteson going to offer it?

Mr. Matteson:

Yes.

The Court:

I think technically the objection is well taken, Mr. Matteson. You can ask him what boats he had in his charge at that time.

Mr. Matteson:

I think it speaks for itself, as a matter of fact. I will offer this letter in evidence if I may.

The Court:

Any objection?

Mr. Underwood:

Mr. Matteson agrees that he is not offering the pencil notations on the letter, and with that agreement I have no objection to the letter going in.

The Court:

Let it be admitted.

(Letter dated February 11, 1929, signed A. A. Simmon above referred to was marked Libelants' Exhibit 38.)

Q. At the time you received that letter what boats did you have that Mr. Simmon had arranged to store with you?

A. I don't remember all of them, but the Seminole and the Iolanthe and Mr. Phipps' fishing boat, and sometimes Mrs. Guest came in off and on and went out.

Q. Who arranged with you the storage of Mrs. Guest's boat?

A. The same—I think it was Mr. Simmon.

Q. Now I show you this letter, Captain Pilkington, and ask you if you remember that one?

A. Yes, I remember that one.

Q. And this letter is signed by Van E. Huff?

A. By Huff.

Q. Is he the man that you referred to?

A. Yes, sir.

Mr. Matteson:

I offer this letter in evidence.

Mr. Underwood:
I have no objection.

The Court:
Let it be admitted.

(Thereupon letter dated April 2, 1929, signed by Van E. Huff, above referred to, was marked Libelant's Exhibit 39.)

Q. Can you tell is Captain Pilkington, about this letter; what were the circumstances of that communication?

A. After I had received this letter, a few days after I received it, Mr. Phipps brought a man in there and introduced him to me as Mr. Riley as his secretary, and also of the Palm Beach Co.

Q. Are you referring to Mr. John S. Phipps?

A. Yes, Mr. John S. Phipps.

Q. Now tell me all that Mr. John S. Phipps said to you at that time.

A. Well I went up to Mr. Phipps when he came in, as I generally do in meeting people, and he says, "Captain, this is Mr. Riley, my private secretary, and also of the Palm Beach Company." He said, "You need not bother taking any business up with me whatever"; he says, "I want you to do all of that business through Mr. Riley".

Q. Now did he say anything further than that?

A. Well not at that time that I can remember.

Q. Did he say anything about what Mr. Riley was to do?

A. He told me that Mr. Riley would come down there once a month regularly and look the boats over, that the boats would be in his care, that he would have charge of all of them.

Q. Did Mr. John S. Phipps come to your yard on any other occasions?

A. He came there several times.

Q. Tell me what you remember about Mr. John S. Phipps coming there.

A. Well he and his wife came there one time and went on the Seminole and looked the "boats" over and they came off and said they looked very nice, and I asked him if Mr. Riley would be down and he says, "Sure, he will be down the first of the month regularly".

Q. Did Mr. Riley come every month while the boats were there?

A. Yes, he came every month.

Q. Now what boats were in your custody at this time that Mr. Phipps introduced Mr. Riley to you?

A. The Seminole and the Iolanthe.

Q. Now did you have any discussions at any time with Mr. Phipps about matters relating to these boats?

A. Only when he came down there this time when he introduced me to Mr. Riley.

Q. I show you this copy of a letter; scan you tell me about that; tell me what that is? Just what is that?

A. That was after I had given the customers—

The Court:

Captain, don't tell what is in the letter. Just tell what it is; is it a copy of a letter or is it an original, and from whom to whom?

A. This was after I reduced the price—

The Court:

Wait a minute. Tell us what it is; is it a copy of a letter you wrote or a copy of a letter you received?

A. I don't understand you.

(By Mr. Matteson):

Q. The Judge is asking you whether this is a copy of a letter that you wrote or—

A. Oh, yes, yes; this is a copy of the letter I sent.

Q. To whom was this letter written?

A. To the Palm Beach Company; to Mr. Riley in care of the Palm Beach Company.

The Court:
What is the date of it?

Mr. Matteson:
January 18, 1932.

Q. Will you tell us how you came to write this letter?

Mr. Underwood:
I object to that.

The Court:
I don't think you have laid the foundation yet.

Mr. Matteson:
I will offer the letter in evidence. This is a letter about rates. Have you the original of this letter, Mr. Underwood?

Mr. Underwood:
Yes, I have.

Mr. Matteson:
May we use that instead of the copy?

Mr. Underwood:
Certainly.

Mr. Matteson:
Mr. Underwood has produced the original letter, so instead of marking the copy I will ask to have the original marked.

The Court:
Do you offer that in evidence?

Mr. Matteson:
Yes.

The Court:
Any objection?

Mr. Underwood:
No.

The Court:
Let it be admitted in evidence.

(Letter dated January 18, 1932, above referred to, was marked Libelants' Exhibit 40.)

Mr. Matteson:
The same reservation applies to that letter, that is, there is something written on it that was evidently not a part of the letter itself. I am offering the letter but not the legend on it.

The Court:
It will be so admitted.

Mr. Matteson:
Now, if your Honor please, I don't want to take the time to read this letter to the Captain, but I want to ask him about the subject-matter of it.

The Court:
All right.

Q. Captain Pilkington, this letter seems to be about rates. How did you come to write this letter about rates? Can you tell us about—

A. Rates?

Q. Yes, rates on storage of the Seminole.

A. One year I had written all customers that I was giving a five dollar reduction on their bills, that is, per month, for one year, but that we would go back to the same rates the next year. I don't know whether I got a letter to all of them or not but I got it to a number of them.

Q. Did you have some discussions with respect to rates, some oral discussions with somebody with respect to the rates on the Seminole?

A. Not until after I wrote that letter to the Palm Beach Company or to Mr. Riley.

Q. After you wrote that letter what happened?

A. Mr. Phipps and Mr. Riley came down to the place and told me that our rates for that year was entirely too high.

Q. Who told you that?

A. Mr. Phipps himself. Well, I says, "I can't afford to store that large boat for less than $2.50 a day; it is impossible", and I says, "I will try to do the best I can for you". Then he says, "If you can't come down in your price I will take her out and take her to Palm Beach and anchor it off of our wharf", and in the meantime I split the difference with him and charged sixty dollars a month.

Q. Was all of that conversation with Mr. Phipps?

A. Yes, with Mr. Phipps alone.

Mr. Underwood:

I object to that as leading, and I suggest that you caution Mr. Matteson—

The Court:

Yes, that is a crucial part.

Mr. Matteson:

He said the first part of it was with Mr. Phipps and I wanted to find out whether all of it was.

(By Mr. Matteson):

Q. What part did Mr. Riley take in this conversation, if any?

A. Well, after Mr. Phipps said it was too high and that he would take the boat up to Palm Beach and anchor it off of their wharf, Mr. Riley turns to me and says, "Do the best you can, Captain", and that is all Mr. Riley said.

Q. I show you this letter, Captain, and ask you what that is?

A. If I remember right there were several men that I had got for him, for the Captain, when Mr. Phipps was down there one day and he said that he wanted the boat out in a hurry.

Mr. Underwood:

I move to strike out so much of the answer as not responsive to the question.

The Court:

Yes, strike out all of the answer with reference to the contents of the letter.

Q. Is this a letter that you received; is it something you received or sent, Captain?

A. That is after I had sent him—

The Court:

Wait a minute. Is it a letter to you?

A. Yes, sir.

Q. From whom?

A. From Mr. Riley.

Mr. Underwood:
What is the date of it?

Mr. Matteson:
May 18, 1932.

The Court:
Do you offer that letter in evidence?

Mr. Matteson:
I offer the letter in evidence. Is there any objection to this letter?

Mr. Underwood:
No objection.

The Court:
Let it be admitted.

(Thereupon letter dated May 18, 1932, above referred to, was marked Libelants' Exhibit 41.)

Mr. Underwood:
If your Honor please, when I say I have no objection to these things I am, of course, reserving my general objection to anything about Mr. Riley, because he has not been connected with the respondent Phipps. I take it that is so understood.

The Court:
I so understand it.

Q. I show you this paper, Captain, and ask you what it is; is that a letter you received or sent or what is it?
A. That is an explanation of—
Q. Is it a letter which you wrote?

A. Yes, copy of a letter I wrote.
Q. You say that is the reply to this other letter?
A. Yes.

Mr. Matteson:
Have you the original of this letter addressed to Mr. Riley, dated May 20, 1932 which is in answer to this other one, Mr. Underwood?

Mr. Underwood:
I do not have the original of that letter.

Mr. Matteson:
Then I offer the copy in evidence. Do you object to that?

Mr. Underwood:
I have not read it yet.

Mr. Matteson:
I am sorry (hands letter to counsel).

Mr. Underwood:
May I ask Mr. Matteson a question: Do you have the bill that is referred to in the letter of May, 1932—May 18th?

Mr. Matteson:
I don't think so.

Mr. Underwood:
Do you have a copy of it?

Mr. Matteson:
I have never seen it.

Mr. Underwood:

If your Honor please, I find in my files no such letter as of May 20, 1932, and I do not find in the bills any such bill as that referred to in Exhibit 41 or the document now offered, and without the presence of anyone here to tell me that such a letter was received, I am constrained to object to it. I might say that there is nothing in either of these letters to indicate what boat is the subject of discussion, and that is something which motivates me at the moment.

The Court:

If you ask Captain Pilkington if he sent that through the mail and that is the only copy he has, that would then leave us to deal with the question of relevancy.

Mr. Matteson:

This first one that he received has already been marked as Libelants' Exhibit 41, and I am now referring to the copy of his answer.

The Court:

Has the one that he received been admitted yet?

Mr. Matteson:

Yes, your Honor.

The Court:

And now we have the copy. Did he send the original of that through the mails?

Mr. Underwood:

I ask that he not be led on this subject.

(By Mr. Matteson):

Q. Tell me about that letter of which this is a copy; do you know whether it was mailed or not?

A. Yes; I mailed it myself.

The Court:
Now let me see that. You are offering this copy now?

Mr. Matteson:
Yes, sir.

The Court:
Subject to it being connected up, it will be admitted.

(Copy of letter dated May 20, 1932, addressed to J. F. Riley, above referred to, was marked Libelants' Exhibit 42.)

Q. Captain, have you got a copy of the bill that is referred to in these letters?

A. I don't think so.

Q. Now what did that bill have relation to; what was it about?

A. One bill was for the $35.00 I sent for storage on the boat—$17.50 for storage on the boat, and the help I paid for and sent the bill to—

Q. What boat was that in relation to?

A. The Seminole.

Q. What were the circumstances; do you remember how it came about?

A. Mr. Phipps was there and he wanted to have it done in a hurry and he thought that the boat looked pretty well, so Captain Bryant had me to get several men to bring there to wash the boat down and help get the boat ready, so I paid the men and sent them the bill for their wages.

Q. You say Mr. Phipps was there?

A. Yes, sir.

Q. What conversation did you have with him at that time?

A. Just about the boat looking so well, and he was in a hurry to get it out; that he only had a few days down here and he wanted to go out and spend all of the time

he could, so that is all I know about that. After he said that I got the men to help the Captain out to get the boat ready.

Q. I show you this copy of a letter. Is that a letter that you received, sent or what is it?

A. This is a copy of a letter that I wrote to Mr. Riley and said that—

Mr. Underwood:

I object to him stating the contents of the letter.

The Court:

Sustained.

Q. It is a letter you wrote to Mr. Riley?

The Court:

Just answer his question, Captain.

A. It is a copy of a letter.

Q. Copy of a letter you wrote Mr. Riley?

A. Yes, copy of the letter.

Mr. Matteson:

Do you have the original of this, Mr. Underwood?

Mr. Underwood:

What is the date?

Mr. Matteson:

March 17, 1933. And here is another one of April 26, 1933.

Mr. Underwood:

Yes, I have the originals of both, March 17, 1933 and April 26, 1933, both addressed to the Palm Beach Company by George J. Pilkington.

(By Mr. Matteson):

Q. I show you this letter dated March 17, 1933, Captain. Is that a letter that you sent to Mr. Riley?

A. Yes, the letter that I wrote to Mr. Riley.

Mr. Matteson:

I offer this letter of March 17th in evidence.

Mr. Underwood:

No objection.

The Court:

Admitted subject to the general objection.

(Letter of March 17, 1933, signed George J. Pilkington, above referred to, was marked Libelants' Exhibit 43.)

Q. How did you come to write this letter, Captain?

A. I made up my mind to give every one that I could five dollars reduction, per month, on their boats, but I don't know if I got a letter to every one or not but I know I got it to quite a number of them.

Q. You sent letters similar to this, to quite a number of your clients?

A. Yes, sir.

Q. What rate did you quote for the Seminole at tha time?

A. Well just five dollars off, making it seventy dollars; I was charging seventy-five.

Q. Now here is a letter over a month later; what is that letter, Captain?

A. This is a letter that I wrote and—

The Court:

Don't state what is in it. Is it a letter you received or a letter you wrote?

A. This is a letter I wrote.

Q. To whom did you write it?
A. Mr. Riley.

Mr. Matteson:
Is there any objection to this letter? I offer it in evidence.

Mr. Underwood:
No objection.

The Court:
Let it be admitted in evidence subject to the general objection.

(Letter dated April 26, 1933, addressed to Palm Beach Company, signed George J. Pilkington, above referred to, marked Libelants' Exhibit 44.)

Q. Now does this letter quote a different price for the Seminole, Captain?
A. No, it is just $600.00.
Q. This letter quotes a price of $600.00?
A. I made that as an offer to them with the hope that the old rates would—
Q. You quoted them a price of six hundred dollars, expressing the hope that you would return to the old rates when business got better?
A. Yes.
Q. This conversation that you had with Mr. Phipps that you told us about—

Mr. Underwood:
May we have the time of this conversation fixed?

Mr. Matteson:
I am trying to do that now.

Mr. Underwood:
He has mentioned at least two conversations.

Mr. Matteson:
That is right.

Mr. Underwood:
Which one is it.

Q. Captain, I am referring to the conversation you had with Mr. Phipps when you said that Mr. Phipps said that your rates were too high.

Mr. Underwood:
May we have the time and place fixed?

The Court:
Let him fix the time.

Q. Can you tell us, Captain, the date on which you had the conversation with Mr. Phipps in which he said the rates were too high?

A. I don't remember the date.

Q. Can you tell us whether it was before or after this letter?

A. I don't know whether it was before or after; I can't remember the date when he was there, but this letter that was between Mr. Riley and myself—

Q. At the time you had the conversation with Mr. Phipps in which he said the rate was too high, how much were you charging for the Seminole then?

A. $75.

Q. Was that before you made the five dollar reduction?

A. Yes, sir.

Q. I show you this document, Captain, and ask if you can tell me what that is?

A. Yes, I remember writing—

Q. Tell what it is first, Captain.

A. It is an order for him to get the boat out.

Q. Is it a telegram?

A. I don't know; it must have been a telegram, because my wife copied that off.

Q. That is in your wife's handwriting?

A. Yes, sir.

Mr. Matteson:

I will ask to have this copy of the telegram marked for identification.

(Copy of telegram dated April 30, 1933, to Mr. J. S. Phipps, signed Geo. J. Pilkington, marked Libelants' Exhibit 45 for Identification.)

Mr. Matteson:

Do you have the original of this telegram, Mr. Underwood?

Mr. Underwood:

No, I do not have any such telegram.

Q. I show you this letter, Captain, and ask you what that is; is that a letter you received or sent, or what is it?

A. I received that letter from Mr. Hawkins, with Mr. Phipps' name signed to it, though.

Q. Who is Mr. Hawkins?

A. Mr. Hawkins is in the office of the Boulevard Company.

Q. What dealings had you had with him before this?

A. I never had any dealings with him.

Q. Had you known him down there before?

A. Yes but I never had any dealings with him.

Q. Did you know what his position was down there?

A. No.

Q. Is that the same office that you for a time sent the bills to, Captain?

A. Yes.

Mr. Matteson:

I offer this letter in evidence.

Mr. Underwood:

If your Honor please, I have only the usual objection to this, that there is no connection shown between Mr. Hawkins and the respondent.

The Court:

It is admitted under the same understanding.

(Letter dated March 20, 1934, to Captain George Pilkington, signed Roy H. Hawkins, above referred to, was marked Libelants' Exhibit 46.)

Mr. Matteson:

Will it be conceded that Mr. Hawkins is vice-president of the Biscayne Boulevard Company?

Mr. Underwood:

I don't know whether he is or not. You have him under subpoena.

Mr. Alley:

Did he sign it that way?

Mr. Matteson:

What is that?

Mr. Batchelor:

He asked you if he signed the letter in that capacity?

Mr. Matteson:

No.

Q. How did you receive that letter, Captain Pilkington?

A. I received it a few days after March 20th.

Q. This letter says, "Will you kindly deliver to Captain Willie Baker the yacht Seminole.' Can you tell us whether that came through the mail or whether it was brought to you?

A. It came through the mails.

Q. After that was anything done with the Seminole?

A. I turned it over to Captain Baker.

Q. I show you this letter and ask you what that is; is that something you received, sent or what is it?

A. It has been so long ago that I just can't remember it.

Q. Well now, Captain, I wish you would look at it again and read it carefully. Take your time, as there is no hurry, and see if you can remember the circumstances under which you got it?

A. Yes, if I can remember right the boat was brought in and the crew didn't have time to lay up all of the bedding and one thing and another—

Q. Captain, first we want you to say whether this is a letter that you received or sent?

A. Yes, I received that letter all right.

Mr. Matteson:

I doubt if there is a copy of it in existence, it being a handwritten letter. I offer it in evidence.

Mr. Underwood:

Only the usual objection.

The Court:

Admitted under the same ruling.

(Letter dated May 7, 1934, signed "Palm Beach Company J. F. Riley, above referred to, marked Libelants' Exhibit 47.)

Mr. Underwood:

Subject to someone deciphering it better, we will agree that the date on it is May 7, 1934.

The Court:

All right.

Q. Now, Captain, will you tell us what you remember about receiving this letter?

A. All I can say about it is that I received the letter all right and I permitted the men to go on the boat to lay it up that he sent down.

Q. And that boat was the Seminole?

A. The Seminole, yes.

Q. Now here is another one, Captain, is this a letter that you received?

A. Yes, that is a letter that I received.

Mr. Matteson:

Is there any objection to this letter?

Mr. Underwood:

Just the usual objection.

Mr. Matteson:

I offer it in evidence.

The Court:

Admitted in evidence under the same qualification and ruling.

(Letter dated 9-2-34, signed J. F. Riley, above referred to, marked Libelants' Exhibit 48.)

Q. Now I ask you to look at this letter again, Captain, and tell us what you remember about the circumstances of this letter?

A. I received that letter all right, and Mr. Phipps was down there and told me that he was going to send Captain Abel down to do some work on the Iolanthe and he said he would be down in a few days, so he came and went on the boat and was working on the boat.

Q. Did he bring this letter with him or not?

A. I think he did but I am not sure of it; whether I received it by mail or whether he brought it I don't know; I think he brought it, though.

Q. This letter refers to the Iolanthe and the Seminole?

A. Yes, sir.

Q. Did Captain Abel work on one or both of the boats?

A. What?

Q. Which boats did Captain Abel work on?

A. On the Iolanthe.

Q. Did he work on the Seminole, too?

A. That I couldn't say.

Q. Did Captain Abel work on the boats in the yard more than once; did Abel work on the boats in the yard more than one time?

A. No, not more than once on the Iolanthe; that's all.

Q. Did he ever work on the Seminole that you know of?

A. I couldn't say whether he did or not.

Q. Captain, I ask you what this letter is; is that a letter you received?

A. Yes, I received that letter.

Mr. Matteson:

Do you want to see this, Mr. Underwood? I offer it in evidence.

Mr. Underwood:

I have just the usual objection, if your Honor please; no connection and, in addition, it refers to the Iolanthe and is therefore immaterial.

The Court:
Admitted under the same ruling.

(Letter dated August 26, 1931, signed J. F. Riley, above referred to, marked Libelants' Exhibit 49.)

Q. Now I show you this letter, Captain Pilkington; is that a letter that you received?
A. I don't remember a thing at all about that; my wife generally handled that.
Q. I am not asking you about the substance of it, but is it a letter that you received?
A. I received it all right.

Mr. Matteson:
I offer it in evidence.

Mr. Underwood:
Same objection.

The Court:
Same ruling.

(Thereupon letter dated September 13, 1932, signed J. F. Riley, above referred to, was marked Libelants' Exhibit 50.)

(By Mr. Matteson):
Q Now I show you this letter, Captain Pilkington, and ask you if this is a letter that you received?
A. Yes, I received that.
Q. Whose boat was the Dorothy?
A. Mrs. Guest's boat.

Mr. Matteson:
I offer it in evidence.

Mr. Underwood:
Same objection.

The Court:
Same ruling.

(Letter dated December 1, 1933 signed Palm Beach Company by Roy H. Hawkins, above referred to, marked Libelants' Exhibit 51.)

Q. Captain Pilkington, you told us about the monthly visits of Mr. Riley. Now will you tell us what Mr. Riley did when he came to the yard on these occasions?

A. He went over all the boats; he examined all the boats and seen that they were in good shape.

Q. And did you have any conversations or dealings with him when he came?

A. Only reported to me sometimes when he came off about the conditions of the boats, and that was all.

Q. Who ventilated the boats when they were in your yard?

Mr. Underwood:
May I ask that that question be restricted to some particular boat?

Mr. Matteson:
We will restrict it to the Seminole, the Iolanthe and Mr. Phipps' fishing boat.

Q. Captain, who ventilated those boats when they were in your yard?

A. I went through the boats to see if there was any mildew in the boats and I saw no mildew in the boats. I generally ventilated them myself before Mr. Riley came down, and when he came down I told him what I had done.

Q. What did Mr. Riley do?

A. He went over the boats again.

Q. When those same boats that we are talking about were stored in your yard what was done with the keys to the boats?

Mr. Underwood:

May I ask that that be restricted to some particular time?

Mr. Matteson:

I am talking about the entire period.

Mr. Underwood:

There is no proof yet that it was the same boat. Our primary interest is what happened with respect to the Seminole in 1935.

The Court:

I think you had better make it more specific.

Q. All right, Captain, I will put it this way: the first time that the Seminole came to your yard what was done with the keys of the boat?

A. Brought to the office.

Q. And on subsequent times that she came to the yard what was done with the keys of the Seminole?

A. Always brought to the office every year with the exception of the last year, the last time it was out.

Q. With reference to the Iolanthe, Captain, what was done to the keys the first time she came to your yard?

A. They were brought to the office.

Mr. Underwood:

Same objection; immaterial.

The Court:

It is admitted subject to the general objection.

Q. What was done on subsequent occasions?

A. Always brought to the office every time.

Q. Where were the keys kept in your office?

A. Right back of the door on alphabetical nails; each boat had its own alphabetical nail.

Q. Tell me this: were there ever any boats stored in your yard without your first receiving the keys of the boat?

A. Yes, there were boats stored in the yard that didn't leave the keys.

Q. Were there many of those?

A. No, sir.

Q. Would it be fair to say that in most cases—

Mr. Underwood:

I object to this as in the nature of cross examination of his own witness.

Mr. Matteson:

It is not intended to be.

The Court:

This may be highly important, so let him answer the questions.

(By Mr. Matteson):

Q. You spoke of a boat that was left without keys. What happened with respect to any such boat, Captain?

Mr. Underwood:

May I object to that as being immaterial, at least until the boat is identified.

The Court:

The question is too general. I will sustain the objection.

(By Mr. Matteson):

Q. Let me put it this way, Captain: were there more boats that left their keys in the office or more boats that didn't?

A. No, sir, only one that I can remember.

Q. What boat was that?

A. That was the Seminole; the last time it was out.

Q. Is that the only occasion on which a boat was stored in your yard without the keys being left with you?

A. That is the only one that I can remember.

Q. Captain Pilkington, I want to ask you about the storage of boats in your yard with gasoline in them. Did you permit the boats to be stored in your yard with gasoline in their tanks?

A. That was left to the owner mostly; I advised them to take it out.

Mr. Underwood:

I object to that and move to strike it out, what he advised the owners, as not responsive to the question.

The Court:

The motion is denied.

Q. Go ahead, Captain, you were telling us about gasoline on the boat.

A. I advised them to take it out; sometimes they didn't take it out so at that time we didn't have no rule to work on.

Q. Coming down to the time when the Seminole was stored with you the last time before the fire, do you remember what date that was?

A. When the boat came in?

Q. Yes.

A. It came in on February 26, I think.

Q. February?

A. Yes.

Q. You mean she arrived at your yard—

A. She left the yard on February 26th and came back, I think, April 6 or April 15th, somewhereas around there.

Q. About the middle of April?

A. Yes, somewhereas around there; I just can't remember the date.

Q. What time did she arrive there?

A. If I remember right it was in the afternoon, right after dinner time.

Q. About what time o'clock would that be?

A. About one o'clock, somewheres around there.

Q. Who brought her there?

A. Captain Willie Baker.

Q. Who was engineer at that time, do you remember?

A. I don't remember; only it was a man that was working in Palm Beach on some of their boats; I couldn't say what his name was.

Q. Where was the Seminole left when she was brought to your yard?

A. Left out at the wharf at our place.

Q. Where is that?

A. New River, below Fort Lauderdale.

Q. Just outside the shed?

A. Yes.

Q. How far from the shed?

A. About one hundred feet.

Q. How long did the captain and the crew remain on her after they got there?

A. They didn't remain on her very long; I should say about half an hour or three quarters of an hour, not over that.

Q. And did you have any conversation with them at that time?

Mr. Underwood:

May I ask that he be instructed to answer "yes" or "no"?

The Court:

That calls for a "yes" or "no" answer.

Q. Just say yes or no. Did you have some conversation with them?

A. Yes, I had some conversation.

Q. With whom did you have that conversation?

A. That was when the boat came in.

Q. To whom did you talk?

A. Captain Willie Baker.

Q. What was that conversation about?

Mr. Underwood:

I object to that on the ground that no foundation is laid to connect Baker with this Respondent.

(Legal Argument.)

Mr. Matteson:

I simply want to bring out under what circumstances she was left there.

The Court:

The objection is overruled, subject to the same ruling that it be connected up.

Q. Will you tell us, Captain Pilkington what conversation you had with Captain Baker when he left the boat there?

A. I received a telephone call from Captain Abel to give a message to Captain Willie Baker to send a small package up on the bus, and then I said he had already sent it; then I asked him if he wanted his engines turned over

this year and he said no, that he didn't want that done, so that was all the conversation we had.

Q. Did he speak to you at the time that he left—did he speak to you at the time he left the yard?

A. No; he locked the boat up tight and jumped in his car and went off.

Q. This matter of turning over the engines this year that you asked him about, what was that?

A. Well, as a rule, I turned the engines over about once a month for people that want them turned over; when people don't want them turned I don't touch them.

Q. Captain Baker said he didn't want them turned over?

A. Captain Baker said he didn't want them turned over.

Q. What does it mean to turn over the engines of a boat?

A. Well, every month we turn them over to keep the valves from sticking and oil the cylinders to keep the pistons from sticking. Some large engines they don't turn them over; they just fill them full of oil and let them stand.

Q. When Captain Baker left the Seminole at your yard at that time what was done about the keys, if anything?

A. He took the keys with him.

Q. You didn't receive any keys?

A. I didn't receive a key; no, sir.

Q. After Captain Baker had left did you put the Seminole under your care right away?

A. No, sir.

Q. Why not?

A. Because I wanted to air the boat out; after a boat returns, after a boat runs up there, the engines are always warm and that makes an engine-room very warm, and I wanted the boat to cool off and the engines to cool off before putting it under the shed, and I made that rule to everyone.

Q. To cool off the engines before putting them under the sheds, is that what you mean?

A Yes.

Q. After the Seminole had been left there did you hear from Riley?

A. I had a telephone call asking me if the boat had gone under the shed; I told him no. I said, "I don't have any keys to get in the boat to air the boat out", and he asked me where the keys was and I told him I didn't know. He said, "I will try to get them for you". And that was all that was said.

The Court:

Mr. Colman, go back and read that answer.

(Preceding answer read by the Reporter as above recorded.)

The Court:

Read it again.

(Preceding answer read by the Reporter as above recorded.)

The Court:

Please read it again.

(Preceding answer read by the Reporter as above recorded.)

Q. After that happened what happened about the keys?

A. After I waited several days to get word from Mr. Riley about the keys, as he promised he would get them for me, there was a man come there one day to go on board the boat to get a small package off, and I told him all right; he handed me the letter; I think I have the order here.

Q. Is this the letter that you refer to?

A. This is the letter I received; that was brought to me by the man who come up.

Mr. Matteson:

I offer it in evidence.

Mr. Underwood:

Same objection.

The Court:

Admitted under the same ruling.

(Letter dated April 17, 1935, to Captain Pilkington, signed Seminole Boat Co., by Roy H. Hawkins, was marked Libelants' Exhibit 52.)

Q. Do you know who the man was that brought this letter?

A. No, sir; he acted very queer when he came in there and I stood there and watched him—

Mr. Underwood:

I object to that. I object to it as a characterization and conclusion.

The Court:

I think the objection is good.

Q. Well, Captain, did you see this man go on the Seminole?

A. Yes; he didn't stay hardly two minutes and he was off again.

Q. Did he take a package with him?

A. It was so small I could hardly see it.

Q. About the keys; did he have the keys to the boat at that time?

A. Yes, he had keys.

Q. Where was the Seminole at that time?

A. It was laying alongside of the wharf.

Q. Had you received any keys at that time?

A. No, sir.

Q. Did this man give you the keys?

A. No, sir.

Q. What did he do with them?

A. Took them with him; he said he was going to take them back where he got them from.

Q. Did you say anything to him about the keys?

A. I told him that I had to have them.

Q. Now I will show you this letter, Captain, and ask you if that is a letter you received?

A. Yes, sir; I received that letter all right; I received that from the man that came afterwards.

Q. That came when?

A. That came after the articles.

Q. That came after the iron cots?

A. Yes.

Mr. Mattescn:

Q. Do you have any objection to this letter, Mr. Underwood. I offer it in evidence.

Mr. Underwood:

Just the usual objection.

The Court:

Same ruling.

(Thereupon the letter dated April 16, 1935, addressed to Pilkington Boatyards, signed J. F. Riley, above referred to, was marked Libelants' Exhibit 53.)

Q. Which of these letters did you receive first; the one about the cots or the one about the silver?

A. I received the one about the silver first—no, I received this one, the one about the iron beds, first.

Mr. Underwood:
That is Exhibit 53?

Mr. Matteson:
Yes.

(By Mr. Matteson):
Q. Now after this man had come with the keys and gone away again, did you do anything further about the keys?

Mr. Underwood:
I am sorry to interrupt, but which man?

Mr. Matteson:
He doesn't know his name.

Mr. Underwood:
Are you referring to the man who brought Exhibit 52 or Exhibit 53?

Mr. Matteson:
52.

(By Mr. Matteson):
Q. After the man came with this letter about the silver, the man who had the keys and took the small package away, did you do anything further to get the keys, Captain?

A. I asked him what he was going to do with the keys and I told him I wanted to have them. He said he was going to take them back where he got them from and he told me if I wanted to know anything further to write to Mr. Hawkins and told me where he was. He told me he was down at the Boulevard Company, so I wrote a letter down there and told him that I had to have these keys before I could put the boat under the shed and that I had

to air it out, and when he sent the keys up he sent two keys up by a letter.

Q. Is this the letter that you refer to?

A. Yes, that is the letter I received.

Mr. Matteson:

Is there any objection to this letter, Mr. Underwood?

Mr. Underwood:

No objection.

Mr. Matteson:

I offer it in evidence.

The Court:

Admitted in evidence.

(Thereupon letter dated April 20, 1935, signed Seminole Boat Co., by W. L. Webber, above referred to, was marked Libelants' Exhibit 54.)

Q. That letter from Hawkins about the keys, did that come in the mail or did someone bring it?

A. That came in the mail.

Q. Were there some keys with it?

A. Yes.

Q. What keys were there with it?

A. Two keys, a large brass key and a small padlock key; I took it to be a padlock key.

Q. Where was the Seminole at that time; was the key under the shed or at the dock?

A. It was outside the shed; I had not put it under at that time.

Q. What did you do with those keys when you got them?

A. I went on and opened up the Seminole all I could, and when I went to the hatch over the engine room I

couldn't make it fit, so there was nothing for me to do but to open up the rest of the boat.

Q. What do you mean by the "rest of the boat"?

A. I went down and went through the boat and opened the windows and opened the doors.

Q. One of the keys you had would let you into the rest of the boat?

A. Yes, that was the large brass key.

Q. What was the other key you received?

A. I took it to be a padlock key, but it was a latch key.

Q. Did you find anything on the boat that that key would fit?

A. Yes, I found the Captain's quarters.

Q. Did you receive any key to the engineroom?

A. No, sir.

Q. How was the engineroom left when the Seminole was left with you; was there any way to get into it?

A. Only through a hatch.

Mr. Underwood:

I object to that as calling for a conclusion.

The Court:

The objection is sustained.

(By Mr. Matteson):

Q. Just tell us about the condition of the engine room when the Seminole was left with you.

A. I don't know anything about the engineroom because I wasn't in it.

Q. How about the engineroom hatch?

A. The hatch was on top; that is the only way you can get in—that is where the crew went in and out, on top of the upper deck, and this key I had didn't fit it, and they were the keys that I gave Captain Abel when he went on the boat.

Q. We will come to that in just a moment. Was the hatch locked or not?

A. It was locked, yes.

Q. How about the skylight on the engine-room?

A. The skylight was down, fastened.

Q. Was there any other way that you know of to go into the engineroom?

A. From what I understood there was, but I never seen it.

Q. Did you know at that time of any other way to get into the engineroom?

A. No, sir, I didn't.

Q. Well, if you couldn't get in her why did you put the Seminole under the shed?

A. Because everything had been all right for the last eight years that I had stored the boats there, and I didn't think anything was wrong; I had given any thought that there was something wrong I would not have put it under the shed. I had gone on the boat, all through it, on Wednesday before the fire and I didn't smell nothing and everything was in good shape.

The Court:

Read that answer.

(The preceding question was read by the Reporter as above recorded.)

Q. Did you do anything further about the keys, Captain?

A. I was waiting for Mr. Riley to come down, as he always promised, and it was his orders by Mr. Phipps to come down there once a month, and Mr. Phipps told me in the presence of Mr. Riley that he would be down the first of every month and that I could look for him.

Q. So you didn't write any more letters?

A. No, sir.

Q. Did Mr. Riley come down there between the time the boat was stored, about the middle of April, and the time when the explosion occurred on June 24th?

A. He came down after the explosion.

Q. But before the explosion he didn't come?

A. No, he didn't come down.

Q. Captain, with these two keys that you received in the letter was there any other part of the Seminole, other than the engineroom, that you could not get into?

A. No, I could get into everywhere on the boat.

Q. You mean to include the engine-room in that?

A. No, sir; I couldn't get into the engineroom; I had no key.

Q. I find there are two or three of these letters that I omitted to speak to you about, Captain: I show you this letter and ask you if that is a letter you received?

A. I just don't remember when I wrote that letter.

Q. Is this a letter that you received?

A. Yes, I received that letter.

Mr. Matteson:

I offer it in evidence.

Mr. Underwood:

Same objection.

The Court:

Same ruling.

(Letter above referred to was marked Libelants' Exhibit No. 55.)

Q. Captain, you have already testified that this letter, Libelants' Exhibit 40, dated January 18, 1832, is a letter which you wrote to Mr. Riley. Now this letter that I have

just shown you, dated January 21, acknowledging receipt of the letter of January 18—

A. Yes, that is the answer.

Q. Here is another letter, Captain, and I ask you if that is a letter you received?

A. Yes, that is after I made the reduction.

Mr. Matteson:
I offer it in evidence.

Mr. Underwood:
Just the usual objection.

The Court:
Admitted under the same ruling.

(Letter dated March 21, 1933, signed J. F. Riley, above referred to, was marked Libelants' Exhibit No. 56.)

(By Mr. Matteson):

Q. I show you one more letter, Captain, and ask you if that is a letter that you received?

A. Yes, I received that letter.

Mr. Matteson:
I offer it in evidence.

Mr. Underwood:
Same objection.

The Court:
Same ruling.

(Letter dated May 3, 1933, signed J. F. Riley, above referred to, was marked Libelants' Exhibit No. 57.)

Mr. Matteson:

I think that now there have been produced and marked as exhibits all of the letters that Mr. Botts produced this morning in response to notice to produce by the other side.

(By Mr. Matteson):

Q. Now, Captain, I am coming down now to the date of the accident, June 24, 1935. Up to that time had Mr. Phipps told you that there was any change in the ownership of the Seminole?

A. No, sir.

Q. Had anyone told you that?

A. No, sir.

Q. How would you send the bills for the storage of the Seminole?

A. We would send them to Mr. Riley in care of the Palm Beach Company.

Q. And from whom did you receive payment of those bills?

A. Mr. Riley and the treasurer of the company; Mr. Riley's name was on some of the checks and some of the checks were—

Q. Now I show you this, Captain Pilkington, which is a photostatic copy of two papers, and will ask you to tell me what those papers are.

Mr. Underwood:

Just a minute. I think we can save a lot of time.

(Discussion off the Record.)

(By Mr. Matteson):

Q. Captain, now I have these original documents pieced together here; can you tell me what that is?

A. I just can't tell you without looking at the books.

Q. This says, "storage—Yacht Seminole, month of May, $50.00", and attached to it is a check for $50.00 to George J. Pilkington. Did you receive that?

A. Yes, I received that.

Q. And this check is dated June 10, 1935?

A. Yes.

Q. Do you remember when you received that?

A. I received it along about that date.

Q. About June 10, 1935?

A. Yes.

Mr. Matteson:

I offer the two parts of this check in evidence.

Mr. Underwood:

No objection.

The Court:

Admitted in evidence.

(Check above referred to was marked Libelants' Exhibit 58-A and voucher above referred to was marked Libelants' Exhibit 58-B.)

(By Mr. Matteson):

Q. Now, Captain, the payments that you had received for storage for the Seminole prior to this time had come in this form or in some other form?

A. They came in that form.

Q. Now here is another one which has been torn apart, same being for $10.00 dated June 24, 1935. Did you receive that?

A. Yes, I received that during the fire.

Q. What do you mean "during the fire"?

A. Well, he sent up and told me he was sending me the balance of the $60.00.

Q. Who is "he"?
A. Mr. Riley.
Q. How did this come to you?
A. To me by letter.

Mr. Matteson:
Do you object to this, Mr. Underwood?

Mr. Underwood:
No, I don't object to the check.

The Court:
Admitted in evidence.

(Thereupon check for $10.00, dated June 24, 1935, above referred to, was marked Libelants' Exhibit 59-A, and voucher thereto was marked Libelants' Exhibit 59-B.)

(By Mr. Matteson):
Q. You say this came in the mail?
A. Yes.
Q. On the day of the fire?
A. Yes, sir.
Q. Now, Captain Pilkington, on the day of the fire did someone come to the yard with respect to the Seminole; did someone come to the yard with respect to the Seminole on the day of the fire?
A. I don't remember whether they did or didn't.
Q. Do you remember Captain Abel coming there the day of the fire?
A. Yes.
Q. Tell me just what happened when he came to the yard.

Mr. Underwood:
If your Honor please, I object to anything about Abel on the grounds previously stated; no connection with the respondents.

The Court:

The objection is overruled, subject to it being connected up.

Q. Go ahead and tell me again about Captain Abel.

A. Captain Abel came there on the day of the fire, about just between one and half past one, and he had an order from Mr. Riley to let him go on the boat and get some equipment, and I says, "do you want a man to help you get it off; I will give you one if you want him", and he says, "no, the equipment is just fishing tackle," and he says, "I can easily get that." And he says, "if I do want any help Mr. Thomas will help me".

Q. Did he say anything else about the fishing tackle?

A. No, sir, he didn't say nothing else.

Q. Did he say for what purpose he wanted it?

A. Yes, he did, as far as that is concerned.

Mr. Underwood:

May it be understood that my objection runs to this whole business and particularly to the conversation?

The Court:

Yes.

A. He said that it was fishing tackle he wanted to get off the boat, and he said he was going to take Mr. Phipps and his party from Pompano on a fishing trip and they wanted extra fishing tackle.

Q. I show you this paper, Captain Pilkington, and ask you what that is?

A. That is the order that he brought to me personally, that he gave to me.

Mr. Matteson:

I offer this in evidence.

Mr. Underwood:
Same objection.

The Court:
Same ruling.

(Thereupon the handwritten memorandum to Captain Pilkington, signed J. F. Riley, undated, was marked Libelants' Exhibit 60.)

(By Mr. Matteson):
Q. Was there anyone with Captain Abel?
A. Yes; Mr. Thomas.
Q. Did Mr. Thomas take any part in the conversation?
A. No, he didn't.
Q. Now after what you have told us, what happened next?
A. Well, I watched Mr. Thomas smoking a cigarette and then I asked him to put the cigarette out, that I didn't want any smoking in the shed.

Mr. Underwood:
May it be understood that my objection runs to all of this?

The Court:
Yes.

(By Mr. Matteson):
Q. Do you have any rule with respect to smoking?
A. Yes.

Mr. Underwood:
I object to the rule about smoking.

The Court:
You have asked him if he had a rule?

Mr. Matteson:
Yes.

The Court:
The objection is overruled.

(By Mr. Matteson):
Q. Did you have a rule about smoking?
A. Yes.
Q. Was that rule posted or published?
A. It was posted on the place on a sign.
Q. Captain Abel was smoking, you said, or was it Thomas?
A. It was Captain Thomas and Captain Abel both.
Q. Tell me from there again; just go ahead and tell me what happened.
A. They put their cigarettes out all right and then went in the shed. I watched them until they got on the Seminole, on the upper deck. They made their first stop beside the hatch that goes into the engineroom, and they stayed there quite a little while and then they couldn't get in the hatch, couldn't get the hatch open, and they went down in the back and in the after door of the cockpit, and that's the last I seen of Captain Abel until they brought his charred body out of the fire.

Mr. Underwood:
I move to strike out the witness' conclusion that they couldn't get the hatch open.

Mr. Matteson:
Let me ask one more question?

The Court:
Before ruling on that?

Mr. Matteson:
Yes.

The Court:
All right.

(By Mr. Matteson):
Q. Just tell me what you saw them do at the hatch, if you saw them do anything.
A. I couldn't see what they were doing because it was down back of the awning; what they were doing I couldn't say.
Q. You just saw them in that vicinity?
A. I seen them stay there quite awhile, and then I seen them get up and go away.

Mr. Matteson:
I have no objection to striking out the conclusion.

The Court:
The motion is granted.

(By Mr. Matteson):
Q. Can you tell us whether or not they opened the hatch?
A. They didn't open the hatch.
Q. You say they got into the stern door?
A. Yes.
Q. How long after that was it that the explosion happened?
A. About fifteen minutes, fifteen minutes.
Q. Did you know Captain Abel before this?
A. Slightly.
Q. How did you know him?
A. Just from Mr. Phipps sending him down there to work on the Iolanthe, and he came there about a boat, a small boat at one time.

Q. Do you know whether they had any arrangement on the Seminole for drawing off gas?

A. Only what I have been told by Captain Abel.

Q. Well, have you observed anything with respect to that?

A. Yes, I observed that they drew out five gallons of gas one night after the, after he, quit work.

Q. Who was it that brought it off?

A. Captain Abel himself.

Q. Did you do or say anything about it at that time?

A. I didn't know anything about it, but I asked him where the—I asked him where he got the gas and he said he got it off the Seminole. I said, "you didn't connect onto the pipe down at the engine and draw the gas that way, did you", and he said, "no, I got it out of the spigot where you generally draw gas to put on the launches".

(By Mr. Matteson):

Q. Well, did you say anything about that?

A. I told him not to do it again; I told him not to draw any more gas out and he said he wouldn't. So the next night he came out with fifteen gallons of gas. I stopped him right there, and I told him not to go in there any more to do any work. I told him to tell Mr. Riley the same thing. Then he didn't come back to work for three or four days. I got a call from Mr. Riley to have the Iolanthe out in front of the building, that they were going to bring it up to Palm Beach to have Captain Abel work on it up there.

Q. Now about this rule against smoking that you have in the yard: did you have any difficulty in enforcing that rule?

A. No, sir.

Q. You spoke about the rule against smoking and I think you said it was posted. Can you tell me what this picture shows?

A. It shows "no smoking".

Q. Is that the sort of a sign you had posted in the yard?

A. Yes.

Q. This one is a picture of the new yard, is it not?

A. Yes, of the new yard.

Q. Was a sign posted in the old yard like this one?

A. No, sir. Let me show you. It had painted up in here on this first post: "No Smoking"; painted in red letters.

Q. How near was that to the entrance where you went into the shed?

A. They had to go down underneath on the left to get to it.

Mr. Underwood:

I would like to make an inquiry at this point. I recall nothing in the pleadings that would lay any foundation for a claim that anybody started this fire by smoking.

Mr. Matteson:

We do not claim that at all.

Mr. Underwood:

May I ask what the materiality is?

Mr. Matteson:

It has something to do with the general character of Captain Abel.

(By Mr. Matteson):

Q. Did you ever have any difficulty with Captain Abel with respect to that rule, with respect to smoking?

A. Well, I just had told him not—when he first came down there I told him that I didn't want any smoking in the building and he said all right, that he wouldn't smoke.

Q. Are you referring to the time of the fire or to some other time?

A. No, that was another time.

Q. What time are you referring to, Captain?

A. I thought you asked me about the time when he first went under there to work.

Q. That is correct. What happened at that time?

A. He promised me he wouldn't smoke, and he didn't smoke, that is, I didn't see him smoking until I had come up from down the lower part of the building, and when I came up the boardwalk I saw him smoking on the bow of this boat, the Iolanthe. I didn't say anything to him, but I untied the line and was pushing the boat out, and he wanted to know what I was going to do. I told him about the promise he made about not smoking, and I was going to push his boat outside and that he could take it where he pleased. He said, "please don't do that; leave it here, and I will promise you I won't do any more smoking".

Q. And that was all of that?

A. Yes.

Q. Now, Captain, were there any other boats in the yard at the time of the fire, or any boats with the possible exception of the Seminole that had gasoline in their tanks?

A. That I don't know.

By Mr. Underwood:

I object to that, if your Honor please. Let him say what he did and what examination he made—

The Court:

The objection is sustained.

Q. Can you tell us, Captain, whether there was any other boats with the possible exception of the Seminole?

A. I don't remember.

Q. You don't remember?

A. No.

Q. Do you remember telling Mr. McCoy that no boats were allowed to be laid up with gasoline in them?

Mr. Underwood:

Wait a minute, Captain, please: I object to this. This is his witness and he now embarks upon cross examination of him.

(Extended Legal Discussion.)

The Court:

I think the objection is proper. The objection is overruled.

Q. Just answer yes or no.

A. Yes. I knew there was gasoline on it.

Mr. Underwood:

I move to strike that out.

The Court:

The question calls for a yes or no answer. Reframe the question.

Mr. Matteson:

Would not the objection be satisfied if we allowed the "yes" to remain, and strike out the rest of the answer. The rest of the answer is his explanation, and I have no objection to striking out the explanation, because I will ask other questions relating to that.

The Court:

I think probably you are right, but to avoid any semblance of error, in view of the fact that the extra statement was made, I will adhere to my ruling.

(By Mr. Matteson):

Q. I will get at it this way: Tell us, Captain, what you know or observed with respect to whether or not there was any gasoline in the Seminole at the time of the fire, or while she was in your yard?

A. I don't know anything only what I was told.

Q. Did you observe anything at any time?

A. No, I didn't. I didn't know there was any—as far as I am concerned personally myself—in the tank, and what I told you what—it was just hearsay.

Q. After the fire do you know anything about the arrangements for raising the Seminole or recovering the body?

A. No, sir.

Q. Did you have anything to do with that?

A. No, sir.

Q. Did you see Mr. Garry Miller, of Fort Lauderdale, at your yard, at the time of the fire?

A. He was there; they told me he was going to take charge of the place.

Mr. Underwood:

I move to strike out what Mr. Miller told him. It is not responsive and not binding on the Respondents.

The Court:

He didn't say Miller told him; he said, "they told him."

Mr. Underwood:

Yes.

The Court:

And you move to strike out what they told him?

Mr. Underwood:

Yes.

The Court:

The motion is granted.

Q. Who is Mr. Miller?

A. He is the County Attorney.

Q. Of Broward County?

A. Yes, sir.

Q. What did he do when he came there?

A. Really I didn't see what he done, only what I was told, after I asked them all to investigate for me the cause of the fire.

Q. Do you know about any parts that were recovered from the Seminole?

A. No, sir.

Mr. Botts:

Just a minute. Captain Pilkington is 70 years old and he has been here talking all day, so I ask that this hearing be adjourned at this time. I tried to get him to lie down at noon, but he wouldn't do it, so I am going to ask an adjournment until tomorrow morning because of his physical condition. He is a very old man and he was very ill about two months ago, and I have some questions to ask him myself, therefore I would like to have an adjournment until tomorrow morning.

The Court:

We will adjourn until tomorrow morning at 9:30.

At 9:33 o'clock a. m., Friday, March 17, 1939, Court reconvened pursuant to adjournment of the previous day, and the trial of the case at bar was resumed; whereupon the witness

545 GEORGE J. PILKINGTON resumed the stand and further testified as follows:

Direct Examination Continued.

By Mr. Matteson:

Q. Captain, I have one more letter that I want to show you; is that a copy of a letter that you wrote or sent, or received, or what is it?

A. Yes, sir; I received that, yes.

Q. Is this a letter that you wrote, you sent, or received?

A. I sent that letter.

Q. Sent that letter?

A. Yes, sir.

Mr. Matteson:

Mr. Underwood, have you the original of this letter?

Mr. Underwood:

Yes.

Q. Is this the original of that letter, Captain? Is that the original letter?

A. That's the original; yes, sir.

Mr. Matteson:

I offer that in evidence.

The Court:

Admit it.

(Said letter so identified and offered was introduced in evidence and marked Libelants' Exhibit No. 61.)

Q. I show you this other letter, Exhibit 45; is this one that I just showed you, the answer to that letter?

The Court:
You had a general objection?

Mr. Underwood:
I don't object to that at all.

A. Yes; that is the answer to that.

Mr. Botts:
Will you identify those, please, by exhibit numbers?

Mr. Matteson:
I have; these are exhibit numbers 54 and 61.

Mr. Botts:
I understand the witness identifies 61 as the answer to 54; is that correct?

Mr. Matteson:
That is right.

Q. I show you one more, Captain Pilkington: is that a letter that you received or sent, or what is it?
A. I think, if I can remember right, Captain Davis brought that letter to me.
Q. You received it?
A. Or Captain Baker.
Q. You received that?
A. Yes, sir.

Mr. Matteson:
I offer this in evidence. Do you want to see it, Mr. Underwood?

Mr. Underwood:
Just the usual objection to this, your Honor.

The Court:
Admitted, then, with the same ruling.

(Said letter was introduced in evidence and marked as Libelants' Exhibit #62.)

Q. This is subsequent to the date of the fire.—Captain, this last letter that I have shown you, Exhibit 62, is dated September 30, 1935, and is a request to allow Captain Baker to remove the hull of the Yacht Seminole, from your property. Was that after the fire?
A. That's after the fire.
Q. And as the result of this letter, what happened?
A. They took the boat away; the hull away.
Q. The wreck?
A. Yes, the wreck.
Q. Captain, are there any books kept at your yard? Did you keep any books there?
A. Yes, sir.
Q. And who keeps those books?
A. My wife.
Q. And who does the billing for the yachts?
A. My wife.
Q. And who makes the deposits—keeps track of the receipts?
A. Sometimes my wife, and sometimes myself.
Q. And who writes the letters?
A. I write a letter.
Q. In asking those questions, I am referring to the time prior to the fire. Was that true then?
A. Yes; that's right.

Mr. Matteson:
That is all.

Mr. Botts:

I guess you would rather I would cross examine this witness?

Mr. Underwood:

He is your witness.

By Mr. Botts:

Q. Captain, how long have you been in the yacht storage business?

A. Something like thirty five years.

Q. How old are you, Captain?

A. Seventy seven.

Q. At the time of the fire, Captain, where was your residence, with relation to the sheds of your storage yard?

A. Right along the side of the shed.

Q. A comparatively few feet from the water, is it not?

A. About twenty feet.

Q. Yes. Did you have an office for your business?

A. I had an office in the building where I live.

Q. In your residence, was your office?

A. Yes.

Q. And you didn't hire a bookkeeper?

A. No, sir.

Q. Mrs. Pilkington, did that work?

A. Yes, sir.

Q. And you and she together, you were the manager, and she assisted you; is that about the situation?

A. That's right; yes, sir.

Q. Now was your residence at the same place on that occasion back, soon after the Seminole was first stored with you, when you mentioned a visit by Mr. Phipps?

A. Yes, sir.

Q. Where did that interview between you and Mr. Phipps, take place?

Mr. Underwood:

If your Honor please, may we have the conversation fixed? I don't know which conversation. The witness has mentioned several.

Mr. Botts:

I said the first time when Mr. Phipps came there.

Mr. Underwood:

I didn't so understand it.

Mr. Botts:

Well, if I didn't, I intended to; I beg your pardon; I intended to.

Q. In order to make that clear: you recall the occasion when Mr. Phipps first came to visit you at your yard? Just answer yes or no.

A. Yes: well, yes, I do.

Q. Now then, on that occasion of his first visit, were you then living at the yard?

A. I was; yes, sir.

Q. And as near as you can place it, will you tell us where that conversation took place? That is, on the premises, in the house, the yard, or where?

A. That took place about thirty feet away from the northeast corner of our building.

Q. On the land?

A. On the land; yes.

Q. Outside of the storage shed?

A. Yes, sir.

Mr. Botts:

I don't want to ask this witness; I want to refresh my memory.

Q. Now Captain, how deep is the water in your—at the time of this fire, and at the time you were storing the Seminole, how deep was the water in your dredged slip or basin?

A. It was six feet at low water, and in some places where people wanted their boats to lay on the silt at low water, I had different places for that, about four feet.

Q. Were these boats afloat at high water?

A. Yes, sir.

Q. All of them?

A. Yes, sir.

Q. And as I understand it, you say some owners wanted their boats to lay on the bottom, part of the time?

A. Well there was some places where I had—it is shallow, where I could do that.

Q. If they wanted it?

A. If they wanted it.

Q. Now you have testified that on this first occasion when Mr. Phipps visited you, that he was accompanied by some one, I believe; who was that?

A. I don't remember, that has been so long ago.

Q. Well, do you remember who was with Mr. Phipps, I say?

A. Not on the first occasion. Sometimes he came in by himself, and other times he came in with Mr. Riley.

Q. Well now then, will you identify the occasion when Mr. Phipps brought Mr. Riley and introduced you to him as Mr. Riley, as his private secretary and manager?

A. That was a short time after I received a letter from Mr. Huff.

Q. Well now was that the first visit Mr. Phipps made to the yard?

A. No, sir.

Q. I see; all right. Now what time of day, as near as you can recall, was it when Mr. Phipps and Mr. Riley came there?

A. It is pretty hard for me to say.

Q. You can't tell?

A. I can't remember.

Q. Now then when Mr. Phipps talked to you about storing the Seminole, did he make any statement to you as to who was the owner of the Seminole? Just answer yes or no.

A. Yes, he did.

Q. What did he tell you in that respect?

A. Told me he was the owner of the boat.

Q. Yes. Subsequent to that statement by Mr. Phipps, that he was the owner of the Boat Seminole, and prior to the fire, did Mr. Phipps ever inform you as to whether or not there had been any change in the ownership of the Seminole? Answer that yes or no.

A. No, sir.

Q. Prior to the time of the fire and subsequent to the time when Mr. Phipps identified Mr. Riley as his agent, did Mr. Riley ever inform you whether or not there had been any change in the ownership of the Vessel Seminole?

A. No, sir.

Q. During the period of time from the date when the Seminole first was put in storage with you, up till the time of the fire, did any one give you any information as to whether or not there had been a change in the ownership of the Seminole?

A. No, sir, there wasn't.

Q. During that period of time from the first storage of the Seminole, until the fire, did you from any source secure any information that there had been any change in the ownership of the Seminole?

A. No, sir.

Q. On the date of this fire, so far as you knew, who was the owner of the Seminole?

A. John S. Phipps.

Q. When Mr. Phipps on that visit when he told you he was the owner of the Seminole,—did he give you that information at your request?

A. No, sir.

Q. He voluntarily told you that?

A. Voluntarily.

Q. Did you at that time or any time explain to Mr. Phipps any reason why you desired to know who the owner of the boats were? Did you tell him?

A. Yes, I told him.

Q. What did you tell him was the reason?

A. I told him I had to have—

Mr. Underwood:

Let's have the time fixed; is this the same conversation?

Mr. Botts:

Yes, sir.

Mr. Underwood:

May we call this the Rilet introduction conversation?

Mr. Botts:

No, it was the one prior to that; that is my understanding.

Mr. Underwood:

I didn't so understand it. Let's get the fact.

Mr. Botts:

Now, read the question.

(Question read.)

A: I told him that I had to have the name of the boat when it come in, who was the owner of that boat, and I had to have it for my record as well as the Government Inspector; and I had to have it for the—or the Captain's

name, to give to the Inspectors when they came around. Sometimes they asked for it, and other times they didn't.

Q. How long, as near as you can recall it, was this conversation after the Seminole was first stored with you?—as near as you can fix it.

A. Well, I received a letter from Mr. Huff, and it was a few days after that; but I don't remember the date of that letter.

Q. But it was a relatively short time from the time you received the first letter?

A. Yes, sir.

Mr. Botts:

I think that is all, Mr. Underwood:

Q. Did you talk to Mr. Phipps while the boats were in charge of Mr. Simmon, or Mr. Huff, or which way? Which one was in charge of the boats first?

A. Mr. Simmon.

Q. Now then did you talk to Mr. Phipps before they were turned over to Mr. Huff? Do you remember?

A. Yes, sir.

Q. Then it was some time in the period from the time you received the first letter from Mr. Simmon, until about the time they were turned over to Mr. Huff?

Mr. Underwood:

I object to that as leading.

Mr. Botts:

I grant that, and strike it out; that is right; you are perfectly correct. I think the date is sufficiently clear.

Q. Did you ever put the Seminole in that shallow water where it would be grounded at low water?

A. No, sir; never.

Q. She was afloat at all times, the Seminole was? I say, the Seminole was afloat at all times, was she?

A. Oh yes.

Q. Captain, if you get tired, I am sure the Judge will give you a little time to rest if you want to. So if you do, don't hesitate to suggest that; because the Judge realizes that you are not as young as you were once, and I am sure if you feel like you need a little rest, if you will speak to the Judge, I am sure he will do it.

A. Thank you.

Cross Examination.

By Mr. Underwood:

Q. Captain Pilkington, I show you Exhibit 40, a letter which you wrote to the Palm Beach Company; and I call your attention to the fact that you refer to a letter of the 15th instant, meaning a letter of the Palm Beach Company. Do you remember such a letter?

A. I haven't seen these letters in three years, and I just can't place them.

Mr. Underwood:

I have included that in my Notice to Produce, I believe.

Mr. Botts:

That was one of the ones we couldn't find?

Mr. Underwood:

Well, is it? I call for the production of the letter.

Mr. Botts:

Wait a minute; I can tell you which ones we did find. What was the date of that?

Mr. Underwood:
January 15, 1932—'3.: '32.

Mr. Botts:
No, that was one we were not able to find.

Mr. Underwood:
All right, thank you.

Q. You needn't bother with that any more right now.
A. I can't hardly see.
Q. The light is very bad there.—Is that a letter you wrote to the Palm Beach Company?
A. You want me to explain that?
Q. No, just tell me whether or not that is a letter that you wrote.
A. Yes, sir, I wrote that letter.

Mr. Underwood:
I offer it in evidence; letter dated June 22, 1934.

Mr. Botts:
No objection.

The Court:
Let it be admitted.

(Said letter thereupon was introduced in evidence and marked respondents' Exhibit E.)

Q. Now Captain, I show you a copy of a letter; will you tell me whether or not you received the original of that letter.

Mr. Botts:
What is the date of that?

A. That is dated February 23, 1935.
A. Yes, sir; I received that letter.

Mr. Underwood:
I offer it in evidence.

Mr. Botts:
No objection.

The Court:
Admit it.

(Said letter was thereupon admitted in evidence and marked respondents' Exhibit F.)

Q. Captain, I show you a letter dated June 13, 1935; did you write that letter?
A. Yes, sir.

Mr. Underwood:
I offer that in evidence; letter to the Palm Beach Company.

Mr. Botts:
No objection as far as Captain Pilkington is concerned.

Mr. Matteson:
No objection.

The Court:
Admit it.

(Said letter was thereupon admitted in evidence and marked respondents' Exhibit G.)

Q. Captain, is it your contention that you never heard of the—
A. I can't hear you there.

Q. Is it your testimony that you never heard of the Seminole Boat Company prior to the fire?

A. Not as I can remember; I don't remember anything only what I have said. I might have heard, but never paid any attention to it. But rumors travel fast.

Q. Do you deny that you knew of the Seminole Boat Company?

A. No, I don't.

Q. You don't deny it?

A. No, I do not deny it.

Q. Do you remember that you did know of the Seminole Boat Co.?

A. No, sir; I did not know it; personally I did not.

Q. You did not know what?

A. Did not know the Seminole Boat Company.

Q. You hadn't heard of it, prior to the fire?

A. The rumors—but I don't believe rumors; I got to have it direct.

Q. Do you say that you never received any communication from the Seminole Boat Co.?

A. I received some little orders; but I never paid any attention to it, because I got strict orders from Mr. Phipps to take no orders from any one expect Mr. Riley as his agent.

Q. Is it not a fact, Captain Pilkington, that in February 1935 you delivered the Seminole to Captain Willie Baker on the order of the Seminole Boat Co., signed by Roy Hawkins?

A. I don't know—remember whether the Seminole Boat Co. was stamped on the letter or not.

Q. I show you defendants' Exhibit F, which you testified not fifteen minutes ago that you received, and call your attention to the fact that the signature on that letter reads "Very truly yours, Seminole Boat Company, by Roy H. Hawkins". Is it not a fact that you delivered the boat to Captain Willie Baker on the strength of that order?

A. No, I didn't deliver it on really the strength of that, because I know Capt. Baker was the captain for Mr. Phipps once in a while.

Q. The letter made no difference to you?

A. The letter made no difference to me at all whatever, because Mr. Hawkins wasn't in it.

Q. Is that the first time you ever heard of the Seminole Boat Co.?

A. I have heard by letters but I have never paid no attention to it, because I got strict orders from Mr. Phipps to take no orders from any one but Mr. Riley.

Q. Is it your testimony that you sent all your bills for storage either to Mr. Simmon or to Mr. Riley?

A. I sent them all to either one of them, Mr. Simmon in the beginning, and Mr. Riley always after I got orders from Mr. Phipps.

Q. And is it your testimony that your bills were paid either by the Boulevard Mortgage Co. or by the Palm Beach Co.?

A. Through Mr. Riley, and Mr. Riley's name on them.

Q. Let me make it clear. Were you ever paid by a check of anybody else other than the Boulevard Mortgage Co. or the Palm Beach Co.?

A. That I don't remember, whether I was or not; I got so many.

Q. Were you ever paid by the Seminole Boat Co.?

A. No, sir; never.

Q. Are you sure about that?

A. I am sure about it.

Q. Positive of it?

A. I am positive.

Q. Captain, I show you a piece of paper and ask you whether or not that is your signature.

A. That's my signature.

Q. Don't look at the other side. Is that your signature?

A. Yes, that's my signature.

Mr. Underwood:
I offer that in evidence.

Mr. Matteson:
Are you offering this in evidence?

Mr. Underwood:
Yes.

Mr. Matteson:
Well what are you offering: Captain Pilkington's signature, which he has been asked about?

Mr. Underwood:
I am offering the check.

Mr. Matteson:
Well I think he ought to be shown the entire document before it is offered in evidence.

Mr. Underwood:
I don't see the necessity for it; he has identified it as a document on which he put his name. Mark that, please.

The Court:
Any objections?

Mr. Botts:
I would like to ask Mr. Underwood if there is any objection to the witness seeing the document.

Mr. Underwood:
Not in due course, no.

Mr. Botts:
Well I am going to object to it until the witness has a chance to examine it.

The Court:

He admitted his signature. The objection is overruled. Now you are getting into the very trouble that my suggestion contemplated. This has been offered in evidence; the further examination of Capt. Pilkington by Mr. Botts and Mr. Matteson is going to be cross examination—not going to be re-direct.

Mr. Underwood:

I am not at all sure that that is true, your Honor, from my way of thinking.

The Court:

Well, you have offered it.

Mr. Underwood:

That is right.

The Court:

Now when he is examined, why it is going to be cross examination.

Mr. Underwood:

But they have raised the subject of payment; I am going into the subject of the method of payment.

The Court:

I think we had better follow the strick rule, and avoid these difficulties, and let you not offer that in evidence; let you identify it, then when you make out your case you can offer it, and then the further examination of Capt. Pilkington will be re-direct, and it won't be cross on that particular matter.

Mr. Underwood:

We will mark it then for identification.

(Thereupon said check was marked as respondents' Exhibit H-1 for identification.)

Q. Do you remember that check, Exhibit H-1, Captain?
A. I don't remember the check at all.
Q. Do you notice that it says, Seminole Boat Company, By:?
A. Yes, I do.
Q. I show you the back of another check, Captain, and I ask you if that is your signature?
A. That's my signature, yes, sir.
Q. Did you receive that check?
A. I received the check.
Q. Do you notice that it too is signed, Seminole Boat Company, By—Roy H. Hawkins; countersigned Paul R. Scott?
A. I don't remember the checks at all.

Mr. Underwood:
I offer that for identification.

(Said check was marked respondents' Exhibit H-2 for identification.)

Q. January 16, 1929.—I show you, Captain, the back of another check; is that your signature?
A. Yes, sir.
Q. I call your attention to the fact that that check is signed, Seminole Boat Co., By Roy H. Hawkins, countersigned Paul R. Scott. Do you recall that check?
A. I don't recall those checks at all, because it has been so long ago; that's been several years ago.
Q. Ten years.
A. What say?
Q. Almost ten years; in fact it is more than ten years ago.—Ten years ago.

A. Pretty near—I can't remember that far back.

Q. Your memory is not strong about matters that occurred that long ago?

A. No, sir; not altogether. Sometimes if I have something that will—some pointers on such as that, I remember, sometimes.

Q. Do you mean that if you are prepared in advance you can remember these things?

A. No; if I have my attention called to it in a way that I can remember.

Q. Well I call your attention to this check, which you have just identified, February 11, 1929; and ask you what memories that brings to your mind about the Seminole Boat Co.

A. I don't remember that check at all, nor any connection with the Seminole Boat Co.

Q. You received the money?

A. I received—I got my check, all right.

Q. The check was paid?

A. Mr. Simmon must have sent it to me.

Q. You indorsed the check and put it in the bank to your credit, I suppose?

A. Yes.

Mr. Underwood:

I offer the check.

(Said check was marked as respondents' Exhibit H-3 for identification.)

The Court:

If you want to proceed with this evidence offered, and allow the full scope of cross examination when Capt. Pilkington is re-examined by Mr. Botts and Mr. Matteson, it is all right with the Court.

Mr. Underwood:

We will proceed this way, as we have been doing for the last two or three minutes.

The Court:

All right.

Q. Captain, I show you another check; is that your signature?

A. Yes, sir.

Q. You received that check?

A. Yes, sir; I received that.

Q. You deposited it in your account in the bank?

A. Yes.

Q. The check is dated April 24, 1929; I call your attention to the fact that it is signed, Seminole Boat Co. by Roy H. Hawkins, countersigned Paul R. Scott. Does that bring up any memory of the Seminole Boat Co.?

A. I can't remember anything that long ago; I can't explain nothing.

Mr Underwood:

I offer that on the same basis.

(Said check was marked respondents' Exhibit H-4 for identification.)

Q. I show you another check; is that your signature?

A. That's my signature; but that's not mine.

Q. You mean the words "For deposit in bank of Pompano, Pompano, Florida", are not in your handwriting?

A. No, sir, that's not in my handwriting. This is.

Q. The words "Capt. George J. Pilkington" are?

A. Yes, sir.

Q. The check is dated September 11, 1930. Captain, I call your attention to the fact that check is signed, Seminole Boat Co. by Roy H. Hawkins, countersigned Paul R.

Scott. Does that bring back to your mind any recollection of the Seminole Boat Co.?

A. Nothing in—anywheres near in that time it doesn't.

Mr. Underwood:

I offer that on the same basis.

(Said check was marked Respondents' Exhibit H-5 for identification.)

Q. I show you another check; is that your signature?

A. No, sir; that's not my signature.

Q. Is that your wife's signature?

A. Yes, sir.

Q. Did your wife receive that and sign it for you?

A. Yes.

Mr. Underwood:

The check is dated November 4, 1930. I offer that for identification.

(Said check was marked respondents' Exhibit H-6 for identification.)

Q. I show you another check, Captain; is that your signature?

A. Yes, sir; that's mine.

Q. Check dated December 5, 1930. And I call your attention to the fact, Captain, that that check is signed Seminole Boat Co. by Roy H. Hawkins, countersigned Paul R. Scott. Does that bring back to your mind any memories of the Seminole Boat Co.?

A. No, sir.

Mr. Underwood:

I offer that on the same basis.

(Said check was marked respondents' Exhibit H-7 for identification.)

Q. I show you another check, Captain; is that your signature?

A. No, sir; that is not mine.

Q. Is that your wife's signature?

A. That is my wife's signature.

Q. On your behalf?

A. I don't know whether it was in my behalf or not; but if it was my check, why she put it in the bank.

Q. You notice the check is drawn to Capt. George J. Pilkington.

A. No, she has not got it indorsed right.

Q. That is her signature on your behalf?

A. Yes, that is her signature.

Q. Check dated December 31, 1930. That check too, Captain, is signed Seminole Boat Co. by Roy H. Hawkins, countersigned Paul R. Scott. Does that bring back to your mind any memories of the Seminole Boat Co.?

A. I don't have any recollection of any dealings with the Seminole Boat Co.

Mr. Underwood:

I offer that on the same basis.

(Said check was marked as respondents' Exhibit H-8 for identification.)

Q. Now is it your testimony, Captain, that you—still your testimony that you have no recollection of the Seminole Boat Company?

A. I don't have any recollection of it—I forget your name:

Q. Well, never mind my name; my name is Underwood.

A. Well I don't have any recollection of the Seminole Boat Co. at all; no business; on account of the orders given to me by Mr. Phipps.

Q. That's all you can remember?

A. That's what I can remember, but that's later on. That was a good bit later than that, that's the reason that I can remember, because Mr. Phipps is the one that told me them boats belonged to him.

Q. Now Captain, you testified this morning that you had a conversation with Mr. Phipps and that he told you those boats belonged to him, and that that was prior to the time that Huff took charge of the boats; is that correct?

A. It's so long ago—

Q. Is that correct, please?

A. I can't say whether it is correct or not.

Q. Do you remember so testifying when Mr. Botts was questioning you, this morning?

A. About what?

Q. Do you remember stating this morning, in answer to a question by Mr. Botts, that you had a conversation with Mr. J. S. Phipps before Mr. Huff was put in charge of the boats, and that it was on that occasion that he told you the boats belonged to him?

A. I had a conversation with Mr. Botts shortly after the boat came in.

Q. With Mr. Phipps, you mean?

A. Yes, Mr. Phipps, I meant to say.

Q. Now that conversation you said this morning was before the time that Huff took charge of the boats?

A. Yes, sir.

Q. Is that correct?

A. That's correct.

Q. Now you have said that it was on that occasion that Mr. Phipps told you the boats were his; is that correct?

A. He told me the boats was his; yes.

Q. On that occasion?

A. Yes.

Q. Now it was subsequent to that, and you have said, shortly after Mr. Huff's letter telling you that he was no longer in charge, that you had, you say, the conversation in which Riley was introduced as your secretary; is that correct?

A. Yes, sir; that's correct.

Mr. Matteson:

You mean that Riley was Phipps' secretary? You said "your" secretary.

Mr. Underwood:

"His" secretary is correct.

Q. Now you got that letter from Huff stating that different arrangements had been made, on April, 1929; is that the fact?

A. Yes, sir.

Q. The letter is dated April 2, 1929.

A. April the what?

Q. April 2nd 1929.

A. '29.

Q. So that your conversation in which you say Mr. Phipps said that the boats were his, was before April 2, 1929, was it not?

A. Mr. Phipps was in there shortly after the boats came in, with Mr. Simmon.

Q. Now you have told me that your conversation with Mr. Phipps in which he said that he owned the boats, was before Huff took charge?

A. Yes, sir.

Q. Now Huff had taken charge in February 1929, according to the letter that you got from Mr. Simmon; isn't that right?

A. That's right.

Q. So that your conversation with Mr. Phipps in which as you say he said that he owned the boats, was before February 1929, wasn't it? Isn't that the fact? Isn't that the fact?

A. I had so many conversations—

Q. Just please, Captain, answer my question. Is not that the fact?

A. I won't answer that question in that way, because I had so many conversations with Mr. Phipps, I can't remember.

Q. I am not interested in any conversation except the one just now.

A. Yes, I had several conversations.

Q. All right; I am only talking now about one conversation.

A. Well I can't remember which conversation you mean.

Q. Well I will make it clear to you. In all your testimony here in this Court room you have referred to one conversation in which Mr. Phipps as you say, said that he owned these boats; and you have said that that conversation occurred prior to the time of Huff. Now you have got a letter from Simmon dated February 11, 1929, Exhibit 38, in which Simmon told you that Huff was going to be in charge. Therefore is it not a fact that that conversation with Mr. Phipps where, as you say, he said that he owned the boats, was before February 11, 1929?

Mr. Botts:

Wait a minute; don't answer that.

Mr. Matteson:

I object to that question as argumentative.

The Court:

The objection is overruled. I think it would be well to show him the letter, to supplement the question; but on

the ground of being argumentative, the objection is overruled.

Mr. Underwood:

I don't think I could repeat that question, so I will go at it again.

Q. Captain Pilkington, I show you Exhibit 38, dated February 11, 1929. Is that the letter that brought to your attention Huff's interest in the boats?

A. Yes, sir.

Q. That's the beginning of Huff, so to speak?

A. Yes, sir.

Q. Is it not the fact, as I believe you have already testified, that you had a conversation with Mr. Phipps prior to this letter?

A. Yes, sir.

Q. And is it not the fact, as I believe you have testified, that it was at that conversation that Mr. Phipps stated he was the owner of the boats?

A. He said he was the owner of the boat at that time, and several different times.

Q. Now you haven't told us previously in your testimony, of any other conversation in which he said he owned the boats.

A. Oh yes I have.

Q. Not in your previous testimony here.

The Court:

Well, that's argumentative.

Mr. Underwood:

Yes, I appreciate that, your Honor.

Q. Now Captain, according to my notes you have referred—can you hear me from here?

A. Not altogether I can't.

Q. Now Captain, according to my notes you have referred to six different conversations with Mr. Phipps, and I want to go into these one by one, and see if we can clear them up. We have talked just now about your conversation with Mr. Phipps prior to Huff's time. Have you told me everything that you recall of that occasion?

A. I told you that I have had several conversations with Mr. Phipps, at different times, ever since the boat has been in my place; and I can't recall one conversation from the other, because it has been so long ago.

Q. And have you told me everything that you recall about the conversation that you say you had before you got Simmon's letter introducing Hugg?

A. No, I haven't told you all.

Q. Do you remember now some more?

A. I can remember when I was building a drydock, Mr. Phipps was in there one day—

Q. Now wait; Captain, I am asking you about this particular conversation, the one that occurred prior to the time you got Simmon's letter about Huff.

A. Well, I have had several conversations, but I can't remember what conversation that is.

Q. I am just asking you now Captain about that one conversation. You remembered very clearly for Mr. Botts, that it occurred, I think you said, within thirty feet of the water; do you remember that?

A. Yes; he always talked to me when he came off the boat; and that's where he came off.

Q. Well, do you have a clear recollection that that conversation before you got Simmon's letter introducing Huff, was within thirty feet of the water?

A. I can't tell exactly what he said, word for word; but the first—one of the first times he talked to me about he wished my drydock was large enough to accommodate his boat, the Seminole; that I remember distinctly, but I can't tell you what time that was; but he told me that.

Mr. Underwood:

Well if your Honor please, I move to strike that out, on the ground that the time is not fixed. Mr. Phipps was the record owner at least of the boat, at one time; and time is important in this case. It has no probative value unless the time is fixed.

The Court:

I think I will let that go to the argument of the case, and not on a ruling to strike it. The motion to strike is denied.

Q. Well Captain Pilkington, have you told me all that you remember about your conversation with Mr. Phipps that you testify occurred prior to the time you got Simmon's letter introducing Huff?

A. It would be impossible for me to tell you the conversations that I have had with Mr. Phipps; but this—

Q. Captain, I am not asking you that; I am asking you a very simple question; do you hear me?

A. I hear you, yes.

Q. I am asking you simply whether or not you have told us everything that you remember about this particular conversation.

A. The conversations that I referred to Mr. Botts, was that I had the conversations with him, but I didn't specify any time that he had said what he had.

Q. You don't remember the time that he said when he was the owner of the boats; is that a fact?

A. He has told me that several times.

Q. You don't remember the time; is that a fact?

A. No, I don't remember the date; if I did I would tell you.

Q. Now you have told us, Captain Pilkington, about a conversation that occurred when Mr. Phipps brought Mr. Riley down and introduced him as Mr. Phipps' Secretary?

A. Yes, sir.

Q. I would like to ask you now about that conversation. I think you have testified that that occurred after you received Mr. Huff's letter telling you in effect that he would no longer be in charge; is that right?

A. That's right.

Q. How long after you received that letter do you say that conversation took place?

A. That I couldn't say how long it was; it was several days after that, might have been a week or two weeks; I just don't remember.

Q. You think it was within shall we say a month, at the outside?

A. I couldn't say.

Q. Well, the letter Exhibit 39 is dated April 2, 1929; (handing exhibit to the witness); do you remember that letter?

A. Yes, sir.

Q. Now do you say that that conversation was within a week or two weeks of the time you received this letter?

A. I just don't remember how long it was; but he was there and I wouldn't have known Mr. Riley if he hadn't introduced me to him.

Q. Well Captain, I want your best recollection, that is all I want.

A. I have told you.

Q. —of the time when that conversation occurred.

A. Well I have told you all I knew.

Q. Was it in the year 1929?

A. Sure, it was shortly after that, but I can't tell you how many days.

Q. Was it during the month of April?

A. I couldn't say.

Q. Do you think it might have been in May?

A. I can't say anything at all about it; I don't remember, it has been so long ago, and I haven't seen these letters for three years, and I haven't brought anything to mind; and I really forget how many days it was.

Q. Captain, I know you can't tell me the date, or how many days; but I am trying to put a boundary to it at both ends. Now it must have been, you say, after April 2, 1929?

A. It was.

Q. Now can we not agree on some date before which this conversation took place?

A. No, I can't tell you.

Q. Was it before June?

A. That I couldn't say.

Q. Do you remember where that conversation took place?

A. I know where the conversation took place, but I can't tell you anything about when it took place.

Q. Where do you say it took place?

A. Where did—

Q. Where?

A. At my place, about thirty feet away from the corner of my building, just where he got off the boat; he generally comes up,—when he is over on the boats he comes across there where the platform is, and that's the opening of the building.

Q. And that's where this conversation took place?

A. Yes, that's where the conversation took place.

Q. Now you said yestedray I believe that it was on that occasion that Mr. Phipps told you that Riley would come once a month to look at the boats; is that correct?

A. That's right.

Q. And it was on that occasion you say that Mr. Phipps told you that Riley had been appointed to take charge of the boats; is that right?

A. That's right.

Q. Now you spoke yesterday, Captain, of a time when somebody was in a hurry to get the boat, and the captain was there, and you gave him some men to help him get the boat out in a hurry; do you remember that?

A. Yes, sir.

Q. Do you remember this letter Exhibit 41, from Mr. Riley, asking you for an explanation of a certain charge?

A. I believe, if I can remember right, Mr. Riley didn't know about the conversation between Mr. Phipps and I and Captain Bryant.

Q. And you got this letter from Mr. Riley?

A. Yes, sir.

Q. And you wrote him this letter, Exhibit 42, is that right? Did you write him that letter?

A. Oh yes, I wrote him that letter.

Q. Now have you got that particular conversation in mind with me now?

A. Yes.

Q. That's the one I am talking about. Now you told me yesterday or you told Mr. Matteson yesterday, and all of us of course, that somebody said he was in a hurry and asked for help,—men, to help get the boat ready quickly; do you remember saying that?

A. That was Mr. Phipps that said that; he was in a hurry to get the boat out.

Q. Now you say Mr. Phipps told you he was in a hurry?

A. Yes, and Mr. Bryant asked me—said the same thing, that Mr. Phipps was in a hurry to get the boat to go out on a trip; he asked me if I could get some men for him, and I done it.

Q. Now Captain, I want to read to you and call your attention to a paragraph of this letter Exhibit 42, and then I am going to ask you a question about who was in a hurry, and who said he was in a hurry. "When Mr. Phipps was here on the day the captain was in a hurry to get the boat ready to go; he asked me to let him have my men to help him, which I did." Now who was it that was in the hurry, and said so?

A. Both of them, Mr. Phipps, and Mr. Riley, said so afterwards.

Q. Do you remember that they were getting the boat ready to go on a charter at that time?

A. I don't remember anything about it; I had nothing to do with the charter business or anything like that.

Q. Do you remember that a charter was mentioned in the conversation?

A. No, sir; I don't. It might have been mentioned but I didn't pay no attention to it.

Q. You do recall, do you not, that the Seminole was chartered frequently?

A. I don't recall anything at all about the charter business.

Q. Now Captain, you referred to a conversation that occurred following, as I understand it, your letter of March 17, 1933, which is Exhibit 43, in which you said that there was a discussion between you, Mr. Phipps and Mr. Riley, about the rates being too high; do you remember that conversation?

A. Yes, sir.

Q. And I think you fixed the date of that conversation with reference to this letter Exhibit 43; will you look at that and tell me if that is the letter that helps you fix the time?

A. That's the letter I wrote before the reduction was made.

Q. And was it after this letter of March 17, 1933 that you say you had this conversation with Mr. Phipps and Mr. Riley about the rates being too high?

A. Yes, sir; it was after that.

Q. After this letter?

A. Yes, sir.

Q. How long afterward?

A. That I couldn't remember, how long it was; they were down here together.

Q. Do you remember whether it was two or three days or a week or a month?

A. I don't know how long; I merely remember the conversation as a slight conversation between the two or three of them.

Q. Are you sure that you had such a conversation as that in the early part of 1933, following this letter?

A. Let's see.

Q. That's the same letter I have just showed you, Captain, Exhibit 43 isn't it?—Yes.

A. This I wrote before the reduction of the prices, and then Mr. Phipps and Mr. Riley came down after I wrote this letter.

Q. And you don't remember how long after?

A. No, I don't remember.

Q. Are you sure that it was they who came down?

A. It was Mr. Riley and Mr. Phipps.

Q. Had you already received Exhibit 56, the letter of March 31, 1933, when they came down?

A. Well—

Q. Had you already received that letter?

A. Yes.

Q. —Exhibit 56?

A. I received that letter after I wrote—

Q. Had you received Exhibit 56 before the conversation you speak of?

A. Yes, sir.

Q. Is that right?

A. Yes, that's right, as near as I can remember.

Q. What boats did you have stored at that time, amongst those in which the Phipps family was interested?

A. I had the Seminole and the Iolanthe; I don't remember whether the two boats—the fish boat and Mrs. Guest's boat—his sister's—was in there at that time or not; I don't remember.

Q. Do you remember where that conversation took place?

A. Which conversation is that?

Q. That's the one following these two letters that I have just showed to you.

A. That there was in the same place, right where they come out of the building.

Q. How did you three get together? Whom did you meet first? Or did you meet them both at the same time?

A. I met both of them; they both came off together, and I was there on the outside where I generally stay to meet them when they come out.

Q. Had you seen them as they went aboard?

A. Yes, I had seen them when they went aboard.

Q. Did you give them the keys?

A. I think I did; I am not certain of that at all; they generally kept the boats open—or they had.

Q. Where were you when they were in the shed?

A. I was outside, right alongside of the building.

Q. Could you see into the shed?

A. Not altogether; I can't see in the boats.

Q. Do you remember where they went?

A. They went—they said they went on the Seminole and they went on the Iolanthe.

Q. They said they went on both?

A. Yes.

Q. Who said that?

A. They told me so.

Q. Both of them said that?

A. Yes.

Q. Where were three persons present at that conversation, you say?

A. Myself and Mr. Riley and Mr. Phipps.

Q. Now I would like you to tell me again what it was they said as nearly as you can remember.

A. What was said?

Q. Yes.

A. Mr. Phipps asked me—told me, that I was charging too much, and if I wanted to take fifty dollars for the storage of the Seminole, I could do so, or he would take

the boat out and take it to Palm Beach and anchor it off in front of his dock rather than pay the $50. And that was in the middle of the season.

Q. What else was said?

A. And I told him I would let him know; and Mr. Riley turned around as they were going out and he said "Captain, do the best you can".

Q. And is that all that you now remember of that conversation?

A. That's all I remember that was said then.

Q. Captain, at the time of the fire, is it your testimony that you understood that Mr. J. S. Phipps was the owner of the Seminole?

A. He had already told me that he was the owner of the Seminole.

Q. Is it your testimony that at the time of the fire you understood that Mr. J. S. Phipps was the owner of the Seminole?

A. That's what I understood; that is what I had been led to believe, by Mr. Phipps alone.

Q. When was it that a doubt first arose in your mind as to who the real owners of the Seminole were?

A. I didn't give it a thought, because of what Mr. Phipps had told me, to take no orders from no one else but Mr. Riley, his secretary.

Q. And when was it that you first began to wonder who the real owners of the Seminole were?

Mr. Botts:

I object; there is no testimony that he has ever said he began to wonder. He is putting a thought in that has never been testified about, and I object to it.

The Court:

I think that is well taken.

Mr. Underwood:

It is cross examination, your Honor; I can test his recollection.

The Court:

Your question on cross examination must be based on facts or matters in evidence. I don't recall that. Sustain the objection.

Q. Do you keep copies of your bills?

A. No, sir; not of the bills.

Q. I may be wrong about this, Captain, but my recollection is that you have testified that all your bills were sent either to Mr. Simmon or to Mr. Riley, and were addressed either to them or to the Palm Beach Company or the Biscayne Boulevard Co.

A. I can't understand you.

Q. I am sorry; strike it out and I will try it again. I may be wrong, Captain, but my recollection is that you testified that you sent all your bills either to Mr. Simmon or to Mr. Riley?

A. I did up to the time that he told me not to.

Q. Up to the time Simmon told you not to?

A. Yes.

Q. And thereafter you sent them all to Mr. Riley?

A. No, Mr. Huff told me to continue to send it down to Mr. Simmon; and then when Mr. Riley—or Mr. Riley and Mr. Phipps came in he told me to send—not to bother with Mr. Huff any more, that he had placed everything in the hands of Mr. Riley.

Q. Now Captain, about your bills; you sent them all addressed either to Mr. Simmon or Mr. Huff or Mr. Riley, is that right?

A. I had no place—yes; I never had no place else to send them.

Q. And your bills were sometimes addressed to those men, and sometimes to the Palm Beach Company, or the Boulevard Mortgage Company; is that right?

A. That's right. I don't know how my wife addressed them; that's what I can't say.

Q. Did you ever see a bill for the storage of the Seminole that was addressed to John S. Phipps?

A. That I don't remember.

Q. Did you ever receive any payment from John S. Phipps personally for the storage of the Seminole?

A. That I couldn't say for certain.

Q. You did receive payments from John S. Phipps on some occasions for the Iolanthe, did you not?

A. Yes, sir.

Q. Isn't it a fact, Captain Pilkington, that you always billed for the storage of the Seminole and the Iolanthe on separate bills?

A. Sometimes we did and sometimes we didn't.

Q. Do you remember any occasion when you put both boats on the same bill?

A. That I couldn't say, it has been so long ago.

Q. Now Captain, yesterday you identified this check of June 24, 1935, Exhibit 59-A, as one which you received on the day of the fire; is that right?

A. Yes, sir.

Q. And you were in Fort Lauderdale at your yard when you received it?

A. Yes, sir.

Q. How did you get your mail at your yard at that time?

A. I go down in the evening, sometimes my wife goes down and gets the mail and brings it up.

Q. And do you say that this came to you by mail?

A. Yes, sir—I can't say for certain; I think it was, for the simple reason that my wife was up at Palm Beach, and Mr. Simmon agreed to send it down to us.

Q. You mean Mr. Riley?

A. Or Mr. Riley—yes; Mr. Riley.

Q. But she wasn't up at Palm Beach that day, was she?

A. My wife was.

Q. On the day of the fire?

A. No, sir.

Q. She had been to Palm Beach and had seen Mr. Riley and had agreed with him on a $60. figure, had she not?

A. Yes.

A. Isn't it a fact, Captain, that Abel brought this check with him and handed it to you?

A. That I don't know; I don't remember.

Q. Now following the return of the Seminole to your yard, which I think we all agree was about the 16th of April, I think you have said that Mr. Diley did not come down between that time and the time of the time; is that right?

A. He hadn't come down.

Q. Now you have spoken of two visits by people from the Palm Beach Company and from Miami, the Boulevard Mortgage Co., or some such persons, on behalf of the Seminole, between the time of her return and the time of the fire; do you remember that?

A. They sent one man up.

Q. Well, one man came from Palm Beach with a letter from Riley?

A. That's right.

Q. And you say there was another man who came up with a letter from Hawkins?

A. Yes, sir.

Q. I think you testified that the man with the letter from Riley came down first, and that the man with the letter from Hawkins came next; is that right?

A. Yes, that's right.

Q. And the man with the letter from Riley took off a couple of cots, or something like that, and carried them away; is that right?

A. That's right.

Q. And I think you said that the man who came with the letter from Hawkins, took off a small package?

A. Yes.

Q. Do you remember what that man looked like?

A. I couldn't say.

Q. Isn't it a fact, Captain, that there were two men there?

A. No, sir; there was one man; there might have been one in the car that I didn't see; but one man came up.

Q. Isn't it a fact that two men went aboard that day?

A. No, sir; one man went aboard.

Q. Don't you remember a negro that was with the man who presented the letter?

A. No, sir; I don't remember a colored man at all. He didn't have no colored man with him.

Q. You don't remember what this man looked like?

A. No, sir; I do not.

Q. And you say he took a very small package off with him?

A. Pretty small package; yes, sir.

Q. How big would you say that package was?

A. Well I took it to be—

Q. Just tell me how big it was, Captain.

A. Well—

Q. As big as a cigar box?

A. No, not quite; about a third the size of a cigar box.

Q. A half-pound box of candy?

A. Well I can't say that.

Q. About a third the size of a cigar box; all right.

A. A third the size of a cigar box.

Q. And you say that is all he took off?

A. That's all I seen him; yes.

Q. And those were all the visits of anybody on board the Seminole with any letters of authority from either office, is that right?

A. Yes, sir.

Q. Now Captain, you have told us that you didn't have any printed form of contract for the storage of your boats; is that correct?

A. Not at that time.

Q. You have now?

A. I have now; yes.

Q. Were your contracts with all the boat owners, substantially the same?

A. Substantially the same. Well, I won't say that; there might be some difference in them; I can't tell. Some pay me in advance, and some didn't; so that altered the contract. But they all got the same statement.

Q. Did you undertake in your contracts to do any more for the boat of one man than you did for the boat of another?

A. No, sir; I always treated everybody the same.

Q. A part of your service was to air out the boats, and turn over the engine if the owner wanted that done, by hand; and to pump out the bilges when necessary; is that right?

A. I charge for storage; and anything—turning over the engines, keeping the water out of the boat, keeping the boats clean, I made free gratis and I never made any charge for it; unless the boat sprung a leak and we had to get more men to get it up, then I made a charge.

Q. How large a staff of men did you have, Captain, regularly employed?

A. One other man besides myself.

Q. But quite apart from whether you were paid for it or not, isn't it a fact that one of the things you did for these boat owners was to air out the boats, and turn over the engines by hand when they wanted you to, and pump out the bilges as necessary?

A. That's right.

Q. Now Captain, did you verify the Answer that was filed on your behalf in this suit? Did you read it and swear to it?

A. I don't remember it at all, it has been so long ago.

Mr. Underwood:

May we have the original of the pleadings, your Honor?

* * *

Q. Captain, I show you this verification to your Answer to the libel in this case; is that your signature?

A. That's my signature; yes, sir.

Q. Will you read that and tell me then—read that first, and then I will ask you a question about it.—Did you read this Answer before you wrote your name there?

A. I don't know whether I did or not; I don't remember.

Q. I call your attention to the second paragraph here, where it says that "as one of the respondents named in the libel in said cause, that he has read the foregoing and attached Answers, knows the contents thereof"; does that refresh your recollection as to whether you read this before you signed it?

A. I don't remember whether I read it or not, to tell the truth; I don't; I can't remember.

Q. You did sign this?

A. I signed it, all right; that's my signature.

Q. And did you swear to the truth of it?

A. I think I must have done.

Q. Now you remember that you filed in this case a petition against Mr. Phipps, in addition to your Answer?

A. Yes, sir.

Q. And did you sign that? Is that your signature?

A. Yes, sir.

Q. And did you read that and know the contents of it before you signed and swore to it?

A. I don't remember whether I read it or not; I know I signed it; that's my signature.

Q. You don't remember whether you read those papers or not?

A. I don't remember whether I did or not.

Q. And of course that was some time after the fire, was it not?

A. Yes, some time after the fire.

Mr. Matteson:

Your Honor, I think if there are any statements in the pleadings on which Mr. Underwood intends to comment, it would be only fair to call them to the attention of the witness at this time.

Mr. Underwood:

That is what I am about to do.

Q. Now Captain, in the libel filed on behalf of the people whose boats were burned, it says, as to you, in Article 7 paragraph numbered 3, "In that the said respondent failed to inspect the Yacht Seminole to determine whether the gasoline had been drained from her tanks before placing her in the shed of the yacht storage basin. That's what it says in the libel. Now in your answer to that libel, in Article 9, it says, this respondent denies "that the said respondent failed to inspect the Yacht Seminole to determine whether the gasoline had been drained from her tanks before placing her in the shed of the yacht storage basin". Is it a fact that you did inspect the Seminole?

A. No, sir; I did not.

Q. To determine whether the gasoline had been drained from her tanks before placing her under the shed?

A. I did not.

Q. Do you realize that you have denied the allegation in the libel, that you failed to do that?

A. I didn't inspect it, because I didn't have any keys to get in there.

Q. Do you realize, Captain, that you have sworn to a plea in which you have denied the charge against you, that you failed to do that?

A. That I failed to do it?

Q. Do you realize that the people whose boats were burned, have alleged that you failed to inspect the Seminole to determine about her gasoline before you put her in the shed? Do you realize that?

A. I can't say about that.

Q. And do you realize that you have denied that that is true—that charge against you?

A. No, I don't realize that at all.

Q. Well, do you now say that you did or did not inspect the Seminole to determine—

A. I didn't inspect it.

Q. Wait a minute, please: to determine whether or not there was any gasoline in her tanks?

A. I didn't inspect her; I couldn't get in the engine room.

Q. You could only tell about the gasoline in the tanks by being in or looking in the engine room, couldn't you?

A. That's right.

Q. Now Captain, in the libel there is another charge made against you, in that you failed to inspect the Yacht Seminole for fire hazards before placing her in storage with the libelants' vessels in the shed. I call your attention to your answer to that charge, where you say, this respondent denies "that the said respondent failed to inspect the Yacht Seminole for fire hazards before placing her in storage with your libelants' vessels in the shed of the yacht storage basin", and so forth. Do you realize that you have denied that you failed to inspect the Seminole for fire hazards?

A. I don't deny that at all; I inspected every inch of that boat outside of the engine room, and that I couldn't get in because I didn't have any key.

Q. Did you inspect her for fire hazards?

A. I inspected her all the way through.

Q. For fire hazards?

A. Well there wasn't—for fire hazards or any other kind of hazards.

Q. And did you satisfy yourself there was no fire hazard?

A. I satisfied myself as far as I could see that there wasn't no fire hazards anywhere where I went in the boat.

Q. How many times did you go aboard the Seminole and inspect her from the time she arrived there on the 16th of April until the day of the fire?

A. Just almost every other day; I can't remember that.

Q. And you were aboard of her from time to time?

A. From time to time; yes, sir.

Q. Two or three times a week?

A. Well, oftener than that.

Q. Oftener than that?

A. Sometimes we went on every day, and other times we didn't go on, because I had the boat for eight years, and I was well acquainted with the boat.

Q. You thought she was a good boat?

A. I think she was a good boat.

Q. You saw nothing wrong with her prior to the time of the fire?

A. I didn't see anything wrong with her at all.

Q. You had been in her engine room on previous occasions?

A. Just looking in, but I wasn't in altogether, because I never needed the engines turned over; they told me not to.

Q. And do you mean to tell me that you were never inside her engine room?

A. Oh I was in the engine room but not for any inspection; just to see if there was any odor in there or not; bilge gas or gasoline gas.

Q. And had you ever smelled any such in her engine room?

A. Never in that engine room; no, sir.

Q. And had it been your practice in previous years to go into that engine room and inspect it for bilge gas and gasoline odor?

A. I always go in the engine room, I always did there too.

Q. During all the time that she was in your yard?

A. The whole eight years; yes, sir; I go in every boat in the place.

Q. Now you testified yesterday as I recall it, that you did not put the boat under the shed until you got the keys; is that right?

A. That's right.

Q. And you didn't want to put her under the shed until you had had an opportunity to make sure that she was aired out?

A. I aired it out myself.

Q. Now just what did that consist of—that airing out?

A. Opening all the windows, and the doors, and one hatch.

Q. Which hatch was that?

A. That was the hatch over the engine room—that is a ventilator; it was a glass ventilator over the top; it wasn't where they went down in.

Q. You mean the skylight, Captain?

A. Yes, sir; the skylight.

Q. It comes up to a peak?

A. Yes.

Q. And it is made of a metal frame—

A. That's right.

Q. A metal frame with glass panes in it?

A. Yes.

Q. And you opened that?

A. No, I can't say that I did open that.

Q. You opened windows?

A. I opened all the windows down below.

Q. Did you open the windows in the alleyway that runs past the engine room?

A. I opened every window there was along the side of the boat, each side.

Q. Every window on both sides?

A. Yes, outside of the engine room, and I couldn't get in there to do that.

Q. Did you try?

A. Well, I didn't have any key.

Q. Did you try to get in the engine room?

A. Well there is no way to get in the engine room only through a little window where Capt. Abel went into, and I don't remember that window.

Q. You don't remember that window?

A. No, sir; I don't remember that window.

Q. What did that window look like, Captain?

A. I couldn't tell you.

Q. What is your recollection of it?

A. No, sir; I can't recollect that window at all.

Q. Was it a glass window?

A. I couldn't say whether it was a glass window, or whether it was a board window.

Q. You had had that boat at your yard from time to time since 1928, is that right?

A. Yes, sir.

Q. And you had been through that boat a great many times?

A. Yes, sir.

Q. And do you still say that you did not know about that window?

A. I still say that I don't remember that window; if I did I would tell you so.

Q. Captain, I understand that you now say you don't remember the window?

A. I don't remember that window.

Q. Did you know about that window at that time?

A. No, sir; I did not.

Q. You deny that?

A. Well, because I had no occasion to.

Q. Now you have told us, Captain, that you got some keys with a letter dated April 20, 1935, which is Exhibit 54, and you said that there were two keys; is that right?

A. Yes, sir.

Q. Between the time you got those keys, and the time of the fire, did you have any conversation with Mr. Hawkins?

A No, sir. I didn't have any conversation at all.

Q. Did you have any conversations with Mr. Phipps?

A. No, sir.

Q. With Mr. Riley?

A. No; Mr. Riley wasn't there.

Q. Did you have any conversation with him between the time you got the keys, and the time of the fire?

A. I had a conversation over the wire, or over the 'phone, before the fire.

Q. That was before you got the keys, wasn't it?

A. Yes, sir.

Q. I am talking now, Captain, about between the time you got the keys and the time of the fire. You have told me before that nobody came down to look at the boat. I want to know whether you had any conversation with anybody about the boat by telephone or otherwise.

A. No, sir; I don't remember; there is so many comes in there and asks questions; I don't remember who they were or what they were.

Q. But you don't remember any such conversation now?

A. I don't remember any conversation.

Q. I assume you have looked through your files to find the correspondence that you could find between yourself and anybody on behalf of the Seminole, around that time. Did you have any correspondence with anybody between the time the keys were received and the time of the fire, about the Seminole, except your letter acknowledging the keys?

A. That I don't remember. I acknowledged the keys from Mr. Hawkins, because that's where I was told the keys were, by the man that came up there from there.

Q. But after you did that, did you have any other conversation?

A. I just don't remember whether I did or not.

Q. Did you have any other correspondence?

A. I don't remember.

Q. How soon after you got the keys did you go aboard the boat?

A. That very day.

Q. How soon after you got the keys did you write the letter acknowledging them?

A. That I couldn't say.

Q. Had the keys been left with you in previous years?

A. Yes, sir.

Q. How many keys had been left with you in previous years?

A. Quite a number of years; two bunches.

Q. Was the key to the engine room hatch left with you in previous years?

A. Always; yes, sir.

Q. But you say that in this year you only got two keys?

A. I only got the two keys.

Q. You got those keys two months before this fire, did you not, Captain?

A. That I can't say, whether it was two months or not.

Q. You received the keys on or before April 23rd, did you not?

A. Yes.

Q. Showing the witness Exhibit 61. Now in that intervening two months you didn't write anybody any letter asking for more keys, did you?

A. I don't remember whether I did or not.

Q. And you didn't call up Riley or Hawkins or anybody else asking for more keys, did you?

A. I told Mr. Riley that I didn't have the keys, and I was waiting for him to come down here, every day.

Q. You told me just a few minutes ago that that conversation was before you got the keys. Isn't it a fact, Captain, that from the time you got those keys, which you acknowledged on April 23rd, you neither wrote nor asked orally, anybody, for those keys?

A. I don't remember anything about that. All I know, I had the keys to go in the boat and open up what part the keys would fit.

Q. You can't point to any letter or any conversation in which you asked for another or any more keys, can you, Captain?

A. No, because I expected Mr. Riley down, every day.

Q. But you didn't call him up and you didn't write to him during that entire period of sixty-odd days, did you, Captain?

A. No, I did not, because he said he would be down in a few days.

Q. He said that before you got the keys?

A. Yes, he said he would be down in a few days, and I expected him there.

Q. Where are those keys now?

A. I don't know.

Q. What did you do with them?

A. I give them to Capt. Abel when he went on the boat.

Q. And you know that he got into the engine room with those keys, don't you?

A. I watched him when he went past, and he had Mr. Thomas to stoop down to open the hatch, and whether—they did not open it; and then he went along on the deck, and went down in the aft part of the room, and went up to the engine room; that is what I understand, but I didn't see Capt. Abel after he went inside of the door.

Q. You have every reason to believe that Capt. Abel got into the engine room, haven't you?

A. (Witness spreads hands.)

Mr. Matteson:

I object to that, if your Honor please.

The Court:

Well, he hasn't answered. What do you say on that, Mr. Underwood?

Mr. Underwood:

I won't press the question.

Mr. Betts:

I won't object to it, either.

The Court:

It has been objected to, and withdrawn, now.

Mr. Underwood:

You can ask him that question later on.

Q. Captain, I think you agree that it's perfectly proper to store a vessel with gasoline in her tanks, if her fittings are tight, don't you?

A. Yes, sir. I would rather have a full tank than an empty tank.

Q. Do you remember that once you put 200 gallons of gasoline in the Seminole while she was laying at your yard, and that she lay there some 45 days with the gasoline in her?

A. That was because they wanted to go away on a trip.

Q. Do you remember that.

A. I don't remember the day, no; but I know they got some gasoline, but how much I don't know.

Q. Do you remember that on December 30, 1928 you supplied the Seminole with 200 gallons of gasoline, and that she lay in your shed until the 15th of February 1929?

A. Outside.

Q. With that gas.

A. She lay outside; she didn't lay in the shed.

(Brief informal recess was had.)

Q. I think you said, Captain, that you were getting into your small boat when the first explosion occurred; is that right?

A. Yes, sir.

Q. Is that a rowboat?

A. Rowboat.

Q. Where was the rowboat with reference to the position of the Seminole?

A. About twenty feet off the Seminole, alongside.

Q. Was there a catwalk there in the shed?

A. Yes, in the center.

Q. You walked down the catwalk and got in your boat?

A. No, I got down the ladder and went into my boat; small rowboat.

Q. Down the ladder from the catwalk down to the water?

A. Yes.

Q. How high was that catwalk?

A. About—well from high water it was about eighteen inches—from high water.

Q. Do you remember how the tide was at the time of the first explosion?

A. That I don't remember.

Q. This inspecting of boats that you did, did you do all that personally, or did your man help you?

A. I done it personally.

Q. Did your man go around the boats too?

A. No, sir.

Q. He never went around the boats?

A. No, sir, only to pump out the water; colored man; just to pump out the water.

Q. If in the course of your inspections you found some water in the bilges of some boat, you would send him to do the pumping; is that what you mean?

A. Yes, sir.

Q. And that was done with the boat's pump?

A. Beg pardon?

Q. How was that done?

A. By hand.

Q. By hand?

A. Yes, sir.

Q. No operation of any motor?

A. No, sir.

Q. Well did all these boats that were in your shed lay up against a catwalk, or did you have to climb from one to another?

A. Some of them were along the walk, and some over on the other side, alongside of it.

Q. And sometimes in order to go on the Seminole you might have to climb over two or three boats?

A. No, you would get in a rowboat and go over to it.

Q. Row over to it?

A. Yes, sir.

Q. How did you get aboard the Seminole from a rowboat?

A. Easy.

Q. Over her stern?

A. Yes, sir.

Q. It was quite a climb, wasn't it?

A. No, it wasn't so much.

Q. How many feet would you have to climb up over the rail of the Seminole?

A. I should say about three to four feet; that was nothing.

Q. Three to four feet climb was nothing? You are pretty spry, are you, Captain, for your years?

A. That don't make any difference.

Q. You can climb three or four feet without trouble, can you?

A. Sure.

Q. Maybe a little more?

A. I have done it.

Q. You wouldn't have any difficulty climbing over a three-foot sill from the window into the engine room, would you, Captain?

A. No, because there wasn't no way to stand, only by getting on another boat, and go to that window, providing you went inside; if you went inside—

Q. I am talking about the window from the alleyway into the engine room.

A. From where?

Q. From the alleyway on the starboard side of the boat, into the engine room.

A. From the engine room?

Q. From the alleyway on the starboard side of the boat, into the engine room.

A. There was—that was on the inside of the boat.

Q. If there was a window there, and it was only three feet above the floor of the alleyway, it wouldn't be any trick for you to climb over that three-foot window, would it?

A. No, but I never had no call to.

Q. Were you out in the river in front of the basin when the explosion occurred?

A. No, sir; I was in under the shed.

Q. You were under the shed?

A. Yes, sir.

Q. Were you going to go aboard the Seminole yourself?

A. No, sir; I was going on my dredge; I was dredging at the time?

Q. Where was your dredge?

A. On the outside of the building. I had dredged all under the Seminole, and for 150 feet up, and I was going on the outside and continue.

Q. You were rowing toward your dredge, were you?

A. Yes, sir.

Q. Were you facing the shed or away from the shed?

A. That's on the side of the shed.

Q. Well from where you were when you heard the explosion, how much of the shed could you see?

A. I didn't see much of it; I didn't see much of it.

Q. You couldn't see much of it? You mean that—

A. I was down at the stern of the boats; there was a boat laying there, a houseboat, right where I got on, and it was very high,—about as high as the Seminole, almost; and I couldn't see out there.

Q. Was that houseboat between you and the Seminole?

A. Yes, sir.

Q. When the explosion occurred?

A. Yes.

Q. Could you see the Seminole?

A. I could see about forty feet of it; the stern.

Q. Forty feet of her stern?

A. Yes.

Q. Well then that wouldn't be as far as her stack, would it?

A. Oh my no.

Q. You couldn't see her stack, and you couldn't see forward of her stack, is that right?

A. Yes, sir.

Q. What was the first thing that you did when the explosion occurred?

A. I jumped up on the walk and run back, and was undoing the lines to push out a boat that was laying alongside of it, and I looked up and my wife called to me and said "There is a fire over the top of your head": and by that time the breeze had blew the sparks and everything all the way down, everything was on fire; and there was a flame went over the top of the walk and caught on the boats on the other side, and I ducked under the flames and went on out.

Q. You got out along the catwalk?

A. Yes, sir.

Q. You had a narrow escape yourself? The fire spread very rapidly?

A. It spread so quickly you couldn't see it; it was all in one blaze in no time; didn't have time for nothing, the heat was so great.

Q. As I visualize your shed, Captain, the Seminole was on the side furthest from your house; is that right?

A. Yes, sir.

Q. So that the fire as it spread was spreading toward your house?

A. The fire spread the full length of it, and all around it, at the same time; it blew all around it; it blew the cabins off of the three boats.

Q. There were other explosions following that on the Seminole?

A. I don't remember—no, not on the Seminole; no, sir.

Q. You mean you only heard one explosion on the Seminole?

A. That is all.

Q. And did you hear other explosions after that?

A. I didn't, but somebody—some others told me so, but I didn't myself.

Q. Well, we can't take what others told you, Captain.

A. No, I can't tell you.

Q. You don't remember hearing but the one; is that right?

A. Only the one, is all.

Q. Did you examine the Flamingo between the time of the first explosion and the time you had to leave the shed because of the fire?

A. Yes, sir; I examined that; I went all over all the boats.

Q. No; maybe you didn't understand me. After the explosion occurred, and before you had to leave the shed, did you look at the Flamingo?

A. I looked up and seen half the cabin going.

Q. Was she burning then?

A. Yes, sir.

Q. You mean half the cabin was afire?

A. Half the cabin was blowed off and was afire.

Q. When you say, blowed off, you mean it was afire?

A. Yes, it was blowed off; the explosion from the Seminole blew the front of the Seminole all to pieces, and then blew the half of the cabin off of the Flamingo.

Q. By the front of the Seminole, you mean the bow? The engine room is up nearer the bow of the boat than the stern of the boat?

A. I don't know exactly the distance.

Q. Captain, I show you respondents' Exhibit A for identification; does that look like the Seminole, to you?

A. Well it looks something similar to the deck plan; it is similar.

Q. Now tell me what you saw.

A. I seen the explosion come up, and all of this was blowed off.

Q. Indicating from the engine room all the way to the bow.

A. Yes, sir.

Q. You mean the deck was blown completely off?

A. Yes, sir.

Q. Did you notice what happened abaft the engine room,—whether anything was blown up back there?

A. There was nothing back here, because the wind was blowing in the front of the building, up the river.

Q. And she was stern-out?

A. Yes; stern out.

Q. So the wind was blowing toward the bow?

A. Yes, sir.

Q. Well I want to get this straight, Captain; do you mean that the force of the explosion blew up her entire deck from the after part of the engine room to her bow?

A. It blew up—no, it blew up this here, was, all I understand, was steel; I am not certain of it.

Q. Indicating over the engine room. All right now, go on.

A. And then this here blew up here.

Q. Excuse me, Captain, but "this here" doesn't mean anything unless I interrupt you and tell the reporter what you are pointing to; so if you could say where you mean, it would be clearer; and I think counsel might like that better than for me to try to interpret what you say.

A. The explosion as I seen it from where I was a standing, blew up here and kind of spread.

Q. Indicating above the engine room.

A. It spread after it got up.

Q. What was it that spread? You mean there was—

A. The flame.

Q. The flame.

A. Yes.

Q. And the flame swept forward very fast, is that what you mean?

A. Yes.

Q. That is what you meant when you said it blew the forward end of the boats off?

A. Yes, sir.

Q. Who turned in the fire alarm, Captain?

A. Beg pardon?

Q. Who turned in the fire alarm?

A. My wife.

Q. And how long after the explosion was it that the fire department arrived?

A. I think it was about five or six minutes.

Q. They got there very fast?

A. They got there very quick.

Q. How far was the fire department from your shed, approximately?

A. They got as close to the shed as the heat would let them; and that there was about—I don't think it was as wide as this room.

Q. Well, how far away was the fire department? I mean how far did they have to travel in that five or six minutes, to get to your place from Lauderdale?

A. Fort Lauderdale? Yes, sir.

Q. And about how far?

A. About three miles.

Q. About three miles from Fort Lauderdale?

A. Yes, sir.

Q. What fire protection did you have at your shed?

A. Well I had fire extinguishers about that high (indicating about 30 inches); I had six of them.

Q. Did you have any water?

A. Yes, sir; I had—I have water, all right.

Q. Had sprinklers?

A. No, sir, I have no sprinklers.

Q. Have any fire hydrants?

A. No, I had no fire hydrants.

Q. Have any Foamite?

A. Well I don't know whether you might call them fire extinguishers Foamite or not.

Q. You don't remember what type they were?

A. I don't remember.

Q. But you had six fire extinguishers, and the water in the river?

A. Yes, sir.

Q. Is that right? And that is all the fire protection you had? That is all the fire protection you had?

A. That's all the fire protection I have; because I never had nothing to happen to me in forty five years.

Q. Captain, I think you said yesterday that you remembered that the Seminole first came to your yard on June 11, 1928; is that right?

A. Somewheres around that time.

Q. Well, how did you pick that particular date?

A. Well, I had to enter in the book, I think it was the 11th; but I wouldn't say for certain whether it was that particular date or not. It might have been there before that, and might have come after that. That I couldn't say. We generally booked from the 15th; sometimes we do, and other times we give the owners of the boat the difference. Sometimes we charge—

Q. Have you refreshed your recollection from a book or something to get that date of June 11, 1928?

A. Just by the books, that is all.

Q. You don't remember that independently?

A. No, sir. Somewheres June the 11th; that's what I said.

Q. Was there any doubt in your mind, Captain, prior to the fire, as to who the real owner of the boat was—Seminole?

A. Before the fire?

Q. Up to the time of the fire.

A. I always was under the impression that was Mr. John S. Phipps.

Q. Was there any doubt in your mind about that?

A. No, there wasn't any doubt at all.

Q. I show you a letter that bears date of July 5, 1935, and ask you if that is your signature?

A. Yes.

Q. Is that your signature?

A. Yes, that's my signature.

Q. Did you write that letter?

A. Well there is some question after the fire.

Q. Did you write that letter?

A. Yes, sir; I wrote that letter.

Mr. Underwood:

Will you mark that, please.

Mr. Matteson:

No objection.

(Said letter was admitted in evidence and marked as respondents' Exhibit I.)

Q. Captain, if there was no doubt in your mind as to who the real owner of the boat was, but do you explain your question in this letter?

A. That was after the fire, wasn't it?

Q. Yes. July 5th.

A. Well it was a question in my mind after the fire, because Mr.—I asked Mr. Riley when he was going to take the hull away, and he says "I have got to leave it there until the insurance matters are fixed up".

Q. Was there a doubt in your mind at the time you wrote this letter, as to who owned the Seminole?

A. It was hearsay; not personal.

Q. Now Captain, when the boat was laid up, she was left there by Baker and the engineer and a couple of other fellows on the boat; do you remember that?

A. Yes, sir.

Q. What time of day do you say they left?

A. I don't remember what time of day they left.

Q. You haven't any recollection about that?

A. No, I don't have any recollection.

Q. Do you remember having a conversation with Capt. Baker at that time?

A. On the boat?

Q. Yes.

A. I was down in the yard alongside of my brother-in-law.

Q. Were you on the boat?

A. No, sir.

Q. At that time?

A. No, sir.

Q. You didn't go on the boat at that time?

A. No, sir.

Q. Do you remember a conversation with Capt. Baker?

A. Yes, I remember a conversation.

Q. Isn't it a fact that on that occasion Capt. Baker told you that the windows in the alleyway alongside of the engine room, and the window on the port side of the engine room, were open, and asked you to be sure and close them if it rained before you got the boat under the shed?

A. He didn't say anything of the kind; I will say that right now; he did not say anything of the kind; that is not true.

Q. When you first went aboard the Seminole and went through that alleyway, how did you find the windows on the outside of the boat?

A. I found them up and I put them down.

Q. You found them open?

A. No, sir, I did not; I found them shut, and I put them down myself.

Q. You mean they were the type of window that went down in order to open them?

A. Some of them were, and some were sliding.

Q. I am talking about the two windows in the alleyway that ran past the engine room. Captain, I show you Exhibit A—I think it is; and call your attention, in the lower deck, to two windows in the alleyway that passes by the engine room.

A. Yes.

Q. How did you find those windows when you first boarded the Seminole after April 16th?

A. All on that side was closed up.

Q. Every window in the boat?

A. Yes, sir.

Q. On that deck, was closed?

A. Was closed.

Q. You had known Capt. Baker for years, hadn't you?

A. A few years; yes, sir.

Q. And you had known the engineer for some time, had you not?

A. No, I only knew him once in a while; he came down to the yard; I didn't know him personally.

Q. Do you know whether they knew how to prepare a boat for lay-up, safely?

A. Which?

Q. Do you know whether they knew how to prepare a boat safely for lay-up?

A. I think they did; I think Capt. Baker,—he had a boat of his own, and I know he ought to know how to lay a boat up.

Q. You refer to the Molly-O?

A. Molly-O.

Q. She had been stored at your yard?

A. Yes.

Q. She is a houseboat type, somewhat like the Seminole, isn't she?

A. She is a houseboat.

Q. And so was the Seminole, wasn't she?

A. Houseboat.

Q. Now on the day of the fire when Abel came down, he had a conversation with you, isn't that right?

A. Yes.

Q. And he gave you that letter of authority to go aboard the boat, from Riley?

A. Yes.

Q. Was anybody else present at that conversation?

A. Mr. Thomas was some distance off, but there was nobody alongside of him.

Q. John S. Phipps wasn't there, was he? J. S. Phipps was not there, was he?

A. No, he wasn't there.

Mr. Underwood:

If your Honor please, I move to strike out what this witness said yesterday about Abel's saying that he had been instructed to get some fishing tackle to take on a trip that J. S. Phipps was going to take to Bimini; on the ground that J. S. Phipps was not there, and there is no connection between Abel and J. S. Phipps.

Mr. Matteson:

If your Honor please, the testimony was admitted yesterday without any objection being made at all at the time; and furthermore it seems to me that it comes just within the ruling that your Honor made with respect to the conversation that occurred on board the Seminole between the engineer and young Bryant, which was brought out by Mr. Underwood on the stand, to which

we objected; and your Honor ruled it was part of the occurrence and that therefore it was admissible.

(Discussion and arguments by counsel.)

The Court:

The ruling of the Court is that—well, before I announce my ruling I will state this; I want you all to have in mind what I have in mind, whether I am right or wrong. The documentary evidence,—that is the note that was taken by Capt. Abel, signed by Mr. Riley, in and of itself did not authorize Capt. Abel to make statements either as establishing his agency of Mr. Phipps, or as making statements that would be binding on Mr. Phipps: that instrument in and of itself. In other words I view that as a document naming an individual,—for instance Mr. Bryant the reporter; if Mr. Bryant had never been heard of in this transaction before, no connection with Mr. Phipps, and he is the nominee of a note signed by Mr. Riley, to get some equipment, he goes there and he makes some statement while there in the presence of Mr. Pilkington, but not in the presence of Mr. Phipps, I don't think Mr. Bryant's statement would be competent to establish his purported agency of Mr. Phipps. Neither do I think that if—well I think that is sufficient to go that far. It is not competent to establish agency of Mr. Phipps by what Mr. Bryant said at that time. Now then I view the name Abel in there just as if it was Bryant—I mean the Court reporter Bryant; I don't want to get confused with the witness Bryant.

Now then with that in view, I think that this motion should be denied, subject however to the record connecting up two matters; first, that what Mr. Riley did was binding on Mr. Phipps,—which is the general matter that we had under consideration when these general objections were made and the general rulings made: sec-

ondly, as to whether, subject to the whole record showing by other evidence than this particular document, that Captain Abel was the agent of Mr. Phipps, and authorized to make statements binding on him. So that will be the ruling of the Court.

(At 12:38 p. m., Court recessed until 2: o'clock p. m. of the same day.)

March 17, 1939—2:00 o'clock P. M.

Hearing resumed pursuant to recess.

Appearances same as heretofore noted.

620 Thereupon GEORGE J. PILKINGTON, a witness produced in behalf of the Libelants, resumed the stand and was examined and testified further as follows:

Cross Examination (Cont'd.)

By Mr. Underwood:

Q. Captain, I think you testified yesterday that both Thomas and Abel were smoking when they came down on the day of the fire and you asked them to stop and they did stop, is that correct?

A. That is right.

Q. They threw their cigarettes away before they went into the shed?

A. Yes.

Q. I think you said that you knew Abel only slightly?

A. Slightly, yes.

Q. And that prior to the day of the fire your knowledge of him was in connection with work that he was doing from time to time on the Iolanthe, is that right?

A. The Iolanthe, and he came there to get the Dorothy I think once.

Q. You said something about having observed Abel smoking while he was working on the Iolanthe, is that the fact?

A. Yes.

Q. And where was the Iolanthe at that time?

A. It was laying in near the boardwalk alongside the Seminole.

Q. Under the shed?

A. Under the shed.

Q. You spoke to him about that?

A. Yes.

Q. And he promised to stop?

A. He promised to stop.

Q. And was anybody else present when you saw him smoking on the Iolanthe?

A. I don't remember whether there was or not.

Q. I think you testified that either on the day of the fire or very soon thereafter you had a conversation with Garry Miller, is that the fact?

A. He was there the day of the fire.

Q. And you had a conversation with him?

A. Yes.

Q. He is your Fort Lauderdale attorney?

A. Yes.

Q. And he was at that time?

A. Yes, sir.

Q. You said something this morning about a government inspector. Do you recall mentioning that this morning?

A. Inspector?

Q. A government inspector who came down to look at something.

A. He came in the building every now and then.

Q. What government inspector do you refer to?

A. Well, the Custom House.

Q. An inspector from the United States Customs House?

A. Yes.

Q. When did that inspector come around?

A. He came there any old time; he didn't have any specified time to come.

Q. Now and then he would come around?

A. Yes, now and then he would come along.

Q. Did that inspector inspect the condition of the boats?

A. He didn't go on the boats to inspect the boats.

Q. He just confined himself to asking questions of you, is that right?

A. Yes, sir.

Q. Was Mr. Phipps ever present at a time when the government inspector asked you any questions about the Seminole?

A. No, sir, he was never there.

Q. Do you remember on the afternoon of the fire and while the fire was still burning, that Mr. Hawkins came to your house?

A. Yes.

Q. And do you remember that Mr. Riley came to your house?

A. Yes.

Q. And do you remember that Mr. Webber was with Mr. Hawkins?

A. There was some men with him but I don't know who they were.

Q. Do you remember that the Chief of the Fire Department of Fort Lauderdale conversed with you in your house?

A. He was there.

Q. Do you remember whether all four of these men were with you at the same time?

A. I don't remember whether they were or not; it is so long ago that I can't remember it.

Q. Did you have a conversation with Mr. Hawkins at that time?

A. Slightly.

Q. Did you have a conversation with Mr. Riley?

A. I couldn't remember—who was Bradley?

Q. Riley.

A. Yes, he was with Mr. Hawkins I think.

Q. During that conversation—do you remember that Mr. Webber was present during that conversation?

A. Who?

Q. Webber?

A. I don't know; I don't know him.

Q. Do you remember a man who came down shortly after the 16th of April and got a package and you asked him to send you the keys; you remember that man, don't you?

A. After the fire you mean?

Q. No. The boat reached your yard about the 16th of April?

A. Yes.

Q. And three or four days after that a man came down with a letter from Mr. Hawkins, which letter you have identified?

A. Yes.

Q. Do you remember that man?

A. I remember him but I couldn't recognize him if I saw him.

Q. Do you remember whether or not he was present on the afternoon of the fire when you had a conversation with Mr. Hawkins and Mr. Riley?

A. I don't remember whether he was or not.

Q. Do you remember the substance of that conversation?

A. I don't hardly know the conversation, only about the fire starting and the way it started and that sort of thing. I didn't know anything about it.

Q. Do you remember what you said about the reason for the fire starting?

A. I told him just what I had got from Mr. Miller and Mr. Botts.

Q. Do you remember discussing whether or not there was any gasoline in the tanks of the boat?

A. I didn't discuss that at all.

Q. Isn't it a fact, Captain, that on the afternoon of June 24, 1935, at or near your house, you said in substance to all in the presence of Mr. Roy Hawkins, "I cannot account for the fire. I know there was no gasoline in the boat because I had been in her engineroom and attempted to run the generator within the month but couldn't do so for lack of gasoline?"

A. I didn't say anything of the kind to them or to anybody else.

Q. Did you make such a statement on that afternoon to Mr. Riley or in his presence?

A. Not anything of the kind.

Q. Did you make such a statement that afternoon to Mr. Webber or in his presence?

A. No, sir; not to him or anyone else.

Q. Do you remember the name of the chief of the Fire Department of Fort Lauderdale who was there that afternoon?

A. I remember who he was.

Q. Do you remember his name?

A. No, I don't remember his name.

Q. Do you remember the man?

A. Yes, but I forgot his name.

Q. Isn't it a fact that on the afternoon of June 24, 1935, at or near your house, you said, in substance, to the Chief of the Fire Department, or the man who was

there in charge of the Fire Department that day, "I cannot account for the fire. I know there was no gasoline in the boat because I had been in her engineroom and attempted to run the generator within the month but couldn't do so for lack of gasoline."

A. I didn't say anything of the kind to him or to anyone else, because I never run the generator the whole eight years we had the boat stored there.

Mr. Underwood:

That is all.

Re-Direct Examination.

By Mr. Botts:

Q. Captain, sometime this morning you made the statement in substance to the effect that you would rather have the gasoline tanks full of gas than empty. Just what do you mean by that?

A. Well, there is no room—if a gasoline tank is full there is no room for *gas* on the top.

Q. You mean there would be no room for vaporized gas on the top of the gasoline?

A. Yes, sir.

Q. Now supposing a gasoline tank was entirely empty except for air, there would be no danger there, would there?

A. That depends on whether the tank has been aired or not.

Q. I see. If the gasoline tank had never been filled with gasoline, there would be no danger in it, you say?

A. No.

Q. Can you explain why a gasoline tank that was empty, as you described it, might be dangerous? What do you mean by that?

A. Well, there is always a vapor which stands by any galvanized iron; sometimes it disappears and sometimes

it don't, but what it has goes down to the bottom of the tank and stays there.

Q. That is, Captain, providing gasoline had once been in the tank, is that right?

A. Yes, sir.

Q. Now you spoke about some government inspector. Do you know as a matter of fact from what particular branch of the Service these men came?

A. Just the inspectors who came around and inspect the boats as to numbers and one thing or another; that's all.

Q. Do you know from what Bureau they came?

A. No; they never said.

Mr. Botts:

Now, Mr. Underwood you produced a number of checks here this morning. I am wondering if you have a check drawn by the Palm Beach Company, or upon its bank account, dated sometime probably in the month of May, 1931, in the sum of $59.20, payable to Captain Pilkington?

Mr. Underwood:

Offhand, I cannot tell you. Do you want me to take the time now and see?

Mr. Botts:

Yes, and while you are looking for that one look for one probably in August, 1931, for $118.20.

Mr. Underwood:

Both Palm Beach Company checks?

Mr. Botts:

Yes, as far as we can tell. They were charged, in the deposit slip as from the Palm Beach Company, and I assume they were.

The Court:

Do you need them in connection with the interrogation of Captain Pilkington?

Mr. Botts:

Yes, your Honor. Let me have all the checks the Palm Beach Company paid Captain Pilkington, because I am going to ask for them one by one. Any check that you may have with Captain Pilkington's indorsement on it by whatever company drawn, and if by an individual, by whatever individual drawn.

Mr. Underwood:

I find two checks of the Palm Beach Company; one dated May 21, 1931, in the sum of $59.20, to the order of Captain George J. Pilkington, which I hand you now.

Mr. Botts:

Thank you.

Mr. Underwood:

I also find a Palm Beach Company check dated August 12, 1931, in the sum of $118.20, drawn to the order of Captain Pilkington.

Mr. Botts:

They are marked paid. I wonder if you have the paid bills for these two checks?

Mr. Underwood:

Don't you think you had better have these identified as we go along?

Mr. Botts:

As soon as I get those bills we can do that, Mr. Underwood.

Mr. Underwood:

I find two bills on the letterhead of Captain Pilkington, both dated April 30, 1931, one which includes the Yacht Iolanthe in the gross sum of $60.40, but that has been marked out in part, leaving the sum of $34.20; and another bill (both of these being addressed to the Palm Beach Company) for storage on the Houseboat Seminole in the sum of $25.00, making $59.20, the amount of the first check. I also find two bills, one dated June 30, 1931, addressed to the Palm Beach Company, in the sum of $43.20, for storage on the Iolanthe and the fishing boat K-121215, which we have called heretofore the Clip; and the other bill is dated July 31, 1931, addressed to the Palm Beach Company by Capt. Pilkington for storage on the houseboat Seminole in the sum of $75.00, and these two I think add up to $118.20.

Mr. Botts:

I am sure they do; I added them once.

(By Mr. Botts):

Q. Now, Captain, I show you a check dated August 12, 1931, in the sum of $118.20, payable to your order. Is that your indorsement on the back of it?

A. Yes, sir.

Q. I hand you two bills marked "paid" and I will ask you to examine the check and the bills and state whether or not there is any relationship between the check and the bills?

A. That is the two.

Q. What relationship, if any, was there between the check and the two bills; did they have any connection?

A. That check covers both bills.

Q. Was that check cashed by you?

A. Yes, sir.

Q. What do you mean when you say it covers both bills?

A. It covers the amount of both of these bills.

Q. This check paid these bills, is that what you mean to say?

A. Yes, sir.

Mr. Botts:

I suppose that technically, representing a defendant, I am in the position that Mr. Underwood was this morning, so I will have to defer offering these until a later time.

The Court:

Have them marked for identification.

Mr. Botts:

Will you mark these for identification, Mr. Colman?

(Thereupen the check and paid bills above referred to were marked Pilkington's Exhibits 1, 2 and 3, respectively, for Identification.)

Q. I hand you check dated May 21, 1931, drawn by the Palm Beach Company in favor of Captain George J. Pilkington in the sum of $49.20, and will ask you if that is your indorsement on the back of that check?

A. Yes.

Q. Was the money represented by that check paid to you?

A. Yes.

Q. I now hand you two received bills made out to the Palm Beach Company, one dated April 30, 1931, in the sum of $25.00, marked "storage houseboat Seminole"; and another bill dated the same date against the Palm Beach Company in the sum of $34.20 against the yacht Iolanthe, and I will ask you if that check has any relationship to these two bills?

A. That check paid both of these bills.

Mr. Botts:

We ask that this be filed for identification. We will mark the $34.20 check number 4 the $25.00 bill number 5 and the $59.20 check number six.

(Thereupon check for $34.20, dated May 21, 1931 and receipted bill dated April 30, 1931, in the amount of $25.00 and receipted bill dated April 30, 1931 in the amount of $59.20, were marked, respectively, Pilkington's Exhibits 4, 5 and 6 for Identification.)

Mr. Botts:

Now, Mr. Underwood, I have asked you if you have any other checks bearing Captain Pilkington's indorsement here, as I would like to interrogate him about any supposed indorsements on those, and I would now like for you to let me have the checks and the bills.

Mr. Underwood:

I want it understood that these things are produced pursuant to the call of the other side, so that my rights will be preserved. I will be pleased, at my earliest convenience, to give you all of the bills that I have of Mr. Pilkington and all of the canceled checks which I have indorsed by Captain Pilkington. I have given you all such that I have been able to find from the Miami office and the Palm Beach office.

(By Mr. Botts):

Q. Captain Pilkington, I understood you to say this morning that your wife, Mrs. Pilkington, kept your books?

A. Yes, sir.

Mr. Botts:

That is all, Captain.

Mr. Underwood:

That is all.

Re-Direct Examination.

By Mr. Matteson:

Q. Captain, one or two more things I want to ask you: In what year did you build your drydock?

A. I dug it out but I didn't get it built.

Q. In what year did you do that?

A. I dug it out I think three years before I started up there; I can't tell you exactly because I done so much work around there that I just can't remember.

Q. Was it a long time ago or was it recently?

A. That was a long time ago.

Q. Now you said something in connection with telling us about your talk with Mr. J. S. Phipps that he would take the boat away. Now can you tell us as nearly as you can just the words that he used? Do you understand me?

A. Not quite I don't.

Q. Captain, you told us about a conversation that you had with Mr. Phipps about the rates of storage and you said that he said that he would take the boats away. Now tell us as nearly as you can just the words that he used?

A. He said if I couldn't come down on the price and make it fifty dollars a month he would take the boats up to Palm Beach and work on them there, and not only that but would anchor them off the dock and that wouldn't cost him anything.

Q. You are telling it just the same way you did before. You are not saying his words; you are stating the substance. Can you tell us the words he used?

A. Those are the words he used.

Q. Whose boat was the fishing boat Clip?

A. I think that was Mr. Phipps'; John S. Phipps.

Q. Now was there ever any other occasion when the Seminole was stored in your yard, except this last time,

when she stayed there as long as two months, with her engineroom all locked up?

A. No, sir; not until the last time, the last time they went out and came in.

Q. Now you were saying this morning to Mr. Underwood about Mr. Riley that he said he would be down in a few days? When did he say that?

Mr. Underwood:

I object to that, if your Honor please. That has been covered both on direct and cross examination.

Mr. Matteson:

No. He mentioned that in his conversation with you this morning but he didn't say when he said it.

Mr. Underwood:

It is very clear when he said he said it.

Mr Matteson:

I don't think so.

The Court:

I overrule the objection.

A. He said that the day when he phoned to know whether the boat had gone under the shed or not.

Q. Now you have just explained to us why you would rather have a full tank than an empty tank. Now I would like to ask you how about a tank that is partially filled?

A. Well, that is just as dangerous as an empty tank.

(By Mr. Matteson):

Q. Captain, I would like to have you tell us again just what happened to the Seminole when the explosion occurred?

A. It burned after the explosion.

Q. I don't mean after the explosion; I mean when the explosion happened. When the explosion happened what did it do?

A. What took place by the explosion?

Q. Yes.

A. Well, it blew the whole thing right out of the engineroom; blew part of it off the bow of the boat; to make it clear to you, the front part of the boat.

Q. Now I think you also said something about the Flamingo. Will you tell us what happened to her and what—

A. The Flamingo was laying—this is the bow of the boat here—and the Flamingo was laying up against her, I mean against the bow of the boat; the Flamingo was laying almost to the bow of the Seminole—

Q. You are indicating at right angles?

A. No, parallel; alongside the building.

Q. Which boat was in front?

A. The Seminole was in front of the building and the Flamingo was right to the right of the bow of the Seminole.

Q. Right ahead of the bow of the Seminole?

Mr. Underwood:

As he held his hand to indicate he didn't say "right ahead of the bow". Why not ask him to draw it on a piece of paper.

Q. Will you just draw a picture on this pad which will show how the boats were with respect to each other?

A. (Draws diagram.) This is the Seminole and this is the Flamingo.

Mr. Underwood:

Put "S" on the Seminole and "F" on the Flamingo.

The Witness:

These are the pilings right alongside the middle. This (indicating) is the Seminole and this is the Flamingo.

Q. All right, I will write "Seminole" in this one. Is that the right one?

A. Yes.

Q. And the other one I will mark "Flamingo".

A. That is right.

Mr. Jones:

Also indicate the piling.

Q. And these dots in here (pointing) represent the piling?

A. Yes, sir.

Q. I will just write under that line "piling".

A. That's right.

Mr. Matteson:

I offer this sketch in evidence.

Mr. Underwood:

No objection.

The Court:

Admitted.

(Sketch above referred to and made by the witness marked Libelants' Exhibit No. 63.).

Q. Now tell us what happened to the Flamingo?

A. It burned just the same as the rest of them.

Q. Was it affected by the explosion at all?

A. It blew off the deck and it was all on flame, and I couldn't see the entire cabin of it, but I did see the cabin down this way at the top, and nothing down here, and I think that the explosion affected the house but I don't know for certain or not or whether it burned.

Q. You said it blew off the deck, if I understood you right?

A. What?

Q. You said something about it blowing off the deck, what deck were you referring to?

A. For what?

Q. I thought you said in your last answer it blew off part of the deck. I don't know which boat you are talking about.

A. That was the upper deck where the house is. Below that is what we call the "below deck".

Q. Which boat are you talking about?

A. I am talking about the Flamingo. That is what you asked me about.

Q. That is right.

A. It was all in flame about the same time; and I don't know just exactly what was what.

Q. You were shown this letter this morning, Defendants' Exhibit I for Identification, which you wrote to Mr. Simmon and asked about the real owner of the boat—

A. That was after the fire.

Q. What happened that made you write that letter?

Mr. Underwood:

I object to that, if your Honor please. This is the letter that was brought up this morning (hands letter to Court).

The Court:

I think he is entitled to explain any writing over his signature. to give his explanation, which may be ac-

cepted and it may not, but as far as the competency of the evidence is concerned, I think it is competent.

A. Well, there was a rumor that I received that Mrs. Guest, Mr. Phipps' sister, was part owner of the boat and I wanted to be sure whether she was or not.

Q. And when did you hear that rumor?

A. I heard it around the place; different people asked me the question.

Q. Was that before or after the fire?

A. After the fire.

Mr. Matteson:

That is all, Captain.

Re-Cross Examination.

By Mr. Underwood:

Q. When you had this conversation with Mr. Riley and you say that he said he would be down in a few days; that was before the boat was put under the shed, was it not?

A. Yes, that was the day he phoned me about the keys and wanted to know whether the boat had been put under the shed and I told him—

Q. Your reply to him was that the boat had not been put under the shed?

A. I told him in that conversation that I had not received the keys.

Q. And that the boat had not been put under the shed?

A. Yes.

The Court:

You told him that you had not yet received the years?

The Witness:
Yes, sir.

Mr. Underwood:
That is what he said.

Q. Now you said something about the danger of a gasoline tank empty, part full and wholly full. Do you mean that a tank full of gasoline is not to likely to explode as a tank only part full of gasoline?

A. That is right.

Q. Is it your point that gasoline will not explode but that gasoline vapor will?

A. That is right.

Q. Liquid gasoline will not explode, is that right?

A. I wouldn't say for certain; I wouldn't want to risk it.

Q. That is what you mean when you say a full tank is safer than a partly filled or empty tank; is that right?

A. That is right.

Mr. Underwood:
That is all.

Mr. Matteson:
That is all, Captain.

Mr. Botts:
I want to say to Mr. Underwood that I am not going to bring Captain Pilkington down to these proceedings regularly, but if anything transpires and you want him back here, give me a day's notice and I will bring him back.

Mr. Underwood:
Thank you very much.

(Witness excused.)

645 Thereupon J. F. RILEY, JR., was produced as a witness by the Libelants, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Your full name is—

A. J. F. Riley, Junior.

Q. Where do you live?

A. In Palm Beach.

Q. Your street address?

A. 201 Plaza Circle.

Q. Are you here in response to a subpoena duces tecum addressed to you personally?

A. Yes, sir.

Q. Are you also attending here in response to a subpoena duces tecum addressed to officers of the Palm Beach Company?

A. I don't know that it was officers of the Palm Beach Company.

Q. Have you with you a copy of the subpoena addressed to you personally?

A. I have it there on the desk.

Q. Do you have a copy of your subpoena there?

A. Yes, sir.

Q. This subpoena issued out of this Court on March 7, 1939, and the paragraph addressed to you personally appears on the third page of it, is that right?

A. Yes, sir.

Q. Have you brought with you all the documents that are called for in that paragraph?

A. I brought all of them I have, yes.

Q. Will you produce them, please?

A. They are here on the—

Mr. Underwood:

If your Honor please, I have the documents and I am quite willing to produce them, of course, and redeliver them to the witness, if that is what the question means, but if the question means that Mr. Matteson wants the documents delivered out of the hand of the witness into his hands, I object to any such general question as that. I think he ought to be specific. I do not think that any situation here justifies a general fishing excursion through the books, papers and documents described in the subpoena.

The Court:

Let the witness take them and have them in his possession. His answer would be that he has produced them as nearly as possible. Suppose you get them and put them in the possession of the witness.

Mr. Underwood:

If your Honor please, I think the witness has now produced a substantial number of documents.

The Court:

Proceed.

(By Mr. Matteson):

Q. Do I understand that these documents also include those covered in the subpoena addressed to the officers of Palm Beach Company, or only those addressed to Mr. Riley?

Mr. Underwood:

I am not entirely clear as to what the subpoena means. It was drawn with a very heavy brush, and if what we have produced is not sufficient I would appreciate being advised just what more is required. I have some other

documents, but I have produced in response to the subpoena to the best of my knowledge and belief more than has been asked of this witness.

The Court:

Individually or as employee? It is your impression that what he has produced in response to the subpoena duces tecum served on him personally and as employee—

Mr. Underwood:

Yes. If there is anything missing and we have it, we will be glad to get it.

Mr. Matteson:

Now, if your Honor please, I would like to have these documents marked for identification. We can cover them under one number.

Mr. Underwood:

At the outset the question arises as to time limit fixed in this subpoena. The first file produced has on it at the top "1937-1938".

The Court:

Is this file a collection of papers and documents made in connection with answering the subpoena, or is it a file in its original state at the time of the service of the subpoena?

Mr. Underwood:

I am advised that it is in its original state, and as kept in the ordinary course of business, but subsequent to the fire.

Mr. Matteson:

I am not interested in anything subsequent to the fire.

Mr. Underwood:

Here is one entitled Seminole Boat Company, January 1, 1934, to July 30, 1935".

(Above filed marked Libelants' Exhibit No. 64 for Identification.)

Mr. Underwood:

The next one says, "Seminole Boat" at the top, 1930-1933.

(Above file marked Libelants' Exhibit 65 for Identification.)

Mr. Underwood:

The next one says, "Seminole Boat" at the top, 1928-29.

(Above file marked Libelants' Exhibit 66 for identification.)

Mr. Underwood:

The next one says "Seminole" with some words crossed out—1925-1927.

(Above file marked Libelants' Exhibit 67 for identification.)

Mr. Underwood:

Then follows a group of payrolls. The first one being payroll for week ending August 30, 1934.

(Above group of payrolls marked Libelants' Exhibit 68 for identification.)

Mr. Underwood:

The next one is for the week ending June 28, 1934.

(Above documents marked Libelants' Exhibit 69 for identification.)

Mr. Underwood:

The next one for the week ending June 27, 1935.

(Above documents marked Libelants' Exhibit 70 for identification.)

Mr. Underwood:

The next one for the week ending April 26, 1934.

(Above documents marked Libelants' Exhibit 71 for identification.)

Mr. Underwood:

The next one for the week ending December 27, 1934.

(Above documents marked Libelants' Exhibit 72 for identification.)

Mr. Underwood:

The next one for the week ending October 25, 1934.

(Above documents marked Libelants' Exhibit 73 for identification.)

Mr. Underwood:

The next one for the week ending February 22, 1934.

(Above documents marked Libelants' Exhibit 74 for identification.)

Mr. Underwood:

Now, I have a file of Palm Beach Company vouchers that is very numerous.

Mr. Botts:

Can't we put them in one envelope and give them one number?

Mr. Underwood:

I think that is a satisfactory way to do it.

(Vouchers of Palm Beach Company referred to above were marked Libelants' Exhibit No. 75 for identification.)

Mr. Underwood:

I might state that these in part cover checks and bills which I have agreed to give to Mr. Botts.

Mr. Botts:

That will be all right; that will be quite satisfactory, if they are included. We can mark them as exhibits and then we can examine them later.

Mr. Underwood:

Of course merely marking them for identification doesn't mean that you can examine them.

Mr. Botts:

That will be a matter for the Court to determine.

Mr. Underwood:

Quite true.

The Court:

Proceed, gentlemen.

Mr. Underwood:

Now, does your subpoena, as you interpret it, include the books of the Seminole Boat Company?

Mr. Matteson:
Yes.

Mr. Underwood:
Mr. Riley, did these books of the Seminole Boat Company come from your custody?

The Witness:
Yes, sir.

Mr. Underwood:
The first is the account book of the Seminole Boat Company.

Mr. Matteson:
Mark that.

(Account book of Seminole Boat Company marked Libelants' Exhibit 76 for identification.)

Mr. Underwood:
The next is a file of Journal vouchers of the Seminole Boat Company, with supports, beginning with voucher No. 1 and down to and including voucher No. 22.

(Above Journal vouchers of Seminole Boat Company marked Libelants' Exhibit 77 for identification.)

Mr. Underwood:
Next is another file of Journal vouchers beginning with voucher No. 23 to and including voucher No. 103, with supports.

(Above Journal vouchers numbered 23 to 103, together with supports, marked Libelants' Exhibit 78 for identification.)

Mr. Underwood:

Next is the Stock Certificate book of the Seminole Boat Company.

(Stock Certificate book of the Seminole Boat Company marked Libelants' Exhibit 79 for identification.)

Mr. Underwood:

Next is the Minute book of the Seminole Boat Company, including the by-laws.

(Minute book of Seminole Boat Company marked Libelants' Exhibit 80 for identification.)

Mr. Underwood:

Next is certified copy of certificate of incorporation.

(Certificate of Incorporation of Seminole Boat Company marked Libelants' Exhibit 81 for identification.)

Mr. Underwood:

Now, if your Honor please, I do not think of anything else that we could have produced in response to this subpoena.

Mr. Matteson:

How about the records of the Palm Beach Company. I understand that this witness appears as an employee of the Palm Beach Company.

Mr. Underwood:

We have produced the files which came from the office of the Palm Beach Company that are kept there for the Seminole, and I am advised that they are the only files that are maintained in that office in regard to the Seminole. Mr. Matteson and I may have a dispute

as to whether they are files of the Seminole Boat Company or the Palm Beach Company, but they are, as I am advised, all of the files in that office in regard to the Seminole.

The Court:

We will recess until Monday morning at 9:30.

Hearing recessed until 9:30 a. m. Monday, March 20, 1939.

March 20th, 1939, 9:42 o'clock a. m.

Hearing resumed pursuant to adjournment of previous day. Appearances same as heretofore noted.

656 LESLIE TYLER BROWN was produced as a witness by the libelants, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Matteson:

Q. What is your full name, Mr. Brown?

A. Leslie Tyler Brown.

Q. What is your residence?

A. 705 Miller Road.

Q. South Miami?

A. South Miami.

Q. What is your occupation?

A. At present I am engineer at the Southern Laundry on Southwest 8th Street.

Q. And have you ever been a marine engineer?

A. Yes, sir.

Q. Were you at one time engineer of the Yacht Seminole?

A. Yes, sir.

Q. How much experience have you had as a marine engineer?

A. Well, I would hate to say, all my life, but I have been interested in them ever since my first experience, was in 1900; I have been following the water off and on since then; not continuously.

Q. How long since you have been working in the laundry?

A. I have been in the laundry business—that is, working there, for five years.

Q. And prior to that time was your experience marine?

A. Well, I would say about 50% of it; ashore if I couldn't get a marine job.

Q. Do you hold a marine engineer's license?

A. Yes, sir; internal combustion.

Q. Have you been employed as engineer of other gasoline yachts besides the Seminole?

A. Yes, sir.

Q. Roughly, how many?

A. Oh, I suppose half a dozen.

Q. Will you tell us what your period of service as the engineer of the Yacht Seminole, was?

A. The length of time, about?

Q. Well, when it began and when it stopped.

A. In '22, about April, during the month of April, some time in '22; until I suppose the latter part of the winter or the first of the summer season of '27.

Q. When you began your employment, was she a gasoline yacht or a steam yacht?

A. Gasoline.

Q. Do you know whether she had previously been a steam yacht?

A. Yes, I know that she had.

Q. What do you know about the ownership of the Yacht Seminole at the time you were engineer?

A. You mean in what way, sir?
Q. Do you know who was the owner?
A. Well I always understood that she was owned—

Mr. Underwood:
I object to what he understood.
A. —by the Phipps.—Sir?

The Court:
He is addressing the Court.

A. —Pardon me.

Mr. Underwood:
I object to what he understood.

Mr. Matteson:
If your Honor please, I think that the general reputation and understanding as to the yacht at that time is material to the case; but I don't insist on that point.

The Court:
I think the objection is well taken.

Q. Put it this way: Do you know whether Mr. John S. Phipps had any connection with the yacht at that time?
A. Yes, sir.
Q. What connection did he have, according to your observation?

Mr. Underwood:
If your Honor please, I don't like to make myself objectionable, but this is an important aspect of the case; it seems to me that a better foundation than that ought to be laid before this witness is asked that question. It seems to me the source of his knowledge—he says he

knows—ought to be inquired into before he is allowed to state conclusions.

The Court:

I think the question is proper; if the answer brings forth any objection, you may move against it.

Q. Just tell us what you actually observed.

A. Well when I was hired, I was hired by the captain, who told me the yacht was owned by Mr. Phipps.

Mr. Underwood:

If your Honor please, I move to strike out what the captain told him.

The Court:

The motion is granted.

Q. Don't tell us what anybody told you; just tell us what you observed.

A. I would like to answer that to the best of my ability. We would get orders to move, directly from Mr. Phipps. Mr. Phipps would come aboard and give orders.

Q. What kind of orders?

A. In regard to repair work, or in regard to movement of the ship; or—in fact the general run of orders that would be issued to the captain or myself.

Q. Was there any one else who gave orders during that period?

A. Yes, representative from the Palm Beach office, and later from the Biscayne Boulevard office.

Q. Yes. Was there any other member of the Phipps family that gave the kind of orders you are speaking of?

A. Mr. H. C. would use the boat once in a while; when he was aboard he would—we would do as he suggested, of course. But we never—I think we ever re-

ceived an order from him in regard to anything except movement of the ship while he was aboard of her.

Q. Now Mr. Brown, during the period that you were in service as engineer of the Seminole, will you tell us whether there were any facilities in the engine room for drawing off gasoline?

A. Oh yes.

Q. What did that consist of?

A. Well, there were—when I went aboard there, there was one pipe or more, I don't remember exactly—one or more pipes leading from the manifold, as an offset you might say, just rigged up as a pipe line with a Globe valve and a nipple, L possibly, so we could put gas into a can from these drain pipes.

Q. And what use was made of this offset?

A. Well the launches, fish boats, would come up alongside of the engine room, where we had a square window over the work bench, and we would can it from there into the fish boat through this window.

Q. Just tell us what you mean by canning it.

A. Well you put a can of some kind under there, whatever was convenient; we generally have had spout cans—flexible spouts; pour it in there, drain gas into the can, pass it out the window to a man aboard the boat, and he would pour it in the gas tank.

Q. Now will you explain to us so we will have it clearly in mind, just what you mean by an offset. Do you mean such as we—

A. I sort of compare it to a water faucet; however, it was just piped up with, as I remember, half inch pipe, with a half-inch Globe valve, and then an L and a nipple turned down so that the gas coming out of this valve would go into a vertical stream—into the can.

Q. Now to what extent was this practice followed during the period that you were on the yacht as engineer?

A. For the first several years it was the only way we had to put gas into the fish boats.

Q. Was the gasoline ever used on board the yacht itself, that you recall?

A. This that we drew out of this tank?

Q. Yes.

A. Only for the capstan engine.

Q. How were the launches on deck taken care of?

A. Generally tanked after they were put overboard.

Q. How you spoke of fish boats. Will you tell us what fish boats you have in mind?

A. We carried two clinker built dories, about nineteen feet long, equipped with Kermath engines; we had I suppose as many as one to four or five outboards at different times—outboard engines with three—average of about three boats that they would fit; and generally what we consider a guide boat.

Q. These boats that you mentioned, before you mentioned the guide boat, were they boats that we carried on the Seminole, or not?

A. Yes, sir; carried on the boat deck.

Q. This guide boat that you spoke of, what was that?

A. Depending on who used the Seminole, as to what guide boat we would use; but we always had a fish guide with us, sometimes one of the owner's boats, sometimes a hired guide.

Q. Do you know a boat by the name of the Clip,—known as the Clip?

A. I don't think I recall the name, sir.

Q. Do you know who owned these guide boats that you speak of?

A. In the course of the years that I was on, I suppose we had a dozen or more fish guides with us, at different times; they would furnish their own boats.

Q. I want to ask you about the gasoline tanks on the Seminole. Will you describe them to us and tell us where they were located?

A. These tanks were in the old coal bunker, which was just forward of the engine room; four tanks; they

held about two thousand and just a few gallons over, of gasoline, filled.

Q. You mean the four tanks?

A. The four tanks combined. They were steel constructed, riveted tanks; and they were—I don't know how they got them in there; they were set in there, anyway; they were set in there just as close as you could get tanks in the old coal bunker.

Q. Was it possible to go into that space to inspect these tanks?

A. You could get under the tanks and look up; you couldn't get around them anywhere.

Q. How would you get under the tanks?

A. In the forward bulkhead of the engine room, under the log desk, there was a hole I should say maybe twenty inches square, just a rough estimate; you would crawl through this hole, under the log desk, into the compartment under the gas tanks, which was right on the skin of the vessel probably, at first, or on the frames. The gas tanks were about—possibly thirty inches or three feet above the frames.

Q. Was there anything under the bottoms of the tanks, that you know?

A. There was something, a pan of some kind; to my knowledge, it was a lead pan, seemed to be sheet lead or something of the sort; wasn't riveted; but there was a pan of some kind under those tanks, as I remember it.

Q. Did the tanks set in the pans?

A. Yes.

Q. Then as you looked up from underneath, what would you be able to see? Would you be able to see the bottoms of the tanks?

A. Oh no, no; the bottoms of the tanks were setting in this pan; you could see the side of the tanks, if the flashlight was good enough. You couldn't reach them.

Q. You say these tanks completely filled this compartment?

A. Not completely; they were round tanks in a rectangular compartment.

Q. How much space was there around the tanks? That is what I am getting at.

A. I don't judge it was over two inches at the most, on either the forward or after side of the tank.

Q. Do you know how much between the tanks there was?

A. I would be afraid to answer that definitely; it wasn't but very little room; you couldn't get in there; you couldn't get between them.

Q. A man could not get in there?

A. No, sir; he absolutely could not. I have tried it.

Q. Was there any means of ventilating this tank compartment?

A. That is rather a broad question, sir. Ventilation is something that is—

Q. Were there any ventilators in there?

A. No, there was no permanent ventilators; no, sir. There was a side door, that is a wooden door in the wooden side of the ship above the top rub-mold, which was the top of the steel sides.

Q. On which side?

A. On the port side; and above the top rub mold there was a small wooden door which I finally prized open; it had been painted and white-leaded shut to such an extent that I had to drive a wedge in to open it; and I opened it to ventilate the tank one time, for my own sake; I had to sleep there.

Q. These are the only openings into this tank compartment that you know of?

A. Outside of a few holes in the forward bulkhead that connected with the forward bilges and the cabins.

Q. How were these tanks connected up with the engine room?

A. Iron pipe, through holes in the bulkhead. The holes in the bulkhead were possibly—well they were

roughly cut, 2-½, two or three inches in diameter; and a quarter—I think it was a quarter or three eighths iron pipe came through there into a made-up manifold of iron pipe, that extended along the forward bulkhead of the engine room, that went from one tank to the other, and dodged around the timber, or whatever it had to get around about, screwed pipe connections, which was just fitted around the forward bulkhead—the frames.

Q. What do you mean, screwed pipe connections?

A. Ordinary iron pipe threads; standard fittings.

Q. And how were the lines run from this manifold to the engines?

A. About the same manner. Out of the manifold there was a shut-off valve from a T, and then a strainer; and from the strainer a line of pipe went—that is from each strainer; there was a strainer for each main engine, and the line of pipe went to each carburetor.

Q. How was this line of pipe made up? What was it made up of?

A. Iron pipe.

Q. And how were the connections made?

A. All that I replaced were made with litharge and glycerin; I don't know what the originals were; they were just screwed pipe connections; what dope they used on them I don't know.

Q. That was the point I meant to ask about. They were screwed pipe connections?

A. Yes, sir.

Q. Can you give us any idea of the number of screwed pipe connections in these feed lines?

A. No.

Q. Well, were there many or few?

A. Well, there were plenty; I would say, many.

Q. And how about the manifold line?

A. It was built up the same way; screwed pipe, and there they wanted to make a bend, they would screw

another L and a nipple in, instead of bending the pipe; not to criticize them, but that's the way it was built up.

Q. Now tell me, during your experience of five years on this boat, was there any difficulty experienced with these screw connections—screwed pipe connections—threaded pipe connections?

A. Well I had—on numerous occasions I would find a leak or a drip or a vapor leak or something of that sort, where you could feel the moisture; and I tried, honestly tried, to re-pipe it, with copper tubes; and not getting that, I repaired the pipe lines the best of my ability. I would find one leaking, I would tear it down, and as I say, put litharge and glycerin on, which was what we knew at that time for a gasoline joint.

Q. You spoke of trying to re-pipe with copper tubing; will you tell us what you meant by that?

A. I mean that the captain put that job in himself, and he wouldn't give me the authority to do it; I couldn't do anything without his authority.

Q. And who was the captain at that time?

A. Nelson.

Q. Now will you tell me, Mr. Brown, whether to your knowledge any of these conditions were brought to the attention of Mr. John S. Phipps?

A. I remember on numerous occasions I have asked Mr. Phipps for permission to do different things, along in that line, possibly the gasoline line was one of them at times; and he would always refer to the captain, as the "king of the vessel"; and I couldn't go any farther.

Q. How about this practice of taking gasoline from the engine to fuel up the boats alongside; can you tell us whether to your knowledge that practice was brought to the attention of Mr. Phipps?

A. No; I know he has stood on the rail, or at the rail, plenty of times, and told us to hurry, to get ready to go fishing; something of that sort. He knew that was

being done, but I don't know as it was called to his attention.

Mr. Underwood:

If your Honor please, we move to strike out, "he knew it was being done".

Mr. Matteson:

If your Honor please, I think that is part of the statement.

Mr. Underwood:

Well, as I understand the rules of evidence, your Honor, he can state what he observed; he can't state that another man knew; it calls for this man to know what went on in somebody else's mind.

The Court:

I think technically the objection is well taken.

Mr. Botts:

You are referring now to that part of the statement, he knew it was being done?

Mr. Underwood:

That is right.

Mr. Botts:

I think that should go out, myself.

Q. Was there any other means used of transferring gasoline from the engines to the boats alongside, besides cans, during the period you were on board, that you recall?

A. Yes, sir; yes, sir.

Q. What was that?

A. I don't recall the date, but some time during the last year or two that I was on there, the captain had a bright idea one day, and came down in the engine room and explained to me how he wanted a suction line run from the manifold to the bilge pump that we were using at the time; run a discharge pipe from that bilge pump over the side through this,—through a hose, rather; so that we could start up the bilge pump, pump gas out of the manifold into the boats, they taking it out in tin cans—or five gallon cans.

Q. Was that done?

A. It was done. I objected to it strenuously, but he insisted I do it, and I did it.

Q. In your experience as a marine engineer, can you tell us about the propriety of drawing of gasoline in the engine room for the purposes you have described?

Mr. Underwood:

If your Honor please, I object to that on two grounds; (1) I don't think the proper foundation has been laid for asking that question of this witness. (2) There is no contention that this accident resulted from anybody's drawing off gasoline; there wasn't anybody anywhere near the draw-off valves at the time this explosion and fire are said to have occurred. (3) It is immaterial.

Mr. Matteson:

As far as the materiality is concerned, it is quite clear that no one will ever know exactly what the source of the gasoline fumes in the Seminole was, that exploded. But we have here a provision for drawing gasoline in the engine room, which I believe the evidence will show is entirely improper, and is prohibited by all known rules governing such situations, as a dangerous appliance. And the very fact that it was there, shows negligence on the part of the owner; and the established custom

of using it for a long period of time shows the owner's knowledge. Now with the existence of this highly improper situation in the engine room, and the impossibility of knowing exactly where the gasoline came from, plus the evidence—and there is some—that the valve on this line was actually left open, and may have been a source of gasoline fumes, I think it certainly does not lie in the mouth of the respondent John S. Phipps to object to evidence along this line, and I don't think he will be in a position to show that this highly improper situation could not have been a contributing cause of this accident; and I think that burden would lie on him, as the authorities will show.

The Court:

Mr. Brown, did that remain as a part of the equipment for drawing off gasoline and putting it into these other boats, all the time that you remained as engineer?

A. Yes, sir.

The Court:

Was that condition existing when your services were—

A. When I left the ship.

The Court:

When you left the ship?

A. Yes, sir.

The Court:

I think on the second ground that it is competent; and on the first ground it goes to qualify of his testimony rather than to the competency of it. Certainly an engineer—he may not have been qualified as an expert from a technical standpoint—schooling, and so forth; but I think it is competent; so I overrule the objection.

Mr. Underwood:

I don't quite understand the purport of your Honor's last two questions to the witness. You asked him if they had remained?

The Court:

I had gotten the idea from what he first stated that it was installed and then withdrawn; not continued in use.

Mr. Underwood:

Well, he has spoken of two methods of getting gasoline out; one, the draw-off valves, and the other some method of pumping.

The Court:

Well my questions were with reference to the pumping: did you so understand?

A. Yes, sir; that is the way I understood it.

Mr. Matteson:

I would like to be sure we are clear about that.

Q. Mr. Brown, at the time that you left the boat, at the end of your period of service there, what method was in use at that time? What method or methods were in use at that time, for taking gasoline from the engine room for use in the boats alongside?

A. Used both methods, depending on the size of the boat.

Mr. Matteson:

I think a question was objected to and not answered.

(Question beginning at bottom of page 17b20 was read.)

Q. Will you tell us about that? Do you understand the question?

A. Let's get it straight.

(Question was re-read: "In your experience as a marine engineer, can you tell us about the propriety of drawing off gasoline in the engine room for the purposes you have described?")

A. It is a practice that is possibly used on very, very few ships. I had never seen it before, and I didn't like it. I wouldn't do it myself if it were left up to me entirely.

Q. Now when you say that, why? Tell us why.

A. It seems that from just the point of view that I would take, that gasoline vapor is very dangerous; and you are bound to get some vapor; and if you are drawing off gasoline in an engine room, with or without machinery running, it seems foolish to do it.

Q. Mr. Brown, I wanted to ask you another thing, about the provision for lighting on the Seminole. Can you tell us about how her lighting lines were run? That is, what sort of wires were used, and whether conduits were used, and that sort of thing?

A. Well sir, I hunted five years for them to try to answer that question myself. What I found was that the older part of the vessel, up in the cabins where it hadn't really been changed during the conversion, the wires were run under wood molding, with no protection other than the insulation in the wire; they were pulled through; anywhere they wanted to go with a wire they just simply went with it and they made a connection; and the source of that current for the cabins came from a line of conduit, or several lines of conduit that ran from the port forward, two of them carried along the starboard side, and I think there was two of them or more passed under the gas tanks, through the bulkhead, and to take in the port side of the vessel; the starboard side one continued right up the starboard side.

Q. Now this conduit pipe that was used, will you describe that to us?

A. That is another thing I have often wondered what it was; it was a sort of a black iron pipe; it wasn't galvanized; there was nothing to it except black iron pipe, which was thoroughly rusted; the conduit was rusted in places where the wires were exposed.

Q. Now what was the condition of this conduit pipe that ran under the tanks, at the end of your term of service?

A. That was about the worst part of it; it was exposed; the wires were exposed there where the conduit was absolutely rusted—or had been just previous to the time I left it; it wasn't exposed at the time

Q. I don't quite understand what you are telling us.

A. Well I don't know how I can explain that exactly; but I requested that we re-wire the ship, on several occasions, and was turned down.

Q. Now, to whom did you make that request?

A. To the captain, as "king of the vessel".

Q. And can you tell us whether that was discussed by you with Mr. Phipps at any time?

A. At Palm Beach I mentioned it to him one day at the dock, that the vessel needed re-wiring; and he referred me to the captain; and the captain turned me down, said he couldn't afford it,—couldn't do it.

Q. Did you tell Mr. Phipps why this was necessary or important?

A. Well I suppose I told him I had been having so much trouble with the wiring,—something of that sort.

Mr. Underwood:

If your Honor please, I move to strike out what he supposed; I ask also that the time of this conversation be fixed.

Mr. Matteson:

I consent to that, if your Honor please; I will ask:

The Court:

What about striking what he supposed? I think the motion to strike that which he supposed, is well taken.

Q. Mr. Brown, I don't want you to suppose; I want you to give us your best recollection of any conversation that you had with Mr. Phipps, and as has been requested, please specify the time as nearly as you can.

A. I don't think it would be possible for me to specify the time of that conversation; because there was—it was just a continual request for this, that and the other, and a continual turn-down of the requests, and referred to the captain as to what I am going to do; and he seemed to take, or have, full authority; and when I requested the ship be re-wired I was referred to the captain, and he just simply said it couldn't be done; and I proceeded to knock the rust off of the conduits, and lay a splint alongside of them and take them up, give them a coat of shellac and let it go at that. There is such a thing as the end of human endurance on a boat like that; that's the way I figured it.

Q. You spoke of continual requests as being referred to Captain Nelson. These continual requests that you refer to, were made to whom?

A. J. S. Phipps.

Q. Now see if I get this clear. Which one of these two did you first consult, and then be referred to the other: did you talk with the captain first, and be referred to Mr. Phipps,—or Mr. Phipps and be referred to the captain? Or both? What was it?

Mr. Underwood:

If your Honor please, I object to that on the ground it is all very clear on the record what he did; and I

suggest that this is an attempt on the part of Mr. Matteson to get his own witness to change his testimony.

Mr. Matteson:
I want it perfectly clear; that is all.

The Court:
Read the question. (Question was read.)

The Court:
Well it is clear to me, but I don't see any objection to the question being asked; I will overrule the objection.

Q. Go ahead and answer, Mr. Brown.

A. It will have to be answered in more or less a roundabout way, because on numerous occasions, the three of us were together, and some occasions it was Mr. Phipps and myself only, and other occasions it was the captain and myself only. I can't recall any particular conversation where you might say I had gone to Mr. Phipps first, or gone to the captain first; but I did on numerous occasions go to one, and go to the other, trying to get a point over on something I thought was necessary.

Q. Now in these conversations that you speak of, at which Mr. Phipps was present, or in which you went to Mr. Phipps asking for these things, did you give your reasons?

Mr. Underwood:
If your Honor please, I object to this; I think the witness ought to be asked as to what the conversation was. I would like to have the time and place fixed, and the subject of the conversation.

Mr. Matteson:
I will withdraw the question.

Q. Just tell us as fully as you can of the conversation that you actually had with Mr. Phipps.

Mr. Underwood:

May the witness be instructed, your Honor, to do these conversations one by one, and fix the time and the place and the subject?

The Court:

He says he can't do that; according to his former answers, it has to be general.

Mr. Underwood:

Can he do it as well as he can?

Q. I think that is understood—as well as you can.

The Court:

Any time you can be specific, please do so.

A. I appreciate that, sir, but it is five years of service; it is back twelve years ago; I wouldn't swear to a date on any of those conversations; I couldn't.

Q. Well getting back to the original question, I was asking you to tell us as fully as you could of any conversations that you had with Mr. Phipps; what was said about those conditions that you have described?

A. Well as I said before, it is just a case of some little thing coming up, I would be worried about,—the gasoline or the electric wiring, or something of that sort; taking it up with Mr. Phipps, we would be up there together, one summer particularly I could look on the records possibly and find that, but I doubt it, what summer it was; I spent the entire summer up there; he was there late in the summer and early in the fall while we were laying at the dock; that period of time I had

a number of conversations in regard to the boat in general; and anything that I would suggest for the good of her engine room or the good of the craft, I was referred to the captain.

Q. Did I understand you to say this was in Palm Beach?

A. Yes, I have spent one summer in Palm Beach, at the Phipps Dock.

Q. Do you remember which summer that was?

A. I wouldn't be certain. I went on her in '22 and left her in '27; it was some summer between those dates.

Q. Could the gasoline tanks as they were installed, be completely drained of gasoline?

A. No, sir.

Q. Why not?

A. The draw-pipe or the connection to the manifold, was quite a distance, a matter of inches, above the bottom of the tank; and the tanks had a concave bottom, because they were setting on a pan and the rivet joints showed; by feeling around the pan you could feel the rivets. It was a concave bottom tank, and the connection was several inches above the bottom rivet seam.

Q. These pans that were under the tanks, can you tell us whether there was one, or one big one—one for each tank and one big one? Can you tell us that?

A There was one tank, if my memory serves me right—

Q. One tray?

A. Yes, sir; one tray, and the four tanks set in the one tray.

Q. Was there any drain for the pan?

A. Drain?

Q. Yes, for draining out the pan?

A. No; no, sir.

Q. How was the pan cleaned?—or was it?

A. No provisions made for cleaning; there was no way you could get to it, any more than reach over

the edge from below it; there was no room to get up between the tank—or the pan, and the bulkhead.

Q. Was there any provision for lighting the space under the tanks?

A. There was one light forward of this hole that you crawled through to get into—there was one light on a kep socket, as I remember; some sort of a switch socket, key-chain pull or something of that sort; to my knowledge, or to my best remembrance it was a key socket. It was just simply a light on a socket.

Q. And to what sort of a line, or how was that connected to the electric source?

A. I believe—now excuse me, but I would be afraid to say.

Q. Were the tanks ever tested during your period of service on the Seminole?—the gasoline tanks, in any way?

A. No, sir.

Q. No test of any kind?

A. No, sir.

Q. Were they ever taken out?

A. No, sir.

Q. Do you know how the tanks were secured in place, if they were?

A. By opening that door I could see wedges, wooden wedges of different shapes, between the bulkheads and the tanks,—is the only fastening I ever saw.

Q. What provision was there for ventilating the engine room of the Seminole?

A. There was one square window over the work bench; there was one small square window in my room, or the engineer's room, rather which was originally part of the engine room; and there were two ventilators on the boat deck, which connected with the vertical pipe to the engine room. There was a hatch opening in the after part of the engine room, with a vertical ladder to go on deck.

Q. These ventilators that were connected with the boat deck, will you describe those?

A. Well they were just ordinary ship ventilators, about fifteen inch vertical pipe, turned from the top manually; there was no control from the engine room. I remember we used to call to the bridge to turn them out of the weather, in case of rain or something of that sort.

Q. That is, cowl ventilators?

A. Yes.

Q. And did the ventilators extend—these cowl ventilators, did they extend below the deck which constituted the ceiling of the engine room—ceiling or upper part of the engine room?

A. Possibly a matter of inches; not very far.

Q. You spoke of this engineer's room, that was originally part of the engine room. Will you describe that to us?

A. That was on the port side of the engine room, inside of the engine room, against the after bulkhead; floor space was possibly eight feet long, more or less, by four or five feet wide at the bottom, including your lower bunk; and it was built on an angle side wall; inboard sidewall was built on an angle and was supported to the deck overhead, framed up with sort of an angle iron construction, and framed up with boards and matched lumber.

Q. And what use was made of that room while you were on board the Seminole?

A. That was the chief engineer's room.

Q. And what means of exit to the deck did you have from there?

A. To the deck? Through the engine room.

Q. Through the hatch?

A. Through the engine room, and the engine room hatch.

Q. Did you describe the skylight for us?

A. There was a skylight just forward of the hatch, which could be hinged open; it was screened and then double hinged skylight lids on it, frosted glass.

Q. Were there any braced or soldered connections in the gas lines in the engine room—that is the manifold and feed lines that you have described?

A. I can't recall any, sir.

Q. You cannot recall any?

A. No.

Q. Was that the answer, "I can't recall any"?

The Reporter:

Yes, sir.

Q. Was Mr. Phipps, Mr. J. S. Phipps, in the engine room at any time during your period of service, that you recall?

A. Yes, sir.

Q. Well; will you tell us how often he was there?

A. He didn't come into the engine room very often, but he has been in there, he has come down and talked. I would say on several occasions, while we were under way.

Q. And talked with you, you mean?

A. Yes.

Q. In connection with those conversations, did you or did you not point out to him any of these things that you have told us about?

A. I don't recall that I did at the time of his visit to the engine room.

Q. There is one thing that you spoke of, that I would like to have cleared up. You spoke of, I think the word you used was, a gas leak, or a weeping leak in the gasoline line. Will you describe what you meant by those terms?

The Court:

Read the question again. (Question read.)

A. Well a weep, a seeping leak, or a gas leak, in a gasoline line, I consider a very, very small leak, something that doesn't actually drip and show a stream of gasoline running from the pipe, but by running your hand along the pipe and smelling your hand you can smell gasoline, or you can smell the gasoline vapor if you are observant enough; and those are leaks that I consider an engineer should look out for.

Q. If an engine room such as the engine room of the Seminole were closed up for a period of time, in your opinion could such leaks account for an accumulation of gasoline vapor there?

Mr. Underwood:

I object to that on the ground that it is a hypothetical question without the facts given, your Honor; and wholly speculative besides.

Mr. Matteson:

This witness knows the engine room of the Seminole, the conditions there. It seems to me under the circumstances he can answer the question all right. • • •

The Court:

Capt. Brown, did you repair any of those conditions?

A. Yes, sir; on a number of occasions I have repaired those leaks.

The Court:

How frequently would you have occasion to make such repairs?

A. Well I would say—I would go over them to the best of my ability when we were laying idle and try to

get them ready for the next trip. It may be months apart.

The Court:

I am going to let the witness answer, but I am going to reserve my ruling on that.

Mr. Matteson:

What was the question, again?

Q. (Question read.) ("If an engine room such as the engine room of the Seminole were closed up for a period of time, in your opinion could such leaks account for an accumulation of gasoline vapor there?")

A. Absolutely, if you had those leaks at the time the engine room was closed up, it could cause a very explosive vapor.

Q. Well perhaps I can develop it better in this way. I think it is perfectly clear, but the further thought I want to develop: what is the difference between a leak that drops gasoline, and a leak that weeps gasoline, or seeps gasoline?

Mr. Underwood:

If your Honor please—

Q. —and as to its effect?

Mr. Underwood:

May I ask for my own enlightenment, whether this question is directed to any such leak anywhere, or some particular leak on some particular boat?

Mr. Matteson:

If your Honor please, I am satisfied with the answer; I will let that question go.

Q. What means was there on the Seminole at the time you were there, for determining the amount of gasoline in the tanks?

A. Well just to the starboard side of the log desk, or between the log desk and the batteries, there was a verticle line of pipe, or riser, built up of quarter-inch iron pipe, with a T every 12 inches; and in each one of these T's there was a petcock; and you were supposed to guess at about how much gas you had, and start at the top and come down and open petcocks until you got gasoline pouring out of one of them, and then you decided it was somewhere between that one and the next one.

Q. There was no gasoline—I mean no glass gauge at that time?

A. No glass gauge; no, sir.

Q. Were there any sounding pipes?

A. No sounding pipe.

Q. Mr. Brown, you as I understood it slept in this engineer's room in the engine room of the Seminole, during your period of service there. Did these conditions that you have described cause you any uneasiness?

A. I thought about home many a night. I kept plenty of Pyrene in cans; I would carry five gallons of Pyrene in quart cans and scatter them all over the engine room; I had three or four on each manifold, and figured that if a fire started it would explode the can and possibly put it out.

Q. Well the question I asked you was, did these conditions cause you uneasiness? In answering Yes or No, what is the answer?

A. Well, yes, if you ask it that way.

Mr. Matteson:

That is all.

Cross Examination.

By Mr. Underwood:

Q. Are you married, Mr. Brown?

A. Yes, sir.

Q. How long have you been married?

A. Thirty five years.

Q. How many children have you?

A. Three.

Q. How old are they now?

A. In sort of—23 or '4; 28 or '9; and about 34—close to '5. I was married in 1903.

Q. You have a healthy regard for your own safety, I suppose?

A. I also—yes.

Q. You slept in this engine room off and on for four years?

A. Five years.

Q. Five years. And you were uneasy all this time, but you continued to sleep there night after night, is that right?

A. Yes, sir.

Q. Of course you were right in the engine room when you were sleeping there, weren't you?

A. Practically so.

Q. Well the engine room is a rectangular space, is it not?

A. Roughly speaking, yes.

Q. And the engineer's quarters were set into that engine room?

A. Yes, sir.

Q. I show you respondents' Exhibit A for identification; ask you if that fairly represents the situation of the chief engineer's stateroom as it is marked there?

A. Very good, sir.

Q. Your entrance into that little room was on the forward bulkhead of that little room?

A. Yes.

Q. And your berth is just a foot or two from the port motor?

A. That is right.

Q. And the switchboard was located on the after bulkhead about midway between the two motors, wasn't it?

A. Yes, sir.

Q. Your berth is only three or four feet from there?

A. From the edge of it; yes.

Q. And from the gasoline tanks, which were seven or eight feet? Would that be approximately right?

A. Not quite enough; I would say ten feet possibly.

Q. The gasoline lines that you speak of, the manifold, led across the forward bulkhead of the engine room?

A. That's it.

Q. And the gasoline lines that you speak of from the manifold led down to the port motor?

A. Yes.

Q. Between the port motor?

A. Almost amidship; right to the port side of the log desk.

Q. And they came up on the port side of the port motor?

A. Yes, to the carburetor.

Q. Almost under your bunk?

A. Almost.

Q. The carburetor was approximately under your bunk, wasn't it?

A. Yes, sir.

Q. And the other side, the gasoline line led back to the starboard side of the starboard motor?

A. That's it.

Q. Was there a generator in there at that time?

A. At the time I took it, the generator was under my room.

Q. When you left her, was it still under your room?

A. No, I moved it out here in the open.

Q. Notwithstanding your uneasiness, you slept in that room over one carburetor and within ten feet of these gasoline tanks for five years; is that right?

A. Now—

Q. Is that right?

A. Yes.

(At 10:55 a. m., informal recess was had.)

Q. I didn't understand, Mr. Brown, whether you have a license from the steamboat inspection service or not?

A. Yes, sir.

Q. What license do you hold?

A. Internal combustion.

Q. From the steamboat inspection service?

A. Yes, sir.

Q. For steam engines?

A. Internal combustion.

Q. Not steam engines?

A. Not steam.

Q. And what other vessels have you served on as an engineer? Perhaps I can shorten it; whether you have ever served on another houseboat?

A. Yes.

Q. What other houseboat?

A. The old Boomerang.

Q. And how long ago was that?

A. About 'twenty-one.

Q. 1921?

A. About 1921.

Q. Before you went on the Seminole?

A. Yes, sir.

Q. How big a vessel was she?

A. She was slightly smaller; bulkier; about 60—about 70 feet I imagine, as I remember it.

Q. What kind of power did she have?

A. Single cylinder—I mean single screw, one engine.

Q. Gasoline?

A. Yes, sir.

Q. Any other houseboats?

A. Another, I don't remember the name; owned by the same man; I made several trips on that.

Q. Who owned that?

A. Mr. Fay.

Q. What is the rest of it?

A. I don't remember his initials: Father John's Remedies. A. J., isn't it?—A. J., I think.

Q. Well I didn't work for him, so I don't know.

A. Well I don't remember exactly.

Q. Any other houseboats?

A. I worked on a number of them; not as engineer, but installing the machinery, and testing it out, and work around the shipyard; a number of them?

Q. What shipyard?

A. I worked for Pelsang's; for Merrill-Stevens; Tracy.

Q. Any more?

A. No, not for any length of time.

Q. The Boomerang and one other, are the only other houseboats that you have been on as an engineer?

A. Houseboats, yes.

Q. I didn't quite understand your length of time on the Seminole. It began about April 1922, did you say?

A. About; during the month of April '22.

Q. And originally I put down in my notes that you left early in 1923, then you said something about 1927; which is right?

A. Why I possibly left her every year I was on, between '22 and '27, because only one year I served continously through.

Q. When did you last leave?

A. '27.

Q. What month? Do you remember?

A. I don't remember the exact month; it was during the summer or early spring.

Q. You had not been on her continuously?

A. No.

Q. What did the Seminole do when you weren't on her? Was she laid up?

A. Not in the strictest sense of the word; no, sir. She wasn't laid up; the captain stayed aboard.

Q. Somebody stayed by her?

A. The captain stayed by, in the five years I was on her.

Q. And where was she moored?

A. Sometimes at Phipps' Dock; sometimes in Lake Worth, down below the bridge. We have laid up in Seybold's Canal, and in the Miami River at John Seybold's house.

Q. Which captain hired you in the first instance?

A. Captain Nelson.

Q. Was it Nelson?

A. Yes, sir.

Q. Now you said something about orders that you got from Mr. J. S. Phipps, and something about orders that you got from Mr. H. C. Phipps. Do you remember any particular order that you ever got from either of those gentlemen?

A. I can't quite get that straight in my mind. We got orders, continuously when Mr. Phipps was aboard; he would be issuing orders to do so and so, this and that. I remember one order in particular. I was laying up in the Miami River at Seybold's house; that particular summer I hadn't been on her that summer, but I was with her then; the mate and I were painting the boat deck, and we got a wire signed John S. Phipps, to have the boat down at Royal Palm Dock at seven o'clock that night, with a crew, serve supper for seven, and leave the next day for Dr. Tortugas. That was signed by him.

Q. Is that the only definite order that you can now recall?

A. Oh no, we had a number of them, but it is awfully hard to remember any one of them.

Q. I appreciate that. I simply want to know at the moment whether you can remember any other order about any specific thing.

A. We were up at Palm Beach one time, possibly I had gone up to get her in readiness for the season; it was before the season, as we call it; Mr. Phipps came down to the dock, handed me a ten dollar bill and told me to use his car, go to Miami and get a crew; he wanted a steward and a chef a least, to serve dinner that night to a party on the boat; this was in the middle of the morning. I came to Miami, picked up as many men as I could get, and took them back to Palm Beach, and we served dinner that evening. I remember the ten dollar bill distinctly.

Q. Well that's two, now. Any other specific orders?

A. Well I don't know exactly—I suppose there was plenty of them, but I don't recall any; how about telegraphic orders, or something of that sort?

Q. Well, it is twelve years ago, Mr. Brown.

A. I understand.

Q. And I don't want you to strain your memory too much; but if you can tell me of any specific order, I would like to know about it. Now you have given me two.

A. Well at one time I was working at Tracy's boatyard, I got a message from the captain to come up and go to work; I wired back and asked him if it was a season's job or a few days. He wired back to come for the season; and I had been there a few days and I got a message from Mr. Phipps, signed John S. Phipps, to lay off the entire crew, they wouldn't use the boat. That was another order I remember that came signed by him.

Q. Do you remember what year that was?

A. No, sir, I don't; it was in the fall of the year.

Q. You wrote some letters after that, complaining about that, didn't you?

A. I think I—

Q. Didn't you?

A. Yes; I objected to it.

Q. You had been hired by the captain for the season?

A. Umh hmh.

Q. And you only had about two weeks' work?

A. Umh hmh.

Q. You only got about two weeks' pay?—The witness nods.

A. At that time; yes, sir; pardon me.

Q. And you were sore about that?

A. Sore? No, I wasn't sore. I was within my rights.

Q. You were angry, weren't you?

A. No; there was nothing to get angry about.

Q. You made a complaint about it, didn't you?

A. Yes.

Q. Who did you make the complaint to?

A. Well, before I had gone very far with the complaints, they wired me to come back to work. I went on up there and shook hands and went back to work.

Q. Who did you make the complaint to?

A. Then I made the complaint to George Osborne in the Palm Beach office.

Q. Anybody else?

A. To the captain.

Q. Anybody else?

A. I don't recall anybody else, possibly.

Q. What is your address now, Mr. Brown?

A. 705 Miller Road is the home address.

Q. Here in Miami?

A. South Miami.

Q. And what is your business address?

A. 555 to '61 Southwest 8th Street.

Q. Now you have also mentioned without giving particulars, and I appreciate it may be difficult for you to, after this lapse of time,—orders that you say you got from J. S. Phipps about various things. Let's talk about those. What kind of orders would you get from him?

A. Well for instance if we—you mean me personally, or the ship?

Q. I am talking about you, now.

A. The ship?

Q. You, Leslie Brown.

A. The only order I ever got directly from Mr. H. C. Phipps, I had been laying off Flamingo Dock for quite a while; we had orders to go to the Keys, I didn't know where we were going, and I didn't care; I knew we were going south. We started out and I had a terrible squeal in the engine room,—a whistle; I couldn't figure what it was; and Mr. Phipps came to the engine room, wanted to know what it was. I told him I hadn't located it yet, but I was still trying. We were going through the bridges, through the drawbridges, and I couldn't shut down either engine; and it had me worried. He says "Chief, do you know what it is?" I says "No, sir, I don't"; but I says "I will have to stop and find it." He says, "Well" he says "I will tell the captain to anchor, and you stop and find it, and we will go to a picture show instead of going down to the keys." He says "Now don't worry on my part, I will be perfectly all right; you go ahead and find that trouble and remedy it, and we will go in the morning instead of tonight." It was a very simple thing after I located it; he didn't need to go to the picture show. But he came to the engine room and told me.

Q. That was H. C. you are talking about?

A. That was H. C.; yes, sir.

Q. Now let's talk about J. S.; what kind of orders did you get from him?

A. Well Mr. J. S. would come down to the dock and talk to all of us; it was an audience he liked, and he would talk to all of us at one time,—that is including the captain and myself; I don't know as there was any particular orders to me.

Q. That is what I am asking you about, Mr. Brown; I would like to know whether Mr. J. S. Phipps ever gave you any particular orders, and what they were.

A. Well as I say, he ordered me to Miami several times, on several occasions, to pick up men, or crew, or to be ready to sail at a particular time, or something of that sort. I would generally get that through the captain, hearing him tell the captain, however, when, I would take that as an order, but I wouldn't say it was direct to me.

Q. You might hear J. S. tell the captain "I want to sail tomorrow at the crack of dawn", or "I want to sail tomorrow night"?

A. Three o'clock, sir.

Q. Tomorrow night after dinner, or something like that?

A. Yes.

Q. "And we will be gone a week"?

A. Oh I have heard that on numerous occasions.

Q. All right, anything else that you remember hearing from Mr. J. S. Phipps, of any nature, in the way of an order?

A. Well, I was with him a month over in the Bahama Islands.

Q. On the Seminole?

A. On the Seminole.

Q. By the way, did you ever work on any other vessel in which the Phipps family were in any way interested?

A. Not directly; I helped on the Iolanthe quite a number of times.

Q. But you were never employed on her?

A. I was never employed; that is I wasn't on the Iolanthe's payroll, as I understand it; but I did work on that boat.

Q. I interrupted you; you were telling me about once at the Bahama Islands for a week.

A. A month, sir; and during that time it was very natural that we received a lot of orders from him; and I am trying to get it straight in my mind.

Q. Just what particular?

A. He had plenty of them that I have remembered, but I think you have sort of got me on a particular order, over there.

Q. Do you remember any?

A. Well sir, the only way I could answer that, is that every time he was on the boat he was absolute boss; he was the man in charge, and he would issue all the orders. Now I can't recall any particular order that he issued, any more than "Let's go here", and there, to go fishing, or to do something of that sort; which was in a general way; it wasn't directed to me personally.

Q. Is that what you mean when you say he was boss, that he was in the position, and he had the right to tell the master and the crew where to go and when to go and when to stop?

A. And when to hire a crew and when to lay them off.

Q. That is what you mean by—

A. Yes.

Q. Did H. C. Phipps ever exercise that authority at that time?

A. No, sir; never in the hiring and firing of a crew.

Q. J. S. is the one that did that?

A. He is the one that did that.

Q. Was Nelson the master all the time that you were on the Seminole?

A. Practically all the time; not all the time.

Q. Well, he was master when you began, and he was master when you left?

A. No, sir.

Q. He wasn't?

A. He left before I did.

Q. Sure about that?

A. Yes.

Q. Did Mr. J. S. Phipps ever give you any order about any matter of construction in the engine room?

A. Not that I remember.

Q. Did he ever give you any order to do anything in respect to maintenance or upkeep to the engine room?

A. To answer that it will sort of be a roundabout way, because it was simply a case of—

Q. Did he or didn't he, Mr. Brown?

A. I can't remember any particular—any one case where he actually issued an order to do or don't do anything; it was a case of, refer to the captain.

Q. Are you telling me that as engineer of the boat, when you thought you ought to have something done in the engine room, you went over the captain's head to Mr. Phipps with a request for authority to do something?

A. I have done it; yes, sir.

Q. And you are telling me that when you did that, Mr. Phipps referred you back to the captain? Is that right?

A. Back to the captain; yes, sir.

Q. He never once passed upon that himself?

A. Now I can't recall any instances where he went directly over the captain's head. We have argued between the three of us on a number of occasions; what decision we came to I don't remember.

Q. Having argued among yourselves, you reached a decision among yourselves; is that what you mean?

A. Oh yes, generally.

Q. And did what the three of you agreed to do or not to do; is that right?

A. That is generally the way an argument ends up; yes, sir.

Q. I am talking about these; is that right?

A. Yes, sir.

Q. Do you recognize this thing, libelants' Exhibit 11? Did you ever see this before?

A. I don't deny I have seen all sorts of combinations; that possibly was one of them; I can't say that I remember that particular one. No, sir, I can't say that I absolutely remember that particular hookup.

Q. You have spoken of a valve to draw off gasoline on the Seminole. Does this contraption resemble what existed on the Seminole in your day?

A. Oh yes; yes, sir; that resembles it, but I wouldn't say that it is part of it.

Q. Can you say it was the same, or not?

A. No, I couldn't say it was the same; I don't remember that particular hookup.

Q. What material is that device made of?

A. That is a Globe valve, an angle valve, union, nipple, bushing.

Q. What was that all made of?

A. These valves are made of cast brass; that nipple there I am afraid to say; from the light on it it looks like—this one here looks like it might be iron, from the looks of the rust.

Q. Want to take your knife and scratch it?

A. I would feel better if I get some glasses on. Have you got a knife?—this is a brass nipple there.

Q. That is out of the T-valve is a brass nipple?

A. Out of the angle valve. I would call that an iron nipple in there; see the rust piled up on it? Can't break it through with this knife.

Q. An iron nipple between two valves?

A. Between the union and the angle valve—between the union and the bushing, rather.

Q. Now I show you Exhibit 17; does that resemble anything that you have seen on the Seminole?

A. Yes, I would say it resembles it.

Q. Would you say whether it's the same or not?

A. I wouldn't identify a thing like that as positive; that's the same general idea of a hookup; that was the strainer. Let me try to get this straight in my mind now, where this one would come from. It looks like the port side; yes, port engine.

Q. You don't need to read the legend.

A. I didn't mean to do that, pardon me; but I mentioned it first. One of those went to the auxiliary set, as I remember, and one to the main engine.

Q. Is that the size of strainer that was for the main engine?

A. Yes, sir.

Q. Or, for the auxiliary?

A. To the best of my recollection, the strainer was no bigger than that; it was about that same size on the main engine.

Q. Are they the same size for the main engine and the auxiliary?

A. Same pipe connections.

Q. Were the strainers the same size on the main engine and on the auxiliary?

A. Yes, sir; on the auxiliary as I remember there was one branch line taken off for the auxiliary, and for the main engine, on the same strainer.

Q. What kind of pipe is that?

A. Have to have the knife again.—Brass in there. That's brass pipe in there now, sir.

Q. Well I show you Exhibit 2; I hesitate to ask you whether that resembles anything you have seen on the Seminole, because it is so twisted up now: but does it?

Is that the sized pipe that was used on the Seminole for any purpose?

A. Yes.

Q. What purpose?

A. They used that for gasoline; about the same size—that is the same size; quarter inch pipe. This is a quarter inch pipe.

Q. What kind of pipe?

A. That is a brass pipe throughout. That is brass pipe and brass fittings.

Q. Are you sure, Mr. Brown, the gasoline lines when you were on the Seminole were iron pipe?

A. Absolutely positive—the majority of them, if not all.

Q. Did you ever see any brass pipe in the engine room?

A. Yes, sir.

Q. Of the Seminole?

A. Yes, sir.

Q. But most of it in the gasoline lines was iron pipe, was it?

A. That was the best of my recollection.

Q. Did you complain about that?

A. Yes, sir.

Q. Were there leaks?

A. There were some few leaks at different times; I had trouble with them.

Q. How many different times did you find any leak of any character in the gasoline lines of the Seminole?

A. I would be afraid to answer.

Q. Do you remember very many? How many?

A. Oh, a few, I would say; quite a few. That is rather indefinite.

Q. That is frightfully indefinite, Mr. Brown.

A. I don't know as I could do any better.

Q. Did you have one every day?

A. No.

Q. One every year?

A. —naturally not.—I don't know.

Q. Did you ever have a real gasoline leak where liquid gasoline flowed out from the pipes?

A. No, only from carburetors, not from pipes. I have never had it from pipes, flowing out in a stream, except —pardon me; the way those tanks were rigged up, when we would fill gasoline from the deck I have had a stream come out,—overflow.

Q. Any leak in operation?

A. Not in ordinary run of operation of the boat; there was no serious leak, except as I said before, just small screwed pipe leaks, which you are bound to have in screwed pipe connections, whether they are in brass or iron; more serious in brass than iron.

Q. Those are seep leaks you speak of?

A. Seepage.

Q. You said something about overflow; tell me about that; when did that happen?

A. Overflow? From the gas tanks?

Q. Yes; you remember I asked whether you had any liquid leak of gasoline, and you said, overflow; that is while you were filling?

A. Filling the tanks.

Q. Where was the overflow?

A. The overflow came from the top of the tanks and out overboard, over the side of the vessel; but it wasn't of sufficient size, it was only a half inch pipe—possibly three quarters.

Q. You mean the overflow pipe, now?

A. Yes; only half or three quarter pipe; and we had inch and a quarter—inch and a half filling pipe.

Q. When the tanks got full?

A. When the tanks would get almost full, they would get an air-blow, out through this overflow, and the result

would be the gasoline would puff back through the fill down there and flow into the engine room around the gasoline—

Q. How did it get into the engine room?

A. Because, it came through the deck; no provisions for caulking.

Q. Just a hole with the gasoline line through it?

A. It leaked gas; I have had gas come down through there.

Q. At the overflow?

A. Yes, sir.

Q. When the gasoline line wouldn't take gasoline as fast—

A. It would pour out on deck and some of it would go to the engine room; most of it would go out of the scuppers; most of it would pour across deck and out of the scuppers.

Q. That is the only leak you have had of liquid gasoline? Right?

A. No; I would say the carburetors were along the general run of carburetors of those days, which would be that you couldn't trust the main engine or the auxiliary to shut them down with the spark; I would always shut them down with the gasoline line. If at any time you shut down with the spark, you would get a carburetor full of raw gas.

Q. You mean no carburetor of those days was wholly trustworthy in type?

A. I don't say there was none, but I never met very many of them.

Q. You said something about a pan under the gasoline tanks. One pan is all you recollect, is that correct?

A. The best of my recollection, that is all that was under there; one pan under the four tanks.

Q. Isn't it a fact that there were two pans; the two port tanks set in one, and the two starboard tanks set in the other?

A. Most anything is possible, sir, but that is the best of my recollection, it was one pan; it may possibly have been two, but I wouldn't—that pan is rather indefinite in my mind, any more than the gasoline tanks were set in pan; because I remember one pan; it is very possible it was split.

Q. Was the pan as big as the compartment?

A. It must have been mighty close; it couldn't have been as big or they possibly couldn't have gotten it in; but it was mighty close; mighty close.

Q. Were the edges of it riveted to the compartment—bulkheads?

A. Not as I remember.

Q. How was it held in place?

A. As I remember it was set up on frames of channel or angle iron of some description in there. It was framed up with metal frame, and what cushions they had between the metal and the actual tank, I don't remember—or the pan; I don't remember.

Q. Was the pan rectangular or oval, or how was it shaped?

A. It seems to me it was a rectangular pan.

Q. How far below the gasoline tanks, bottoms, was the pan?

A. That has worried me quite a bit too; it seems to me—I know the pans were setting in it, right in the pan.

Q. Do you mean that the tanks were setting right on the pan?

A. In.

Q. Was the metal of the tanks against the metal of the pan, or was there something across the bottom of the pan for the tanks to sit on?

A. That is what I just mentioned, that I don't remember what kind of a cushion there was under the gas tanks. I can't—I have been trying to think of that; I

have been trying faithfully to think of it, trying to figure out whether or not there was a cushion or something between those two, to keep down corrosion or such as that.

Q. I have the advantage of you, Mr. Brown, because I have been all through there within the last ninety days; but I want to know what you remember.

A. So would I like to know. I have tried to remember just that particular point, about how those tanks were set in that pan. There was a pan under the gas tank; we know that, I know that; but how they were set in there I don't remember; whether there was a wooden strip or some other composition strip, or whether it was metal to metal; and that was my impression, metal to metal.

Q. How close did the ends of the pans come to the side bulkheads of the compartment? That is to say, how near the port skin of the Seminole was the port end of that pan, or whatever pan it was?

A. Well sir, I couldn't answer that definitely, because I opened that door on the port side, as I said before, and I looked in there, and I left the door open for—after I finally got it open I left it open on every occasion possible, to ventilate that compartment; but I still couldn't look down to do any good and I don't remember whether I—exactly the distance; I know it was very, very close.

Q. Where was that little door?

A. It was about—oh now—

Q. First, in which bulkhead of the tank compartment was it?

A. It was in the side of the vessel, in the wood side, maybe 20 or 30 inches above the top—above the top rub mold, on the wood side of the old original coal bunker, or the gas tank compartment.

Q. In order to get to it, you had to go out on the deck?

A. On the dock, or tie a line on you and stand on the rub mold with the line tied on the rail.

Q. Did you ever put your head in there and look through?

A. Yes, I stood on the dock one day and tried to get my head in, and couldn't get it past the tank; as I remember, I tried to get into it one day, but I couldn't get into it.

Q. About how big was that little window?

A. Oh I don't know, 15 by 20.

Q. Well, you could get your head through then?

A. Yes, through the door, through the opening; I mean I didn't have room to go after—

Q. Not your body?

A. I could have got my body through the door, but I didn't have room inside after I got through the door, if I could have. It wasn't the size of the door that kept me out.

Q. When you looked in there did you notice how close to the skin of the vessel these tanks came?

A. I suppose I did.

Q. Do you remember?

A. Not necessarily, no sir; not exactly. I really don't remember how close they were.

Q. You spoke about a little square hole in the forward bulkhead of the engine room. Do you remember where that hole was with reference to the tanks—to the pans?

A. That hole was just about—let's see; middle of the engine room wouldn't be middle of the gas tank compartment; it would be over to starboard a little bit.

Q. Which was it in the middle of, now?

A. I never did measure, but it was close approximately to the middle of the engine room.

Q. Isn't it a fact when you looked through that hole you could see into the pan or pans under the gasoline tanks?

A. When you looked into that hole?

Q. Yes.

A. No, sir; after you crawled through the hole, got into that compartment, you could look up to the tanks.

Q. Isn't it a fact that from the engine room you could look through that square hole, and see into the pans under the gasoline tanks?

A. No, sir.

Q. You are sure about that?

A. I am sure; positive.

Q. You were asked, I think—I am not sure about this, whether there was any drain line from that pan or those pans; do you remember about that?

A. I never found a drain line on them, in any way.

Q. You never saw one?

A. No, sir.

Q. I show you Exhibit D for identification; you know Captain Nelson's signature, don't you?

A. I don't know that I do. I have seen him—

Q. So that you can tell whether that's it?

A. Looks about like it.

Q. Do you recognize that as the general outline of something that might be the Seminole?

A. Roughly.

Q. You notice the compartment and the word Tanks in there?

A. Umhhmh; yes, sir.

Q. Do you notice it says over here, 'tanks standing in drip pans and leading overboard'?

A. Umh hmh.

Q. Does that refresh your recollection as to whether or not there was a drain overboard?

A. It doesn't convice me that there was.

Q. You mean merely because Nelson says it is so, doesn't make it so?

Mr. Botts:

There is no proof yet that Nelson says it was so.

A. As far as that is concerned, I never saw a drain under those tanks, of any kind; where would it drain? Overboard?

Q. Well, you are the engineer; do you say that there wasn't any?

A. Yes, sir, I say there was none. I don't remember a drain under there.

Q. What was the space under the pans used for for, Mr. Brown?

A. Storage of lubricating oil, and parts—repair parts, pipe fittings, such as that.

Q. And the water tanks were forward of that little compartment, were they?

A. Yes, sir.

Q. In the bilge?

A. In the forward bilge, under the cabin.

Q. Was that bilge continuous as you remember it, or was there a water-tight bulkhead or a solid bulkhead?

A. There was a bulkhead, not water-tight or solid, between the gas tank bulkhead, that is the forward end of the gas tanks; the bulkhead came down to the ship's frames, but it was not water-tight or solid.

Q. You mean there were openings there?

A. Large openings.

Q. There was a hole in that bulkhead corresponding to the hole between the engine room and the space under the tank compartment, was there not?

A. Not as much; you couldn't crawl through it.

Q. You say a man couldn't get through it?

A. Couldn't get through it from the forward bilges, he couldn't go to the engine room through the bulkhead.

Q. Sure about that?

A. Not when I was on her he couldn't.

Q. Quite sure about that?

A. Yes, sir.

Q. Now you mentioned a window on the port side of the engine room; do you remember a window on the starboard side?

A. It went to the passageway between the after and the forward end of the vessel.

Q. There was a window there?

A. Only from the engine room to the passageway.

Q. There was a window there?

A. Yes, sir.

Q. How big was that when you were on board?

A. Quite large; 30 or 36 inches square.

Q. Did it slide down into the deck, down in the bulkhead, or how did it open?

A. It hinged into the engine room.

Q. Did it swing forward or aft, to open?

A. The hinges were on the forward side.

Q. Was that made of steel?

A. Wood frame.

Q. Glass, you mean?

A. Wooden frame, glass window.

Q. Do you remember what windows there were in the alleyway outside the engine room?

A. No, sir; there were one or more windows in there—one or more.

Q. One or two, eh? Now I show you libelants' Exhibit 5, a photograph taken some time after the fire, and ask you if that looks like a portion of the forward engine room bulkhead of the Seminole, and one of her tank valves?

A. Well, it looks a great deal like it.

Q. Well I think it is fair to say to you that that is a picture of the Seminole.

Mr. Matteson:

I object to that.

A. I should judge that is what it was after the fire. Of course I never saw it in that condition, but the holes as I said were 2½ or 3 inches in diameter, and there were pipes coming right out of the bottom of the tank, and the tank showed a riveted bottom seam, which would indicate a concave bottom.

Q. You can see the bottom of the tank there, can you not

A. Yes, sir.

Q. Isn't it a fact that you must be able to see down into that pan through that opening?

A. Through that opening?

Q. Yes.

A. Yes, down just a little bit, if the pan were there; I doubt whether you could see the bottom of the pan. But pardon me, weren't you asking about that square opening into the engine room?

Q. Yes; I will come to that. Isn't it fact you could see the pan through that opening?

A. Yes.

Q. There were four such, weren't there? One for each tank?

A. Two in sight, I think.

Q. There were four such openings, one for each tank, weren't there?

A. Yes, one for each tank.

Q. There wasn't any glass gauge in the engine room when you were aboard, I think you said?

A. Gasoline gauge?

Q. Glass gasoline gauge.

A. No, sir.

Q. No long glass gauge?

A. No, sir.

Q. Now what did you do when you found these weeping leaks?

Mr. Botts:

Excuse me, Mr. Underwood; he used the word, seeping, I think, and Mr. Matteson understood; I don't believe he in the first instance used the word; I think it was a misunderstanding of Mr. Matteson's. I may be mistaken.

Q. Well, let's get our word right.

A. We will still use the word, seeping leak, or seep leak.

Q. We will use your word. Just what do you mean by a seeping leak? You mean it drips liquid gasoline, or what do you mean?

A. Not necessarily. It would be a damp, wet spot on the pipe; a seep—just seepage, is the way I have always understood it and used the word; it doesn't necessarily mean that there is a continuous dripping or dropping of the gasoline, but it could be enough there to worry you, or to call your attention to the fact that the joint wasn't tight.

Q. When you find a condition like that, what did you do?

A. Well, repair it, and first chance I get.

Q. And stop the leak?

A. Temporarily.

Q. How did you repair it?

A. Well most of the time it was litharge and glycerin; if not it was shellac.

Q. You wouldn't break the connection?

A. On a number of occasions I would break the connections, if it was anywhere handy we would have to do it, to repair it properly.

Q. Did you repair it properly?

A. Yes, I have done that.

Q. Did you ever leave it improperly repaired?

A. I expect there was a lot of them improperly repaired.

Q. Did you leave it improperly repaired?

A. Not to my knowledge.

Q. Whenever you repair anything you repair it as properly as you knew how?

A. With the material on hand; yes, sir.

Q. Now you said, I think, that you tried to get Capt. Nelson's approval to take out this iron pipe and install copper tubing?

A. That was my preference, copper tubing.

Q. Did you take that up with Capt. Nelson?

A. Oh yes.

Q. And he told you that—he wouldn't let you do it, is that right?

A. It was never done.

Q. Did you ever say anything to John S. Phipps about the copper tubing in there?

A. I would have to be mighty sure on that, but I can't remember any particular instance where I called his attention to it personally. I have talked to him about the conditions in the engine room—about the leakage we had of gasoline; whether or not I requested him to allow me to put in copper tubing; I wouldn't swear to that; but I know that discussion has come up between us, in regard to the way the engine room was piped.

Q. Now you say that you spoke to him about leaks. Do you remember what he said?

A. Well that particular time I don't remember—

Q. Do you remember what he said?

A. It generally—tell me the captain was king—that's the way it generally wound up, unless the three of us were together, then we would argue, if the three of us were together and we would bring up something of that sort, we would have a friendly discussion, more or less.

Q. Did you think this was a dangerous condition in the engine room?

A. Well—

Q. You lived with it five years. Did you think it was a dangerous condition?

A. I would always consider gasoline dangerous.

Q. Any gasoline installation is dangerous, is that right?

A. No, not any. I have seen some gasoline installations that I considered just about perfect. But gasoline itself is dangerous; gasoline vapor is dangerous; and as long as these conditions did exist, and I could do nothing about it—

Q. You could have left the boat, couldn't you?

A. Well—

Q. You didn't have any long term contract binding you to employment there, did you?

A. I had a family to support.

Q. You didn't want your wife to be a widow, did you?

A. I don't know as it made much difference in that respect; it was a case of make a living for her; and I do things today to make a living for my family, and will continue to do them; they might be dangerous.

Q. Did you regard that as a dangerous installation?

A. Well, I regarded it in this way, sir; and it might just as well be threshed out, whether or not—there was a leak; the carburetors would leak if you shut them down without shutting off the gas, they would drip. On numerous occasions the lighting plant carburetor developed a leak while it was running: that is an absolute fact.

Q. Did you fix those things?

A. Yes, fixed them, and they would stay fixed—send them to the shop and have them completely overhauled, as far as the carburetor was concerned; and during the course of the next season it will do it again—carburetors in those days.

Q. As the result of operation, I suppose?

A. As the result of the vibration, or something.

Q. And all carburetors will do that—or practically all, won't they?

A. I would say a lot of them did in those days; a lot of them did.

Q. Now go on; I think I interrupted you, when you were telling me something.

A. And I would keep as I said, Pyrene around there; I had four or five Pyrene cans besides five gallons of Pyrene liquid, and I have on numerous occasions dumped it into the bilges, for safety, when I would find a leak, or when we were filling up the gas tanks and the fumes would get too heavy, or such as that. It may have been foolish, but I have poured Pyrene in the bilges for safety.

Q. Now let's get back to these difficulties that you say you had in the engine room; these seeping leaks; did I get the right word? Do you think now of anything else that you want to criticize about the gasoline installation of the Seminole?

A. I don't know as I was really criticizing; I was answering questions to the best of my ability, sir; and if there is any there—

Q. Of course it is wrong to have leaks, in your opinion, isn't it?

A. Why certainly.

Q. Was there anything else, in your opinion, wrong about the gasoline system of the Seminole?

A. The overflow pipe wasn't large enough.

Q. Anything else?

A. I can't remember that there was any drain on the pan, and I looked for it.

Q. Anything else?

A. Well the installation of the tank, there was absolutely no way to look at them or get to them or to see the condition of them.

Q. Anything else?

A. Oh I don't know; in regard to taking gas in the engine room, I always figured that we ought to have an auxiliary tank for gasoline on deck, somewhere in the open. I talked to the captain on numerous occasions, but I never get any further than the Captain with it.

Q. You mean to fill through?

A. To have an extra supply for the launches, or to have some means of getting that gasoline out of the engine room. I have talked to him on numerous occasions, but at the time I left we were still taking gas from the tanks in the engine room, for the boats.

Q. You don't say you talked to J. S. Phipps about that?

A. No, I don't say I talked to J. S. Phipps about that.

Q. Did you ever talk to J. S. Phipps about there being no way to look at the gasoline tanks?

A. No, I don't think I ever did.

Q. You haven't said that you ever told him that there was no overboard drain from the pans under the tanks?

A. I didn't consider it necessary to tell Mr. Phipps all those things.

Q. You haven't said that you ever told him about the size of the overflow pipe?

A. I don't remember saying that I ever told him that; I don't think I—I know I didn't talk to him in regard to that, unless it was for some particular—now we can go back into that; some particular time we filled up while he was there and he wanted to know why the gas ran over back—which he would have if he had been there. I would possibly have answered him "the overflow pipe is not large enough to take care of it."

Q. You are not remembering something, you are stating what would have happened if something else had happened; is that right?

A. It is just about as vague in my mind as—

Q. You don't remember that that ever happened, do you?

A. No, I don't say that I do.

Q. Do you say that you talked to Mr. J. S. Phipps about leaks in the gasoline lines?

A. I have answered that three or four different ways, I suppose, in the course of different questions. What I

am trying to bring out, sir, is that I tried my best, to the best of my ability, to take care of the boat; I could get no cooperation.

Mr. Underwood:

I move to strike that out, your Honor, as not responsive, and ask the witness to answer the question which I put. May the question be read?

Mr. Matteson:

It is in explanation of his testimony.

The Court:

It wasn't in explanation of an answer. The whole thing was explanation and not an answer; so I think the motion is well taken.

Mr. Underwood:

Will you read the witness the question?

(Last question and answer read.)

The Court:

Well, if it is not clear, you can go back into that again; but I will adhere to my original ruling; that answer is stricken.

Mr. Matteson:

The question is to be answered over?

The Court:

Yes.

Q. Do you want the question read again, Mr. Brown?

The Court:

If you want to explain your answer you may do it, Mr. Brown; but answer the question, and then make your explanation.

A. I think I understand the question; but as I—

The Court:

You will have to answer the questions directly, and then if you want to make an explanation you may.

A. I guess I could best answer that question, I don't remember—

Q. Is that your answer?

A. Yes.

Q. Now captain, was—

Mr. Matteson:

If your Honor please, I am sure the witness knows he can explain that if he wants to?

The Court:

Yes, he can explain his answer.

A. Well, as I stated on numerous occasions I have taken up different things with Mr. Phipps; but to answer that question direct as to whether I took up that particular gasoline leak, or something of that sort, I don't remember. But on numerous occasions I have talked to him about different things that were needed in the engine room; on numerous occasions the captain and Mr. Phipps and myself were together in these friendly arguments; and the result was generally that the captain's word was law.

Q. The captain made the decision?

A. No, his word was law in this way, that Mr. Phipps would refer me to him, or, he would ask the captain

what he thought about it. In some few cases I was allowed to render a decision. But the captain put this stuff in.

Q. Have you finished your explanation about this particular question?

Mr. Botts:

Let him go ahead.

A. He installed this engine room and was proud of it; and it is common sense that any changes I wanted to make in there were against his wishes. So that I think answers it to the best of my ability. If there is anything else—

Q. All right, I want to clear up one point. You have said that Mr. Phipps told you in substance or in words, I have forgotten which, that the captain was king?

A. On several occasions he has used that expression.

Q. He has; all right. Now when you would go to Mr. Phipps with one of those problems that you don't remember about specifically now, he would refer you to the captain, if the captain wasn't present himself; is that right?

A. In the majority of cases.

Q. And if the captain was present you would all three discuss the situation?

A. Yes.

Q. And was Mr. Phipps guided by the captain's wishes?

A. In the majority of sases.

Mr. Matteson:

We object to that. I think he ought to state more specifically than that, what he means, rather than stating the general conclusion.

The Court:

You mean, the question?

Mr. Matteson:

This testimony as to mental operations of another man; that is the point.

The Court:

I overrule your objection.

Q. You say that Mr. Phipps was guided by the captain in the majority of instances. Do you remember any specific instance where Mr. Phipps overruled the captain.

A. That would be rather hard to answer.

Q. Well, you have at least three possible answers; Yes, No, or I don't remember. Does one of those fit?

A. I don't remember.

Q. Now I want to ask you a question too about this pump that you say was installed for pumping gasoline out of the tanks into the boats.

A. No, sir; that was installed for a bilge pump.

Q. And a connection was made?

A. Connection was made so that you could use it for pumping gas into the boats.

Q. Where was the connection tapped into the gasoline line?

A. Somewhere along the manifold.

Q. Do you remember where?

A. Along the manifold—of this gasoline manifold, from the gas tanks.

Q. How did the line run from the manifold, and where did it run?

A. I don't know as I could give you that exactly how it ran. But as I remember that pipe ran from the starboard side over around the starboard tank, and came back to the bilge pump, which was on the shelf to the port side of the log deck.

Q. Where did the line go from the pump?

A. Used a hose.

Q. You mean a flexible hose?

A. Yes, we used a flexible hose, as I remember, a rubber hose from the pump to the boat; hose out of the window.

Q. Where did it go, out of the window?

A. Yes.

Q. What was the nature of the connection between the manifold and the bilge pump? Is that a flexible connection or a solid connection?

A. That is just the point that I was trying to get straight in my own mind, sir, and I am conscientious about it. I don't remember whether or not that was a flexible joint in there at any place or not. It seems to me, the best of my recollection, that was put in solid pipe.

Q. But you are not sure?

A. It was a connection between the gasoline tank and the bilge pump.

Q. Was it made when you wanted to use it, and broken when you no longer wanted to use it?

A. No, sir, just shut off the valve.

Q. Of course you don't know whether that existed in 1935 or not?

A. No, I don't know that.

Q. You have said, Mr. Brown, that you didn't like the idea of this business of drawing gasoline off in the engine room. I think you stated that the reason for that was that it engenders gasoline vapors; in that right?—or it might spill?

A. You get a gasoline vapor any time you draw gas into an open vessel, or expose the gas to air; you have got a gasoline vapor; there is always danger of spilling.

Q. Your reason for thinking there ought not to be in the engine room some such drawing-off valve, as this, is because in use it engenders vapor, or you might spill liquid gasoline; is that right?

A. Which in turn would generate a vapor.

Q. Is that your reason?

A. Yes.

The Court:

Was this bilge pump forward or aft?

A. It was under the shelf, bracket built to the forward bulkhead, and set up a matter of, on a little better than three feet off the floor plates.

The Court:

Well, it led from the tank on the starboard side?

A. Starboard side.

The Court:

Forward to the bilge pump, or aft?

A. No; right across; followed the bulkhead pretty well.

Q. The bilge pump was on a shelf on the forward bulkhead of the engine room?

A. Yes, sir.

Q. There was a little toilet in the corner, the port forward corner; wasn't there?

A. Yes, forward, end of the work bench.

Q. And then going to starboard from that, you had another little bench, and your bilge pump?

A. Under that.

Q. Is that correct?

A. That is just about right. That bench was—or shelf, was built on the forward bulkhead, and continued almost from the toilet to the log deck.

Q. I show you libelants' Exhibit 10, which I think it is fair to say to you was taken in the Seminole's engine room from a point perhaps amidships, looking to the port side.

A. Yes.

Q. Now you see these two brackets there on the forward bulkhead?

A. Yes, sir.

Q. Are those the brackets that the shelf sat on?

A. Approximately that's where it was.

Q. And the pump you speak of was on that shelf?

A. On that shelf; the shelf extended over both ways beyond the brackets a little bit; and here was the toilet.

Q. Indicating the forward port corner of the engine room.

The Court:

Get your blueprint; let me see it from that standpoint.

Q. Will you indicate where the bilge pump was?

A. Right in here at your log desk, that shelf would start.

Q. You will have to bear down on that.

A. I don't want to do that until I find out what I am doing; get it straightened out a little bit. I wouldn't say how much space was in there, but there was a little. Well this generator that you see here, this auxiliary plant, you could sort of look under and around, to get to this here exhaust pipe, ran out of the side there; the auxiliary plant was under the shelf.

Q. Referring to Exhibit 10 as to the auxiliary plant.

A. We were referring to this shelf, and I was trying to get the length of it here; although it is not as I can see very particular how long that should be over there.

Q. Just approximately.

A. Oh that ran from—say here is your center line, your log desk is right in here, about like that; something on that order; and the bilge pump was here.

Q. Driven by a motor—driven by a small direct current motor.

The Court:

Was this bilge pump in the engine room?

A. In the engine room, and up three feet above the plates, up there on the shelf.

Q. Now draw a line from the thing the witness called the desk, and write Desk—Log Desk?

A. Log Desk. That hole should show on there somewhere.— Right in here.

Q. And on this place the witness has called Bench, I will draw a line from that—

A. Shelf.

Q. I will draw a line from that and call it Shelf.

The Court:

Where was that toilet?

A. Right here in this corner; let's see, did we raise that the least bit, to get it above the water line? Seems to me we had to raise the toilet to get in above the water line.

Q. In this corner?

A. Yes, sir.

Q. May we put a circle there?

A. Yes; because I would come out of my room, across the work bench; just had a curtain around it; there was no well around it.

Q. Now draw a circle in the forward port corner and draw a line from it and write the word Toilet on the blueprint Exhibit A. Now on this shelf which you have spoken of, the bilge pump is at the starboard end of the shelf?

A. Yes.

Q. And the direct current motor was just to port of it?

A. That is close enough; yes, sir, that is right.

The Court:

Until that time, I had in my mind placed the bilge pump in the bilge of the vessel; so that was helped to

clear me up. The bilge pump was at that location when you first went with the vessel, was it?

A. No, sir; that was put in after we took out the old Clothel ice machine, and the bilge pump was the original Clothel compressor, the rotary pump or vane pump.

The Court:

What had been used for pumping out the bilge prior to that?

A. We had a connection from the main engine.

(By Mr. Underwood):

Q. You have spoken about the conduit in which the wires, electric-wiring wires were carried from one part of the vessel to the other; as I understand it, they were in conduit in the engine space?

A. Yes, I would say the majority of them were; of course on the switchboard itself there was ordinary switchboard work.

Q. I mean where the lines left one box and went to another box, they were in conduit, weren't they?

A. Yes.

Q. And that was metal conduit?

A. Metal conduit.

Q. You said something about that being rusted. Do you mean rusted through so that the wires were exposed?

A. Exposed.

Q. By wires exposed, you mean that the insulation on the wire was visible?

A. Yes; no protection but the insulation on the wire itself.

Q. You don't mean that the insulation was broken at any place, do you?

A. No, sir; I didn't see any of that.

Q. When you found such a condition, what did you do about it? Did you fix it?

A. Temporarily; reported it, tried to get some new wires to run in—that is new conduit; the captain wouldn't allow it.

Q. When you say you repaired it temporarily, you mean, put a patch around it?

A. Put a wooden splint on the side, and taped it, and gave it a coat of shellac, wherever I would find a weak place.

Q. Now you haven't said that you mentioned that to J. S. Phipps, have you?

A. I might have said that I mentioned it to him—

Q. I am sorry, I naturally interrupt you, but what I want, Mr. Brown, is not what you might have done, but what you can say here on the stand today under oath, did happen. I appreciate your difficulty, and all the years that have gone by, but it is my job to search out your memory, and that is what I am doing.

A. I will assist you every way I can; but I can't be too definite on some subjects, except for the fact I do distinctly remember mentioning the fact that the wiring on the ship was in terrible shape, and I requested that we have it repaired; and the discussion did come up between Mr. Phipps and the captain and myself at some time or other; when I don't know.

Q. You say you mentioned it some time to Mr. Phipps, that the wiring was in bad shape, did you?

A. I feel confident,—I am positive of that, that I did mention it to him.

Q. Where?

A. Well, those conferences between us were generally at Palm Beach, at the dock; and that's about as near as I can come to it.

Q. Where were you on this occasion?

A. I can positively say it happened on the dock at Palm Beach,—at his dock.

Q. You remember that now, do you?

A. I feel sure I did.

Q. Your memory is getting a little better about this conservation, is it?

A. I have been thinking and doing a powerful lot of studying about it too.

Q. How long have you been doing all this thinking and studying?

A. Since I have been here this morning.

Q. Not before?

A. Not in regard to Mr. Phipps. I don't remember him—that is, I didn't try to figure that out.

Q. You just began to think about that this morning?

A. Just began to think about Mr. Phipps and when I talked to him I didn't realize what I was up against. I am not familiar with Court procedure, and I am doing the best I can to give you the proper answers, and I will continue to do so.

Q. When did you first start thinking about Mr. Phipps in connection with the Seminole?

A. Oh a couple of weeks ago.

Q. The first time?

A. Umh hmh.

Q. Now did you happen to start thinking about it then?

A. Well I was served a paper a short time ago to come down here as a witness.

Q. Yes.

A. And—

Q. You haven't talked to anybody about that?

A. Oh yes, yes.

Q. Who did you talk to about it?—Did you hear me?

A. Several friends of mine that I have—

Q. Who?

A. Well I have talked to Mr. Matteson about it.

Q. Who else?

A. Mr.—

Mr. Dyer:
Dyer.

A. Mr. Dyer; I didn't even remember his name.

Q. Who else, Mr. Brown? Don't be so reluctant, Mr. Brown.

A. I am not holding back. Mr.—I can't think of his name, back there; Tomlinson or Thompson.

Q. And that just began about two weeks ago?

A. Roughly; maybe a little longer.

Q. Well now, you tell me the time; when?

A. I haven't got any record of it, sir.

Q. Have you any recollection of when?

A. Well it may have been more than two weeks; it may have been a month, so far as I can say. I have got no record of the date.

Q. Was it two months?

A. I don't think so.

Q. Was it this year or last year, the first time?

A. This year.

Q. Sure about that?

A. I think so.

Q. And where did the first conversation take place, and with whom was it?

A. I can say I don't remember, on that, because I fail to remember whether or not I was approached at the laundry or at my home, or over telephone.

Q. Now you remember distinctly though, that you had this conversation with J. S. Phipps about rewiring this vessel, or his dock at Palm Beach, fifteen years ago—or not fifteen, but seven or eight years ago?

A. Yes, that stuck in my craw.

Q. Is that right?

A. That stuck in my mind.

Q. What time of day was your conversation with Mr. Phipps?

A. I don't remember that.
Q. Was it raining or was the sun shining?
A. I don't remember that.
Q. It doesn't always shine in Palm Beach, does it?
A. Not always.
Q. Were you just coming back from a cruise, or going out on a cruise, or was the boat laid up?
A. I don't remember.
Q. Did that conversation take place?
A. Yes.
Q. You still say that.

Mr. Underwood:
Let the record note the laughter (At table of counsel for libelants), and my feeling that laughter is appropriate at that answer.

Mr. Jones:
An old trick.

Mr. Underwood:
Must have hit the bird, or the bird wouldn't flutter.

Q. You said something about an electric light that was under these gasoline—under the trays or pans under the gasoline tanks; I don't quite understand where you say that was, Mr. Brown.
A. About amidships.
Q. In the compartment underneath the tanks?
A. Yes.
Q. You have used that light from time to time?
A. Used it every time you went under there.
Q. That is the way you got your light?
A. Yes, sir.
Q. You had occasion to go under there frequently when the vessel was in use?
A. Oh yes.

Q. You could tell by looking in those pans, or that pan, whether the gasoline tanks were leaking, couldn't you?

A. Well if they were tight and the gasoline was in there at sufficient depth, you could see it.

Q. Did you ever see any indications that those pans were not tight?

A. No, sir.

Q. Did you ever find any gasoline in them?

A. No, sir; never did.

Thereupon Court recessed until 2 p. m. of the same day.

March 20, 1939, 2:00 o'clock P. M.

Conveyed pursuant to recess.

Appearances same as heretofore noted.

734 LESLIE TYLER BROWN produced as a witness by the Libelants, resumed the stand and was examined and testified further as follows:

Cross Examination (Cont'd.)

By Mr. Underwood:

Q. You told me that Captain Nelson hired you in the first instance; right?

A. Yes.

Q. Which one of you left the service of the Seminole first according to your recollection?

A. Captain Nelson left before I did.

Q. Are you sure about that?

A. Yes. That is my answer, sir.

Q. Do you remember the circumstances under which you left the employ of the Seminole?

A. Well I don't know as I ever got any "circumstances" as you call it.

Q. Do you remember the circumstances?

A. Yes, I remember the time.

Q. Do you remember calling on Mr. Davis of the Davis-Olsson Company with Mr. Simmon and making inquiries about Captain Nelson?

A. I was with Mr. Simmon and possibly we called on Davis-Olsson. I don't remember the incident.

Q. Do you remember that you were inquiring about whether or not Captain Nelson had been getting a rakeoff personally for the purchases that were made on account of the Seminole?

A. Mr. Simmon may have been inquiring—

Q. Do you remember that you participated in that?

A. Not in the argument.

Q. Were you present at that time?

A. I don't recall that particular occasion that he asked about anything of that sort, but I do know that I went around with Mr. Simmon at his request.

Q. To several places?

A. Yes.

Q. Do you remember that at Davis-Olsson's you got or saw a check which that company had paid to Captain Nelson which was 10% of the amount that he had authorized spending there?

A. I can't recall the check.

Q. Will you look at these two pieces of paper and tell me if they refresh your recollection?

A. No, but they seem to be Davis-Olsson's checks.

Q. Do you remember whether you ever saw these two pieces of paper or two like them, or the original check?

A. I can't say that I remember definitely seeing those.

Q. Do you remember Mr. Simmon getting that check from Davis-Olsson when you were with him?

A. I don't think I can remember that.

Mr. Underwood:

May we have this marked for identification.

(Face of check marked Respondents' Exhibit J-1 and reverse side of said check marked Respondents' Exhibit J-2, both for Identification.)

Q. Do you remember talking with a boilermaker foreman at Merrill-Stevens on the same subject, inquiring about any rakeoff that Captain Nelson may have been getting?

A. Boilermaker?

Q. Or any person in similar capacity at Merrill-Stevens?

A. No. I have a faint recollection of something in connection with that when I was with Mr. Simmon at that time; I think I remember something about that, about asking questions of somebody, but I don't remember what was the occasion even now.

Q. Do you remember that you were participating at least to some extent in an investigation of Captain Nelson to see whether or not he was getting a rakeoff on work that was being done for the Seminole?

A. Well I imagine that I had an idea that there was something of that sort going on.

Q. Do you remember that you found out or knew that Captain Nelson twice at least during the season of 1927-1928 receipted for 200 gallons of gasoline more than the boat received?

A. Well, sir, I couldn't answer that at any particular time but I understood that that was done at times.

Q. You know about that?

A. At no particular time; I couldn't say.

Q. But you knew about that?

A. Oh, yes.

Q. The answer was "yes"?

A. Yes, sir.

Q. When you were paid off do you remember having a conversation woth Paul Scott about the reason for your being discharged?

A. No, sir.

Q. You don't remember any conversation?

A. Can I answer that in my own way?

Q. Yes. I am asking you do you remember any conversation—

A. I went to the Biscayne Boulevard office after I was relieved at Fort Lauderdale; I came back with Mr. Simmon—

Q. And you asked the reason why?

A. Yes, and I was given no answer; I asked to talk with Mr. Scott and he didn't have time to talk with me.

Q. Do you deny that you talked with him?

A. I don't deny it, but I never got any satisfaction about it one way or the other as to why I was laid off the boat, and when I asked for an explanation he refused to see me.

Q. That is your recollection, is it?

A. Yes, sir.

Q. Isn't it a fact that you saw Scott in his office at the Biscayne Boulevard Company and he told you that you too were under suspicion for that practice?

A. No, sir.

Q. You don't deny that?

A. I don't remember anything about that conversation.

Q. Do you remember that on that occasion you offered to furnish Mr. Scott with evidence or information regarding Captain Nelson if Mr. Scott would promise to reinstate you on the Seminole?

A. No.

Q. Do you remember that you left, having received no promise from Mr. Scott, and returned a few days later and told Mr. Scott that you were willing nevertheless, without any promise, to tell him all you knew about Nelson?

A. No, sir, I don't remember that.

Q. I want to fix the time, Mr. Brown, with you, if I can, of those conversations, those that I have just been

referring to between you and Mr. Scott: Do you recall that those conversations occurred between the 1st and the 23rd of May, 1928?

A. No. Is that correct? That is in regard to the time I left the ship, in regard to any conversation—what I mean is that it is my recollection that I left the ship in 1927.

Q. These conversations about which I am asking you occurred between the first and the 23rd of May, 1928.

A. I don't even remember the conversations, and as far as dates is concerned I don't see how I could have been there then.

Q. Do you deny that these conversations about which I have called your attention took place?

A. I don't remember the conversations to which you refer.

Q. You deny that they occurred?

A. No, I don't deny it, and I don't know how to word it; I don't remember them, and as I answered you before, sir, I told you that I requested an audience with Mr. Scott and he told me that he didn't want to see me; this was after I left the ship.

Q. Do you deny the conversations that I have spoken about occurred?

A. I don't remember them.

Mr. Underwood:

That is all.

Cross Examination.

By Mr. Botts:

Q. In reference to the practice of taking gasoline out of the engineroom of the Seminole by drawing it from the spigot in there and handing it out through cans, you stated that on occasions when that was being done Mr.

Phipps was standing by and observing such operation, is that correct?

A. Absolutely correct.

Q. I know that you cannot be exact and remember exact dates but do you remember whether that occurred on more than one occasion when Mr. Phipps was an observer of the method you described of securing the gasoline?

A. I should say it occurred on a number of occasions in the course of the five years.

Q. Now with reference to obtaining gasoline by the use of a hose and a bilge pump, I will ask you whether or not when the practice of transferring gasoline by that method was started,—whether or not the bilge pump method was used exclusively or whether or not you sometimes used the bilge pump and sometimes you used pans and containers?

A. They were only used on the larger boats, such as guide boats; the smaller boats would generally take it through the window in a can.

Q. How would the connection be made so that this bilge pump could be converted into a gasoline pumping device; how would it be cut off from its function as a bilge pump?

A. The way I remember that connection was this: it was a "T" with two valves, one line running to the bilge manifold and the other one to the bottom of the gas tank. By cutting off the valve to the bilge manifold and opening the gasoline valve you could pump gasoline with the same pump.

Q. Now would the gasoline be sucked up by one pipe to the pump and then down through the hose to the boat?

A. Yes.

Q. Then necessarily the chambers of this pump would be filled with gasoline and discharged in that method, would they?

A. Yes.

Q. When this pumping operation was discontinued and the hose taken off, would it occur that there would be a certain amount of gasoline left in the chambers of the mechanism of the pump which would perhaps drain into the bilge?

A. With the bilge connection shut off there would be no danger of it draining back into the bilges, however, if the connections were open it would.

Q. Wasn't there an appreciable amount of piping between the pipe and the place where the connection was?

A. Maybe three or four inches or six inches.

Q. Would that portion of the piping be left full of gasoline?

A. Yes.

Q. And that could hardly drain back into the gasoline system, could it?

A. As I remember it, sir, I wouldn't say that it would all drain back into the system; it could not drain back into the system if you had enough gas in the tank, because you would have a head pressure on the bottom.

Q. You have stated in substance, as I recall it, that you objected to that method of transferring gasoline?

A. I did.

Q. Why?

A. It just simply didn't appeal to me and I didn't like it. It was one of the Captain's ideas and he insisted on doing it that way.

Q. To get at the point I have in mind: was there any danger attendant on that method of transferring gasoline; was it dangerous; was it more or less dangerous than the method of transferring it by spigot?

A. I never got that straightened out. My first feeling was that that high speed pump wasn't the proper thing to handle gasoline with.

Q. Would the high speed pump have a tendency to diffuse gasoline into the engineroom?

A. As far as the pump itself was concerned there was no leaks; I don't imagine there would be any more fumes one way or the other.

Q. Now this electric switchboard that has been mentioned; I think you referred to it as being located, I believe, on the after bulkhead of the engineroom; is that the correct location?

A. It wasn't exactly on the bulkhead; there was a space on it so that you squeeze in there.

Q. It was towards the after bulkhead?

A. Yes.

Q. Can you explain the construction of that switchboard in this respect: was there more than one switch located on that switchboard, for instance, a master switch and smaller switches, or how was it?

A. Well, there was a number of switches on it.

Q. And all of those switches were known as knife switches?

A. Yes, sir.

Q. The master switch would kill all of the connections?

A. Yes, there was one switch that would kill everything.

Q. Now with reference to this wiring system that you have described I understood you to say that the wires carrying the electric current for the light and perhaps for other devices were carried through the woodwork and along under moldings without any conduit or other protections save the insulation of the wire?

A. That is true in the cabins.

Q. Now down in the engineroom, as I understand it, the wires were enclosed, at least originally, in iron conduits, is that right?

A. Ordinary iron conduits with outlet boxes.

Q. Now this light which you have identified as being, as I understand it, underneath the general location of the

gasoline tanks, were the wires leading to that within the conduits or were they open wires?

A. When I was on board they were in conduit.

Q. And there were ordinary iron conduits?

A. Yes.

Q. And as I understand, Mr. Brown, in the course of time had become considerably rusted?

A. Several of them had.

Q. From your observation aboard boats does the insulation around wire deteriorate with time so that it is rendered liable to crack or break off and become defective so that the wires are exposed?

Mr. Underwood:

I object to that; it is a hypothetical question without the facts being given, particularly the type of insulation has not been mentioned.

The Court:

That calls for an expert opinion?

Mr. Botts:

It occurs to me, if your Honor please, that this man is qualified as an expert, at least to an appreciable extent; in other words, he is more of an expert than I would be; in other words, a person who has over a course of years worked around mechanical instruments is in a position to express an opinion. Now it may not be as valuable as that of a man who has perhaps graduated as an electrical engineer, but it seems to me that it goes perhaps to the quality rather than to the admissibility of the evidence; I mean as to its probative force rather than to its admissibility.

The Court:

Read the question.

(Thereupon the preceding question was read by the Reporter as above recorded.)

The Court:

He may answer the question. I will reserve ruling on that.

A. I think the only way to answer that is that the wires would show deterioration depending a great deal upon the location of them, as to their location, whether in a boat, a house or anything of the sort; also about the weather, salt water, fumes and a number of things would have to be taken into consideration, the type of acid or flux that they use in soldering joints and such things.

Q. Do you know where the batteries which supply electric current for the lights was located in the Seminole?

A. Yes.

Q. Where were they?

A. Next to the forward bulkhead of the engineroom on the starboard side.

Q. Within the engineroom?

A. In the engineroom, yes.

Q. Now from these batteries to this switchboard was about how far?

A. The length of the engineroom.

Q. Approximately how far in feet would that be?

A. Well, as the wires ran I suppose it would be about 20 feet.

Q. Now were these wires in metal conduits or were they open wires?

A. They were in conduits.

The Court:

Has it been testified what kind of batteries they were?

Mr. Botts:

No, I don't think so.

(By Mr. Botts):

Q. Can you tell us, Mr. Brown, how many and how large these batteries were and the type and voltage and so forth of current produced?

A. They were the Edison type battery, but I don't remember just how many cells we had now. We had enough cells to produce in two banks 110 volts, 110 volts in each bank; in other words, the voltage on each bank would be 110 volts.

Q. So that the current through the wiring system, irrespective of which bank the batteries were used on, would be 110 volts?

A. 110 volts.

Q. How were the switches arranged so you could throw it from one bank to the other?

A. As I remember it, it was a standard Edison connection on the board which would permit you to charge one bank while discharging the other. It was a double-throw switch of some kind. I do not recall the exact wiring of that board, although I did draw a diagram of that board in order to be familiar with it.

Q. Would it be possible to throw these switches so that the current from both banks of batteries would be in the wiring system at one time?

A. I was anticipating that, and I was trying to remember about it. It seems to me that it wasn't possible, that you would have to use one or the other side, however it is very possible. I am not sure, but as I remember the connection, you could operate the banks in multiple—I don't know whether they had that device or not, but I have seen them where you could operate two banks in multiple, you could be charging one and discharging the other. I don't know whether that one was wired that way or not.

Q. As a matter of fact if both batteries were thrown together, assuming that is possible for the purpose of this question, that would make 220 volts of current in the wiring system.

A. You mean both banks?

Q. Yes.

A. No; just simply 110 volts.

Q. Then it would merely increase the amperage of the voltage and not multiply the voltage of the current?

A. It wouldn't increase the voltage appreciably; it would not double the voltage.

Q. Now on this occasion, the day that you have been unable to fix, on the dock at Palm Beach, when you stated that you discussed with Mr. Phipps and Captain Nelson the advisability of rewiring the ship,—I wonder if you gave to Mr. Phipps and Captain Nelson, or the two of them there, any explanation as to why that rewiring was advisable; did you tell them why you believed it should be done?

A. Naturally in the course of the conversation—in the course of a conversation of that kind I would have even argued the point, and I distinctly remember the conversation as coming up and I held up for my point, that the ship should be rewired.

Mr. Underwood:

I move to strike that answer. It is not the witness' recollection of what happened; it is a supposition as to what he would do under such conditions.

The Court:

Read the question and the answer.

(Preceding question and answer read by the Reporter as above recorded.)

The Court:

The motion is granted. Now read him the question again.

(Preceding question read by the Reporter as above recorded.)

(By Mr. Botts):

Q. Can you answer that question one way or the other; did you or did you not to the best of your recollection?

A. Yes, I did.

Q. Now are you sufficiently familiar with the general location of the various wires to tell me whether or not any of the wires connected with the electric system ran underneath the engineroom floor and down in through what is ordinarily called the bilges of the boat, under that section there.

A. I don't remember any wires that ran under the engineroom floor. They run on a level with the floor plates and went forward, going aft up near the floors of the after compartment, in other words, under the stringers, about thirty inches above the frame of the vessel.

Q. Now the engineroom floor, as I understand it, was on the same general level as the floors of the staterooms that were on that deck of the ship, is that correct?

A. No; it was lower.

Q. It was lower?

A. Yes.

Q. Then these wires, if I understand you correctly, ran underneath the floor of the cabins and would have been above the level of the engineroom floor?

A. Yes, sir.

Q. Now the space that they ran through under there was open down to the bilges of the boat; there was no woodwork or anything else to separate the location of this wiring from the open space that went down to the bilges

of the boat, was there; do you understand what I am saying?

A. I don't say—there was nothing else except forward; we had some boards laid on the frames to crawl on in some places, but there was no flooring over the frames of the vessel; there was no plates over it; the floor was all gone; you could see right through the frames, and in a majority of cases aft there was nothing to walk on except the plates and the frames.

Q. Up above that—

A. The conduits were fastened under the floor.

Q. How many carburetors were provided for those motors?

A. One on each main engine and one on each auxiliary.

Q. Was there a drip-pan underneath the carburetors?

A. Yes, sir.

Q. Were there backfire arrestors provided for the carburetors?

A. No.

Q. Now you stated that on occasions, with reference to conditions particularly in the engineroom affecting your duties, that you went over the head of the Captain and went directly to Mr. Phipps.

A. Correct.

Q. Can you give us an illustration of some particular thing at that time concerning which you went directly to Mr. Phipps?

A. I can't say that I could give you the exact dates of the exact conversations or anything of that sort, but it was just in the course of regular events, during the cruise, during the layover at Palm Beach, at which times Mr. Phipps and I had a number of conversations regarding such things. It wasn't because I wanted to go over the Captain's head; it was a matter of suggesting things that I thought were worth while, worth suggesting.

Q. Do you recall at this moment any illustration of one or more things that were discussed in that way, not

so much as an effort to go over the head of the engineer, but do you remember an illustration of one or more such things as you stated to Mr. Phipps suggestions about the various things of importance in your department?

A. I don't think I can remember any particular instance where—I would be afraid to answer it that way. I would say I don't remember.

Q. Did I understand from what you have said that on the type of carburetors that was used at that time that if the engine was cut off and the gasoline supply was not cut off, that the carburetor would leak and drip?

A. That was true that the carburetor would drip and leak. Now that may be explained in this way: all of those Wintons had long intake manifolds, and a great deal of that drip may have been condensation of gasoline in the manifolds which would run back. It was a common occurrence that every time these engines were shut down the gasoline would pour out of the carburetors for some time, and it was absolutely necessary to mop it out of these pans.

Q. You used the expression "poured out". By that expression do we understand you mean it poured out by the gallons or by teaspoonfuls?

A. I should have said I have seen at least a quart or a half pint come out of the manifold when the engines shut down.

Q. Now this fuel supply pipe in the tanks that you said would sometimes overflow because of the small size of the overflow pipes from the tanks. When that pipe would overflow just where would the gasoline go to?

A. Practically everywhere; it would start up on deck and go from there wherever it could.

Q. Would it run down the outside the supply pipe and—

The Court:

I think you are exceeding a little bit too much in leading there.

Mr. Botts:

Very well.

(By Mr. Botts):

Q. Would you indicate where that gasoline might go to?

A. In the case of a runover due to the tanks being full and the overflow not taking care of it, most of the gasoline poured out on deck; it would pour out on the deck and down the scupper and overboard, and some of it would seep down through—that pipe wasn't solid in the deck; it was a gas pipe joint where it went through the deck.

Q. Where did it go from there?

A. Into the engineroom.

Q. Would it go down into the bilges, in other words?

A. Depending on the quantity that came down; it would depend on the quantity as to whether or not it would go down into the bilges; if enough came out it would go down into the engineroom, seep or drip down.

Re-Direct Examination.

By Mr. Matteson:

Q. Who followed Captain Nelson as Captain of the Seminole, do you recall?

A. Willie Baker.

Q. Were you serving on the Seminole at the same time when William Baker was Captain?

A. For possibly two or three weeks.

Q. You were asked about your service on other vessels of houseboat types. Will you tell us what your service has been on other gasoline vessels and what the types of those vessels were. I am not asking you to give the name of every one of them, but give us the years and type and size of the vessels.

A. My first gasoline experience was on the Alabama River in 1905 or 1906, possibly 1905. There was several small gasoline boats on the river and I built one of them

myself and ran it there on the river at different times. A few years later I carried passengers on one of the gasoline boats I had on the river. I built a stern wheel gasoline boat on the Alabama River and ran her on the Alabama River, and also the Coosa and the Talapoosa and also on the Tom Bibgee River, the same boat. There was another gasoline stern wheel boat at Montgomery and I went out on her several trips as consulting engineer; it was all a novelty in those days and we were all interested.

Q. After that what sort of experience have you had on gasoline vessels?

A. Well, I built one in Albank, Georgia, an excursion boat, and ran it up there for quite a while. I have had experience on the Ohio River in gasoline craft and I have run boats around this town since 1921 off and on, except for the past five years. I never done much boating in the past five years, as I have been too busy doing other things.

Q. Have you ever had any experience in pleasure gasoline vessels other than houseboats vessels that Mr. Underwood asked you about?

A. Yes.

Q. What has that amounted to?

A. For years it took all of my spare time; I devoted quite a bit of time to pleasure gasoline boats, going out on boats, taking parties out, or going out with fishing parties.

Q. Have you served as engineer on gasoline yachts of other than houseboat type?

A. Yes.

Q. What sort of vessels and what vessels?

A. Well, the Old Nick; that was about 1923 or 1924. I was working in Tracey's Boatyard and they wanted a man to run the Old Nick, and I helped to run her and I installed the engines and took her out to sea.

Q. What kind of vessel was that?

A. Well, it was built for the Russian Government as a submarine which was converted into a fishing boat; it was equipped with 300 horsepower engines and was about 60 feet long.

Q. Are there any other vessels of that type, of the yacht type, that you recall at the moment?

A. Not the yacht type, but big boats such as that.

Q. I want to ask you a question about these conduits that you have been describing to use that the electric light lines run in. Can you tell us whether these were solid conduits or whether they had openings in them?

A. You mean by openings—

Q. I mean other than the ends.

A. Only the rust holes, that I remember.

Q. Have you seen electric conduit pipes with spaced holes?

A. Those known as "vented" conduits?

Q. Yes.

A. I am familiar with them. I don't say that I have been on ships that had them, but I have seen them and I have read of them.

Q. What is the purpose of putting these vents in them, as you call them?

Mr. Underwood:

I object to that—

Mr. Matteson:

I will withdraw it. It doesn't make any difference now. I will cover that in another way.

Q. You spoke of the effect of the vibration of a vessel on a carburetor, I believe. Will you tell us whether or not that vibration would have any effec' on pipe fitting connections?

A. Yes, sir.

Q. What would that effect be?

A. Any vibration on a screwed pipe connection joint I should say loosens the threads by movement of the pipe in the fitting.

Q. Your attention was called to Libelants' Exhibit No. 5, and I think you said that that picture shows what might have been the bottom of one of the tanks of the Seminole and the valve attached to it, and I think that you said that the appearance was changed. Now was its appearance changed, how was this different in appearance as it was on the vessel at that time?

A. I do not see any pan under that tank; but besides that, the general appearance of the metal of course shows a burn, or discoloration; that was the general idea.

Q. You can see that this has been burned?

A. Yes, sir.

Q. Is there anything in that picture that shows the pan at all; is there anything in this exhibit, Libelant's exhibit 5, to show a pan at all?

A. What's that (pointing)?

Q. That isn't it.

A. I can't see anything else that looks like it.

Q. Let me ask you this question: if there had been a hot fire there and this pan was made of lead,—what would a hot fire do to a lead pan; can you tell us?

A. That is the only way I know of melting lead, to apply hot fire to it.

Q. Among metals is it known that lead has a lower melting temperature—

A. Lower than a great many metals, yes.

Mr. Matteson:

That is all.

Re-Cross Examination.

By Mr. Underwood:

Q. This wiring that was in the cabins, in the lighting system, was regular lighting wire, I take it?

A. Most of it.

Q. Covered by insulation?

A. Yes, sir.

Q. And then it was under a wooden molding?

A. Some of it was under a wooden molding, and some of it just pulled through a hole, a hole through wooden partitions, just pulled through.

Q. That which was under the molding, what type of molding was it?

A. Well, I imagine there was several different types; I remember that some of it run in coronal molding, with the corners cut off,—it was run through under the molding; for instance, in the center of the room there would be a column frame something like this (pointing to wall of Courtroom); it would be a two-wire molding especially made for wiring.

Q. With a slot cut for the wire to fit in?

A. Yes, in some instances it had single slots and in some cases two-slot wires.

Q. Of course all of that molding was painted, wasn't it?

A. Yes, very heavy.

Q. Now, all insulation deteriorates with time, doesn't it?

A. Yes, that seems to be the case.

Q. The rubber-type insulation eventually gets hard and cracks, so to speak?

A. Yes.

Q. You can't tell when that is going to happen, can you?

A. Not definitely; no, sir.

Q. It depends on the kind of service it has seen and the conditions under which it has been existing, is that right?

A. That has been my general belief; I imagine that is right.

The Court:

I don't quite understand, Mr. Brown, about the insulation of the wiring that was under the molding; what was the insulation there?

The Witness:

Just ordinary insulated wire; in a majority of cases it was rubber covered.

The Court:

How was the molding attached to it?

A. The wire was laid right in the molding just like this:

(Witness leaves stand and goes to wall of Courtroom and makes illustration.)

The Court:

Would the rubber insulation be right up against the wood?

The Witness:

Absolutely.

(By Mr. Underwood):

Q. I take it that you have seen that type of construction many times?

A. I saw that in railroad work long years ago; they have since come to the conduits in a majority of cases; that was in 1900, I believe.

Q. You spoke about the overflow from this filler pipe on the deck. Did you ever fix that pipe?

A. No, sir.

Q. Did you think it ought to be fixed?

A. I even suggested to the Captain that it ought to be fixed, and he told me he had it in there just like he wanted it.

Q. You haven't answered my question; you say that when you saw the overflow seep down in between the pipe and the boards—

A. Yes.

Q. Did you ever fix that opening or joint?

A. That was—

Q. Did you ever do it?

A. No, sir.

Q. Didn't you think it ought to have been done?

A. Yes, it should have been done.

Q. Now in your experience on these boats that you have spoken about to Mr. Matteson just now,—those were small boats on the Alabama River?

A. Gasoline boats, about 50 or 60 feet on an average. Some of them were small boats; they ran from 16 feet to 60 feet.

Q. What were they used for?

A. Pleasure and stern wheel boats for towing barges.

Q. Nothing in the nature of a houseboat or fishing boat up there?

A. No, sir, not in the sense as we know them down here.

Q. Open cockpit boats?

A. In a majority of cases; some of them were cabin boats; there were several on the river.

Q. You have mentioned one gasoline yacht other than the Seminole this afternoon, the Nick, and that is the only one. Was there any others?

A. Well, there is a difference between yachts and fishing boats. I have been on different boats at different

times, not as a regular job, but a day or two at a time; just for a day or two or something of that sort.

Q. The Seminole when she went out on these cruises was sort of a mother boat for many of these fishing boats?

A. Yes.

Q. Have you ever been out on any other boat that served that purpose?

A. In what respect?

Q. That acted as a mother-ship, so to speak, of fishing boats on fishing expeditions?

A. Yes.

Q. Which one?

A. The Old Boomerang.

Q. Any others?

A. No the rest of them didn't carry a boat on deck, no more than just row boats or something like that.

Q. You spoke about the carburetor leaking if you shut off your engine by closing the spark without shutting off your gas; did you shut it off that way ordinarily?

A. Which way?

Q. By shutting off the spark?

A. Never, but I found out—

Q. How did you do it; did you turn off the gas?

A. Yes.

Q. Was there any leaking after that?

A. Very little leaking after that.

Q. Was there any leaking at the carburetor after that?

A. I think that is a sort of misleading question and I am objecting to it in that way, the way you ask it. There could have been very little and you wouldn't call it any leak; there would be a little leak, because you always get condensation after you get through using the engines, and I figured by shutting it off at the switch it would be much safer, and—

Q. Is that the reason you stopped the motors?

A. The main reason—

Q. Is that your way?

A. That was my way, yes.

Q. You said something about vibration having effect on pipe connections. Let me ask you about that: brass pipes having threads on both ends and fitting into a fitting on each end, you can have vibration. Did you say that the effect of vibration is to loosen up the connection?

A. I believe that to be the case.

Q. Which way does it turn in the pipe?

A. I wouldn't say that it turned it any way; in general it would be first one way and then the other. If you could examine it close enough to notice the movement, you could see the vibration of the pipe working, which would tend to make it looser. That is about the only way I could explain it.

Q. Does it make any difference whether the pipes are installed with a strain on them or without a strain?

A. I imagine that depends on the installation quite a bit.

Q. Isn't it a fact that it all depends on the amount of vibration and the manner in which the installation was made and the manner in which the pipes are supported?

A. As I said, we tried to get them without any strain; if a pipes is properly supported there isn't much strain on it.

Q. Vibration doesn't always loosen pipes, does it?

A. No.

Q. It depends on conditions, doesn't it?

A. I imagine that is true.

Q. Isn't it true?

A. Let me get that straight.

Q. Isn't it true further that vibration of a boat will loosen pipes, depending on conditions?

A. Yes. I would like to straighten myself out on that.

Q. Go ahead.

A. Vibration in a boat and vibration in a pipe line may be two different things.

Q. Because the boat vibrates doesn't necessarily mean that the pipe will?

A. That is right.

Q. If a pipe vibrates what the effect of it will be depends on conditions?

A. Yes, sir.

Q. And the amount of vibration?

A. Yes.

Q. And how well the installation was done?

A. That is true.

Q. And various other things?

A. Yes.

Mr. Underwood:

That is all.

Re-Direct Examination.

By Mr. Matteson:

Q. The converse of what Mr. Underwood just asked you: I think you said that a boat vibrates and it doesn't necessarily mean that the pipes vibrate. If the boat doesn't vibrate, does it necessarily mean the pipe doesn't vibrate?

A. I think he sort of brought that question out in such a way—he brought that out when I was thinking of something else. I don't think you need to put this into the record, but it is all right with me. If I answered his question yes or no, or one way or the other, as he tried to bring it out, it would mean that I would condemn every locomotive in the United States. A locomotive has hundreds of pipe lines, and if movement would be injurious or cause vibration to pipe lines, I can think of nothing that would do it more than a locomotive engine, unless they were properly installed, and for that reason I answered him that way.

Q. Are you a member of any society of engineers?
A. Yes, sir.
Q. What society is that?
A. Association of Power Engineers.
Q. What sort of an organization is that?
A. Educational.
Q. Are you down here under subpoena today?
A. Yes, sir.
Q. Do you hold any certificate or anything of that kind from this organization that you spoke of.
A. I should have a card with me, and I have this button here (pointing to button in lapel.)

Mr. Matteson:
That is all.

Mr. Underwood:
That is all.

(Witness excused.)

766 Thereupon: MRS. GEORGE J. PILKINGTON was produced as a witness by the Libelants, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Matteson:
Q. Mrs. Pilkington, you are the wife of George J. Pilkington?
A. I am.
Q. Do you live at the location where the Pilkington Shipyard is located?
A. I do.

Q. Do you have something to do in connection with affairs of that yard?

A. I do.

Q. What is that?

A. I do the bookwork; of course I am not a bookkeeper but I do the best I can.

Q. Do you send out the bills?

A. I do.

Q. How do you know to whom to send them?

A. Whatever my husband tells me; he tells me to send them out and who to send them to.

Q. He makes the arrangements?

A. Yes, he makes the arrangements; he made the arrangements in previous years, but the last few years I make the arrangements, because the Captain is not in very good health.

Q. Of course, Mrs. Pilkington, you remember the fire of 1935?

A. I certainly do, because we lost everything we had.

Q. You had been telling me about the system that you have there; did that apply before 1935?

A. Which system?

Q. The system by which you kept the books and he made the arrangements.

A. I don't quite catch you.

Q. You told us that Captain Pilkington made the arrangements with the boat owners and that you kept the books, and he told you what the arrangements were?

A. Yes.

Q. Was that system in effect before 1935?

A. Yes.

Q. And for how many years had it been in the business there?

A. I went up there in 1922, in October, 1922, and the fire was the 24th day of June, 1935.

Q. Now, Mrs. Pilkington, have you at the request of Mr. Botts and myself brought with you the books that you have kept?

A. I have.

Q. Are these the books here?

A. Yes; they are the books.

Q. This book that I pick up first has 1928 on the cover.

A. Yes.

Q. That begins in 1928, does it?

A. Yes, 1928.

Q. In this book I see that you have at the top of different pages the names of individuals.

A. I have.

Q. And after that is the heading of each account—

A. Just like this party here; it is Stark; just like this, Chamberlain and Shaver—

Q. At the head of each page, as I understand it, you have the name of the individual and after that the names of the boats in which he is interested?

A. Yes, I do.

Q. Under these circumstances I take it that you would send the bill for those boats to the individual named, is that right?

A. Yes, on the top of the page, or whatever the Captain gave me.

Q. In this book for 1928 can you find a page that relates to the Seminole?

A. 1928; A. A. Simmon, 1317 Biscayne Building, Miami, Phone 3-1311.

Q. Is that "Biscayne Building" or "Biscayne Boulevard"?

A. Biscayne Building is what I have on the page. You see, the Captain don't hear very well, so perhaps he made a mistake in "Biscayne Boulevard" and told me "Building".

Q. Under the name of A. A. Simmon here I see that storage is listed with respect to various boats, is that right?

A. Yes.

Q. I see.

A. Houseboat Seminole, and then the small boat "Junior"—

Q. What was the small boat "Junior"?

A. That is just like a fishing boat; it is just what they gave me, "small boat, Junior." I don't know what it was like. I guess it must have been a thirty-footer, because you see we charge one cent a day a foot, and thirty-one days would be $9.30; that was in August.

Q. On this page you have some other boats named.

A. Yes, there are six or seven on that page. The "Olanthe"; I don't know how you would pronounce it.

Mr. Matteson:

I think we can agree that it is the "Iolanthe".

Mr. Underwood:

I don't know whether it is or not.

The Witness:

Iolanthe; I-o-l-a-n-t-h-e.

(By Mr. Matteson):

Q. That is what you are speaking of?

A. Yes. And the other one, "Sonia"—

Mr. Underwood:

Are you going to offer the book?

The Witness:

I will try to speak a little louder, if I can. I have been having throat trouble, so you will have to excuse me.

Mr. Underwood:

That is quite all right; I can hear you very well.

A. This one (pointing) is the Mino; and the White Car, and then there is another one, the K-21215.

Q. And all of those boats are listed under the name of A. A. Simmon?

A. Yes.

Q. Then do I understand that the bills representing these charges for storage as listed here were sent to A. A. Simmon?

A. Yes.

Q. You did that?

A. Yes.

Mr. Matteson:

I would like to offer this book in evidence.

Mr. Underwood:

I object to it as not proof of any fact in issue in this case, self-serving declaration and not binding on the Respondent Phipps.

Mr. Matteson:

We are showing the system by which these bills were dealt with, beginning with 1928 and right down to the time of the fire. It makes a connected story and I think it should be before the Court.

Mr. Underwood:

I do not object to the story getting before the Court. In fact, before the case is over, I am going to insist that the story get before the Court, but I think it should get before the Court according to the rules of evidence; that is what they are for. There is nothing that occurred on this book at the time these entries were made would in any way be connected with the Respondent I represent.

The Court:

It will be admitted subject to its being properly connected up. I think it has relevancy. Do you offer the whole book or just that page. If the record goes up on appeal you would certainly make it much more simple by offering only certain pages. To photostat that whole book would be rather expensive.

Mr. Matteson:

That is what I had in mind, your Honor. I refer to page 57 and to the index page under "S". I offer these in evidence, and I think Mr. Underwood will agree that photostatic copies can be substituted in place of the original, provided the original book remains open for inspection. Is that all right?

Mr. Underwood:

Certainly.

Q. Is this the only page in this particular book that refers to the Yacht Seminole?

A. Yes, sir.

Q. And the boats under Mr. Simmon's account?

A. Yes.

Mr. Matteson:

We will agree that the name "A. A. Simmon" appears on the index page, so that will eliminate that page. It will be page 57.

(Thereupon book identified by the witness was marked Libelants' Exhibit 82, with the understanding that page 57 and index page "S" constitutes the exhibit.)

The Court:

What book is that?

The Witness:
That was the first year.

The Court:
I know, but what is it?

The Witness:
That is where the boats come in and we charged the boats up.

The Court:
Do you call it a ledger?

The Witness:
Yes, I would call it a ledger.

(By Mr. Matteson):
Q. I show you the next book, which has the figures 1929 written on the cover. Can you show me the page where the entries with respect to the Seminole are?
A. It is page 19. A. A. Simmon. Then Mr. Riley. The Captain told me to send it to Mr. Riley. It says Mr. Riley —Palm Beach Company.
Q. I see Mr. Huff's name there.
A. Mr. Van E. Huff also. Also was sent to Biscayne Boulevard—it was always to Mr. A. A. Simmon. All listed under Mr. A. A. Simmon.
Q. The bill was addressed to A. A. Simmon, do I understand?
A. Yes. We addressed the bill to A. A. Simmon at 1317 Biscayne Boulevard. I think that is correct, because evidently the Captain must have told me "Boulevard".
Q. What is the meaning of Mr. Huff's name there?
A. I really can't say about that.

Mr. Underwood:

May it be understood that my objection heretofore stated runs to this entire line, so I won't have to be popping up.

The Court:

All right; let the record show that the same objection as made to Exhibit 82 is made to all of the other books and records introduced through this witness.

Mr. Underwood:

And as to Mrs. Pilkington's testimony respecting their contents.

The Court:

All right.

(By Mr. Matteson):

Q. Mrs. Pilkington, start over again.

A. This is my first offense; I don't know how to go about it.

Q. This is the first time you have ever appeared as a witness?

A. The first time in my life.

Q. Here is Mr. A. A. Simmon's name at the top of the page.

A. Yes; and the Captain told me to send it to Mr. Riley at Palm Beach Company; pardon me; it is "Van E. Huff, the Plaza, Palm Beach, Florida"; that is all on here; see?

Q. Then was there part of the time that you sent the bills to Mr. Huff?

A. I really couldn't say.

Q. Was there part of the time that you sent the bills to Mr. Riley?

A. I sent most of the bills—I am sure—to Palm Beach Company.

Q. Is there anything in that book from which you can tell us about what time Mr. Riley's connection with the boats commenced?

A. When Mr. Riley's name appeared here; it must have been in 1929.

Q. Is there anything that shows about what month?

A. Yes, I think it was in April, because you see there is the same ink up there and the same ink down here, so it must have evidently been in April.

Q. That is, it appears to you that the first entries in April were written at the same time as the name of Mr. Riley?

A. I imagine so, but I won't say for sure.

Q. On this page we have entries with respect to the Seminole, the Iolanthe and K-21215, Small Fishing Boats, is that right?

A. That is right.

Q. Is that the only page in the book that has any entries with respect to the Seminole or any other boats of Mr. Phipps' or any member of the Phipps famliy?

Mr. Underwood:

I object to the latter part of the question with respect to "any other members of the Phipps family".

Mr. Matteson:

Or in which any member of the Phipps family was interested?

Mr. Underwood:

Or the Seminole Boat Company?

Mr. Matteson:

I offer page 19 in evidence under the same arrangement.

Mr. Underwood:
The same objection.

(Page 19 of Ledger book above referred to was marked Libelants' Exhibit 83.)

Mr. Matteson:
The index referring to this page 19 is under the name of Van E. Huff, and also under the name of A. A. Simmon.

Mr. Underwood:
But not under the name of Riley.

(By Mr. Matteson):
Q. Mrs. Pilkington, I think we probably made a mistake the last time, because I find page 43 here.
A. Yes.
Q. What is the name of the heading of that page?
A. Mr. Riley, Palm Beach Company, Palm Beach, Florida.
Q. On that page there appears to be entries relating to the K-21215 and the Iolanthe, is that right?
A. Yes; that is page 43.
Q. And that page is indexed under the name of Mr. Riley?
A. That is right; I don't remember crossing that out, (pointing).

Mr. Matteson:
I offer this second page, page 43 of this same book, also.

The Court:
Admitted under the same ruling, and subject to the same objection.

(Page 43 of the book above referred to was also marked Libelants' Exhibit 83, making pages 19 and 43 of said book, Libelants' Exhibit 83.)

Q. Now this next book is —

A. 1930-31-32.

Q. And here on page 53 you have what?

A. On page 53: A. A. Simmon, Biscayne Boulevard, Biscayne Drive, Miami, Florida.

Q. Is there a notation on there as to where to send the bill?

A. Send bill to Palm Beach Company, Palm Beach, Florida.

Q. Under that I take it, Mrs. Pilkington, that you have a full page of entries?

A. A full page, yes, but I was sick at this time and the Captain figured it out here (pointing).

Q. And the entries at the bottom of page 53 were made by the Captain?

A. Yes, and the bills were sent into the company, but I just don't remember which company.

Q. Is this page 53 carried over on the lower part of page 52?

A. Yes, because I have marked here (indicating) 52, 51 and 52.

Q. Under this heading you have entries relating to the K-21215, the Iolanthe, the Seminole, fishing boats, 18 feet —they are the boats?

A. They are all of the boats, yes.

Q. They were all under the name of A. A. Simmon?

A. Yes, and you see here at the top it says: "Send bill to Palm Beach Company, Palm Beach, Florida".

Q. Is that where the bills were sent?

A. Yes.

Q. And this page is referred to in the index under the name of A. A. Simmon?

A. Yes, sir.

Q. You do not find any other reference in the index to that page?

A. No; I just sent them like this. I am ashamed of my bookwork.

Mr. Underwood:

I think it is splendid; I wish I could do as well.

Mr. Matteson:

I ask to have these pages, 52 and 53, marked in similar manner to the others.

(Pages 52 and 53 of the book above referred to were marked Libelants' Exhibit 84.)

Q. Now, Mrs. Pilkington, the next book that I have is—

A. 1932-33.

Q. I call your attention to page 10.

A. Palm Beach Company, Palm Beach, Florida, 1932.

Q. On page 10 under that heading you have entries relating to the Seminole, Iolanthe, 32-foot fishing boat, K-21215—those boats are all referred to on that page?

A. Yes.

Q. And then from the bottom of page 10 we go to the middle of page 11.

A. That is correct.

Q. And this page 52; how is that headed?

A. That is the Yacht Dorothy, Palm Beach Company, Palm Beach, Florida.

Q. That relates to the Yacht Dorothy?

A. Yes, it relates to the Yacht Dorothy.

Q. But the name "Dorothy" does not appear in the heading?

A. No; it is Palm Beach Company, Palm Beach, Florida.

Q. On the opposite page, page 53, what is the heading of that page?

A. Palm Beach Company, Palm Beach, Florida, Houseboat Seminole.

Q. And that entire page relates to the Seminole?

A. Yes, that relates to the Seminole.

Q. Now, turning the page, 54 is—

A. Palm Beach Company, Palm Beach, Florida, Yacht Iolanthe.

Q. And all of the entries on this page relate to the Iolanthe?

A. Yes.

Q. And under the heading "Palm Beach Company"?

A. That is correct.

Mr. Matteson:

I ask to have these pages, 10, 11, 52, 53 and 54 marked the same way as the others.

(Pages 10, 11, 52, 53 and 54 of the book above referred to were marked Libelants' Exhibit 85.)

Q. The next book we have is headed "1934".

A. Yes.

Q. In this book I call your attention to page 3. How is that headed?

A. Palm Beach Company, Palm Beach, Florida, Yacht Iolanthe.

Q. All of the entries on this page relate to the Iolanthe?

A. That is correct.

Q. And the bills with respect to this would be sent to whom?

A. Palm Beach Company, Palm Beach, Florida.

Q. Now we turn over to page 4 of this same book; what is the heading on that page?

A. Palm Beach Company, Palm Beach, Florida, Seminole.

Q. And the entries on that page all relate to the Seminole?

A. Yes, sir.

Q. And to whom were the bills to be sent in that case?

A. To the Palm Beach Company.

Mr. Matteson:

I would like to have these two pages marked in similar manner as the others. I offer them in evidence.

The Court:

Admitted under the same ruling and subject to the same objection.

(Pages 3 and 4 of the book above referred to were marked Libelants' Exhibit 86.)

(By Mr. Matteson):

Q. Now this next book that we have is—

A. 1935.

Q. And I call your attention to page 2 of this book; what is the heading at the top of that page?

A. Palm Beach Company, Palm Beach, Florida.

Q. Under that heading we have entries under "Houseboat". I suppose that refers to the Seminole, does it?

A. Yes, that refers to the Seminole.

Q. Those all relate to the Seminole?

A. Yes.

Q. To whom were these bills sent?

A. Palm Beach Company, because Mr. Riley always told me to send the bills to Palm Beach Company.

Mr. Underwood:

Including the ones on page 25 for five gallons of gasoline; is that right?

Mr. Matteson:
Yes.

(By Mr. Matteson):
Q. And the final entry there is on May 31, 1935, is that right?
A. Yes, but I went up to Mr. Riley, because Mr. Riley sent only $50.00.
Q. I will ask you about that in a minute, Mrs. Pilkington; the last entry with reference to the Seminole is May 31, 1935 for $75.00?
A. Yes, sir.
Q. Would that be the charge for storage during May?
A. It must have been, but the Captain reduced it to $60.00.
Q. It was during the month of June that the boat was burned up?

Mr. Matteson:
I ask to have this page marked. I offer it in evidence.

The Court:
Admitted under the same ruling subject to the same objection.

(Page 2 of the book above referred to was marked Libelants' Exhibit 87.)

(By Mr. Matteson):
Q. Mrs. Pilkington, here is a file of bills that was produced by the lawyers for the other side in this case, and I would like for you to run through them and tell me if you recognize them as bills that were sent by you?
A. Yes, they were sent by me. This "CEP" is a bill receipted by me.
Q. When there is "CEP" on a bill, Mrs. Pilkington, that means it was receipted by you?

A. Yes.

Q. Most of these bills are not receipted at all.

A. Very few; sometimes we got the bills back and sometimes we didn't, but whenever any of our customers sent our bills to us we receipted them and returned them to the customers.

Q. So if there is not a receipt on these that would mean that they were never sent back to you?

A. Yes, that is correct.

Q. Now these bills were made out by you, weren't they?

A. Let me see.

Q. Just look through them and see.

A. That bill (pointing) wasn't made out by me.

Q. That is the one dated January 31, 1929.

A. Yes.

Q. You say that wasn't made out by you?

A. No; I guess my husband must have made that one out.

Q. All right.

A. And this bill must have been made out by him, because this one is not my writing at all.

Q. That would be the bill of July 31, 1930?

A. Yes.

Q. And that one you say the Captain made out?

A. He must have; the Captain must have made that one out.

Q. Now let's see about the others.

A. I can't say about that bill (pointing).

Q. That is the one dated August 31, 1930?

A. Yes; I don't remember making that out like this; I always made them out this way (indicating).

Q. You didn't make the one out on the letterhead?

A. No, sir; only on statements. I wonder why this (pointing) is crossed out.

Q. That may not have been done in your office at all; in fact, I think it was not. Was that one made out by you?

A. Yes.

Q. And that is the one dated September 30, 1930?

A. Yes.

Q. I don't know why this is crossed out. I never would have sent a bill out like this.

Q. You are referring to the bill of April 30, 1932, on which some items were crossed off, is that right?

A. Yes. Now this one is not my bill.

Q. You are referring to the one dated August 31, 1932?

A Yes.

Q. Who made that out?

A. That one must have been made out by my husband.

Mr. Matteson:

I think that we can concede that the rest of them were made out by Mrs. Pilkington or Captain Pilkington?

Mr. Underwood:

Yes.

(By Mr. Matteson):

Q. And the only one in the list, Mrs. Pilkington, that is receipted is the one dated August 31, 1928?

A. Yes.

Q. Is that receipted by you?

A. Yes, that is receipted by me.

Q. So that would be the only one that came back to you for receipt?

A. I wouldn't be sure unless I went through all of them.

Q. If I am right in telling you that this is the only one which is receipted, then would that be right?

A. If I went through all of them I could tell you.

The Court:

Mrs. Pilkington, when he tells you that is the only one that is receipted by you, do you take it for granted that his question is correct?

The Witness:

I don't understand.

(By Mr. Matteson):

Q. If the rest of them are not receipted, then that means that they did not come back to you?

A. Some did and some didn't.

Q. I understood you to say that, but when they came back to you you receipted them and returned them to the customer?

A. Yes.

Q. These bills all came from the files of either the Palm Beach Company or someone else, so if they haven't any receipt on them that means that they never came back to you; is that right?

Mr. Matteson:

In lieu of marking these bills I will ask to have this list furnished me by Mr. Underwood marked temporarily, with the understanding between counsel that we are to bind these with the others before they are marked definitly in the evidence.

(Thereupon the list of bills above referred to were marked Libelants' Exhibit No. 88.)

Mr. Matteson:

We want to offer the file of checks in evidence, but for the time being we can mark the list of them furnished me by Mr. Underwood. We want to show that in quite a number of cases the checks covered items for boats other than

the Seminole, and we want the record to show just what boats they covered.

Mr. Underwood:

The duplicate of the original voucher check will show that, and we will tear these apart and attach them to the bill and the voucher.

Mr. Botts:

Do I understand that each check represents a payment made to Captain Pilkington on account of boats that were stored up there?

Mr. Underwood:

That is my understanding, but when I get the vouchers and attach them, the vouchers will speak for themselves.

Mr. Botts:

Each of them represents a payment made to Captain Pilkington?

Mr. Underwood:

Yes, and they are all indorsed by him.

Mr. Matteson:

With that understanding I will simply mark the list of checks, instead of offering the checks in evidence.

(List of checks above referred to was marked Libelants' Exhibit 89.)

Q. Now, Mrs. Pilkington, I want to ask you a few questions not connected with the books.

A. All right.

Q. Do you know Mr. J. F. Riley?

A. I do.

Q. How long have you known him?

A I guess I have known Mr. Riley since about four or five years ago.

Q. Four or five years from when?

A. I couldn't say positively when Mr. Phipps brought Mr. Riley up and told Captain Pilkington to send the bills to Palm Beach Company; that is when I met Mr. Riley.

Mr. Underwood:

There is no foundation for this yet, and according to the evidence there wasn't anybody else present at that time. This lady wasn't present, and it is shown to be hearsay.

The Court:

I will sustain the objection.

(By Mr. Matteson):

Q. Just tell me when was the first time when you met Mr. Riley; you met him when?

A. I saw Mr. Riley—well, I couldn't say exactly when I met him, but I met him. I will say within the last four years anyway.

Q. Now do you mean the last four years from now or four years back from the fire?

A. Back from the fire.

Q. The fire was almost four years ago now?

A. That is right.

Q. There has been some testimony here about Mr. Riley coming there with Mr. Phipps. Did you see Mr. Riley come with Mr. Phipps the first time that he came?

A. Yes, I did.

Q. Did you hear the conversation that took place at that time?

A. No, I didn't.

Q. When was it after that that you got word to send the bills in care of Mr. Riley?

A. Whatever is in the book; what is in the book to send it to.

Q. As it appears in the book?

A. As it appears in the book.

Q. When did you see Mr. Riley again in the yard at your place?

A. When he went on the Seminole and examined it once a month.

Q. You saw him when he came on those occasions, at least some of them?

A. Yes, and sometimes he came on Sunday.

Q. How did you know who Mr. Riley was?

A. Not until that time when he came in with Mr. Phipps; after he left the Captain told me who he was.

Q. What did the Captain say as to who he was?

Mr. Underwood:

If your Honor please, I object to that; it is not binding in any way upon the Respondent Phipps, and it is hearsay.

Mr. Matteson:

It seems to me that the fact that Captain Pilkington at the time was speaking to his wife, who keeps the books—it seems to me that the instructions that he gave to her in the ordinary course of business should be in the records.

The Court:

I do not agree with you. I will sustain the objection.

(By Mr. Matteson):

Q. Did you have any conversations with Mr. Riley when he came?

A. Only about the boat; that's all.

Q. What conversations did you have?

A. Well, Mr. Riley would say, "she is just fine", and he would say, I guess, what he wanted done; sometimes he would say to let down a curtain or let up a curtain, or something like that.

Q. Sometimes he would give those instructions to you?

A. Very seldom, because we kept the boat well aired.

Q. Now, Mrs. Pilkington, when was the last time you saw Mr. Riley before the fire?

A. I went up there on Tuesday or Thursday before the fire to return the check for $50.00.

Q. Tell us how you came to do that?

A. Well, because Mr. Riley—because the Palm Beach Company sent the check for $50.00 and it should have been $75.00.

Q. Why did you go to Palm Beach about that?

A. Because it should have been $75.00; our bill was $75.00.

Q. Did you go to Palm Beach?

A. Yes, I did.

Q. Did you see Mr. Riley there?

A. I did. I waited two or three hours to see Mr. Riley.

Q. Will you tell us just what took place when you saw Mr. Riley?

Mr. Underwood:

If your Honor please, the same objection.

The Court:

The same ruling. It is admitted subject to it being connected up.

Q. Will you tell us what you said and what he said?

A. Mr. Riley said that Mr. Phipps didn't want to pay $75.00. I said, "the Captain says he can't take the boat for less than $75.00"; so Mr. Riley says, "well, we will just take her out and anchor her somewheres". I says, "why,

Mr. Phipps is the only one that ever complained about our prices"—

Q. What else was said?

A. I don't remember if I carried the check back or if Mr. Riley sent it to us; I can't remember that; I just don't remember that, but I know the Captain wrote a letter in regards to that check.

Q. There was an additional check given?

A. A $10.00 check, but that was later.

Q. Which made $60.00?

A. Which made $60.00. The Captain wrote Mr. Riley—wrote the Palm Beach Company and said he would let him store the boat for $60.00.

Q. Was this $60.00 that was paid, Mrs. Pilkington, for the month of May, 1935?

A. For the month of May, 1935.

Q. Have you told us all that was said at that conversation at that time as far as you remember?

A. Yes; the check was the only thing that I went up there about.

Q. Now tell us about the fire. Where were you when the fire broke out?

A. Well, Captain Abel came and I called Captain Pilkington and told him that Captain Abel wanted to get some equipment off of the Seminole.

Q. Then was there some conversation between Captain Pilkington and Abel?

A. Well, I heard Captain Pilkington—

Mr. Underwood:

May she be instructed to answer yes or no?

(By Mr. Matteson):

Q. Just tell me was there some conversation.

The Court:

The question is was there a conversation or not. That calls for a yes or no answer.

Q. Just answer it yes or no.

A. You see—

The Court:

Do you understand the question. Did you get the full question. I will let the Reporter read it, and then you can answer the question.

(Preceding question was read by the Reporter as above recorded.)

A. Yes.

Q. Did you hear that conversation, Mrs. Pilkington?

A. About the smoking.

Q. Who said that?

A. Captain Pilkington.

Q. Is that the only thing that you heard?

A. That is the only thing I heard.

Q. Then what happened?

A. Just a few minutes after I went in the house I heard a terrible noise. Oh, I can't explain what it was. I ran out on the porch and seen the whole building on fire.

Q. How far is your house from the building, or was it at that time?

A. I guess our house was 35 or 40 feet away.

Q. When you saw that what did you do?

A. Turned in the alarm.

Q. How did you do that; by telephone?

A. Yes. I didn't even take time to look in the directory; I telephoned and asked the operator to get the fire department out there just as fast as possible, that our building was on fire.

Q. Did the fire department come?

A. Yes; they came in about five minutes; it just seemed like it was no time.

Q. What did you do while the fire was going on?

A. I got all of our books out of the house and all of our clothes and my machine—

Q. Your sewing machine?

A. Yes, because I knew everything would be lost.

Q. Where did you take them?

A. I took them over to the caretaker's house.

Q. That is some distance farther away?

A. Just about 100 feet.

Q. Now was there anything else that you saw happen during the fire?

A. Yes. After I came back, after carrying everything out of the house, my nephew was on the bank and went over towards the Seminole, and I don't remember anything else after seeing him going over towards the fire.

Q. Your nephew was Thomas Anderson?

A. Yes; Thomas Anderson, Junior.

Q. Thomas Anderson, Jr.?

A. Yes.

Q. When you say he went over towards the Seminole, you mean—

A. The time he went over to save the man that was blown off the boat onto the bank.

Q. You didn't see him any more after that?

A. No, because I had a heart attack.

Mr. Matteson:

That is all.

By Mr. Botts:

Q. You stated, as I understand it, that the first time you saw Mr. Riley was the time he came there with Mr. Phipps, Mr. John S. Phipps?

A. Yes.

Q. Now shortly after that, that is, within a few days or within a few weeks, or a short time after that visit, did you make any alterations or change as to the person to whom you sent the bills for the boats placed there by Mr. Phipps?

A. Whatever is on the books, Mr. Blotts.

Q. Did you make any change?

A. Whatever the Captain told me I entered in the books at that time.

Q. But I want to know whether you did or not.

A. Yes, I made a change on the books.

Q. And that is the change you testified to Mr. Underwood in reference to the first book, is that right?

A. Yes, sir.

Mr. Botts:

That is all.

Cross Examination.

By Mr. Underwood:

Q. Can you point out to me, Mrs. Pilkington, in which book you made that change?

A. I think it was in 1931 or 1932.

The Court:

To whom were the bills sent before that time?

The Witness:

To Mr. A. A. Simmon.

The Court:

And after that time they were sent to—

The Witness:

Palm Beach Company, Palm Beach Florida.

By Mr. Botts:

Q. I will ask you, Mrs. Pilkington, whether or not you can identify from any of these books the time that you made that change?

Mr. Underwood:

Just a minute—

The Court:

Wait a minute; the—

Mr. Underwood:

I have the witness on cross examination.

Mr. Botts:

I don't think Mr. Underwood asked the witness any questions.

Mr. Underwood:

The record will speak for that, but I will bow to Mr. Botts and let him go on.

A. It is 1929 I think, in the book, but I wouldn't say positively, Judge; it was between 1929 and 1930 or 1931; I won't be sure, but whatever is on the books, Judge, is correct.

The Court:

What you have on the books in evidence—

The Witness:

Here it is: "Send to Palm Beach Company", and when I sent out the statements I sent out the statements according to this—

Mr. Botts:

If you can identify the dates—

The Witness:

It is Palm Beach Company, and I evidently must have sent it out In 1929, but I wouldn't say positively.

Mr. Botts:

That is all.

Cross Examination (Continued.)

By Mr. Underwood:

Q. Now sometimes you changed from sending the bills to Mr. Simmon to Mr. Huff. There was a time at the beginning when you sent your bills to Mr. Simmon?

A. Yes.

Q. Then you changed from Mr. Simmon to Mr. Huff?

A. Yes.

Q. And then you changed back from Mr. Huff to Mr. Simmon, did you not?

A. No.

Q. You changed from Huff to Riley?

A. Palm Beach Company.

Q. I see. You first sent your bills to Simmon?

A. Yes.

Q. Then to Huff at Palm Beach.

A. Pardon me. What is your name?

Q. Underwood.

A. Mr. Underwood, I don't remember sending a bill to Mr. Huff; I can't remember positively about that, but I know I sent it in to the Palm Beach Company.

Q. You never sent any bills to Mr. J. S. Phipps?

A. Never.

Q. You said something about Captain Pilkington's hearing being bad; how long has it been bad?

A. I guess Captain Pilkington has been deaf ever since I have known him.

Q. That would be a great many years before the fire?

A. Yes.

Q. And a great many years before the Seminole first came to your boatyard at Fort Lauderdale?

A. Yes.

Q. Your boatyard at Fort Lauderdale has been rebuilt since the fire, has it not?

A. Yes.

Q. And you have a better yard than you had before, I take it, is that right?

A. Yes, sir.

Q. I have noticed nothing in these books, Mrs. Pilkington, that would indicate who the owner of the boat was. Have you in your recent examination of them observed anything as to that with reference to the Seminole or the Iolanthe?

A. Well, we always—

Q. Not what you always did. Have you observed anything in these books to indicate who the owner of the boat was?

A. Mr. Phipps.

Q. Can you show me Mr. Phipps' name in any of these books?

A. Only the orders we got from Mr. Riley.

Q. Can you show me anything in the books about that?

A. No. Mr. Phipps'—

Q. Mr. Phipps' isn't in these books, is it?

A. Pardon me. Mr. Underwood, may I say something to you?

Q. If it is in answer to any question I have asked you.

A. Only once is Mr. Phipps' name in the books. We received a check for $37.08, and that was in 19—let me see now—1933 I believe it was; it is in these books.

Mr. Matteson:

Would this be the book, Mrs. Pilkington (handing book to witness)?

A. I think it was in '31 or '32.

(By Mr. Underwood):

Q. Is this the check?

A. $37.51.

Q. How about "$37.08"?

A. $37.08 is correct.

Q. Is this the check?

A. That is right; December—

Q. December 9, 1930?

A. Yes.

Q. Is that Captain Pilkington's signature?

A. Yes, that is Captain Pilkington's signature.

Q. Will you look at this little file here; this file contains four bills and four checks. Will you let me know, please, whether these are bills sent out by you or Captain Pilkington and whether on the back of the checks there are indorsements by Captain Pilkington or you for him?

A. Yes; that is my signature on this (indicating).

Q. Have you looked at all four of them?

A. Yes.

Q. They are all four either signed by Captain Pilkington by you for him?

A. Yes.

Q. And these bills—

A. I made out these four bills myself.

Q. And they are on the Iolanthe in each instance, are they not?

A. Yes.

Mr. Underwood:

I offer this file for identification.

Mr. Matteson:

No objection.

(The four checks and four bills above referred to were marked Respondents' Exhibit K for identification.)

Q. Did you keep any record of how often Mr. Riley came down?

A. No. Once a month he used to come until 1935; then he didn't call at our yard at all.

Q. He didn't bring the checks with him, did he?

A. No, he mailed them to us.

Q. When you had this conversation with Mr. Riley about the reduction from $75.00 to $50.00 shortly before the fire in Palm Beach, was anybody else present?

A. No.

Mr. Underwood:

If your Honor please, I move to strike out what this witness said that Mr. Riley said that Mr. Phipps said on that occasion.

The Court:

Wouldn't that be subject to the same ruling? If I am satisfied on the consideration of the whole record that Mr. Riley was empowered to bind Mr. Phipps—

Mr. Underwood:

I think that is the same situation.

The Court:

I will make the same ruling.

Q. Do you remember that Abel brought that $10.00 check with him?

A. No, I can't say.

Q. You don't remember whether he did or not?

A. No, but I believe he did; I won't say positively.

Q. I believe you said that the first you knew of the fire was an explosion and you went out and saw the whole place burning?

A. I didn't know what it was until I went out and seen the whole place on fire.

Q. How soon after you heard the explosion did you see the shed?

A. In a second.

Q. You looked out right away?

A. Yes, I looked out and seen it all ablaze.

Q. How much of the shed was burning when you looked the first time?

A. It seemed like it was the length of the Seminole.

Q. Which side of the shed did you say you looked?

A. The northwest—wait a minute, now. We will say this was the house—

Q. The house was on the far side of the shed from the Seminole, was it not?

A. On this side (indicating).

Q. And the house was—could you see through the shed when you got there?

A. Yes, and over on top of the shed.

Q. Was the end of the shed nearest to you on fire at that time?

A. Well, I guess it was about the middle of the boat when it all came out.

Q. I am talking about the shed now.

A. I am talking about the shed.

Q. You mean that the fire had reached the middle of the shed?

A. No indeed; it came right out from that big smoke stack.

Q. You could see the Seminole's smoke-stack when you looked?

A. I could see the smoke coming out of it.

Q. Could you see the Seminole's smoke-stack when you looked?

A. I could see where it was.

Q. Where was it?

A. Right about the middle of the boat.

Q. When you telephoned did you just tell the operator or did you talk to the fire department yourself?

A. I asked the operator to send the fire department out at once, that our building was on fire.

Q. You didn't talk to the fire department yourself at all?

A. No.

Q. Are you sure about that?

A. I called the second time and they said that they were on the way out; the first time the operator turned in the alarm.

Q. There were men employed at the boatyard when the explosion occurred?

A. I couldn't tell you. I was getting things out of my house.

Q. How many men were there?

A. Well, we had two colored men and my brother, Mr. Anderson.

Q. Were they regularly employed there?

A. Just one.

Q. Which one?

A. Sol.

Q. What is his name?

A. Sol Sewell.

Q. Is he still there?

A. Yes.

Q. Who was the other negro?

A. I really couldn't say; I don't remember his name.

Q. Is he still there?

A. No.

Q. And Mr. Anderson, your brother, was he there at that time?

A. Yes, he was there. He was off the place about twenty minutes; he wasn't working for the Captain at the time.

Q. But he was from time to time?

A. Yes, from time to time.

Q. What were Mr. Anderson's duties and Sol's duties when they worked there?

A. The Captain was getting the Basin ready to build another shed on the other side of the Seminole.

Q. And they were working around the place?

A. Yes.

Mr. Underwood:

That is all.

Re-Direct Examination.

By Mr. Matteson:

Q. Did you have any insurance on your shed?

A. Only $6,000.00.

Mr. Underwood:

I object to that.

The Court:

What is the relevancy of that?

Mr. Matteson:

If your Honor please, Mr. Underwood asked the question: "You have a bigger and better place there than you had before", and I am simply trying to bring out—

The Court:

I am afraid that would be going too far; that would be going too far on that.

The Witness:

We had to borrow money to rebuild.

The Court:

The objection is sustained.

Mr. Matteson:

Then could we strike out the answer of the witness to the effect that they had a bigger and better place than they had before?

The Court:

Is there any objection to that, Mr. Underwood?

Mr. Underwood:

No, I have no objection to that.

The Court:

The motion will be granted.

(Adjournment taken until 9:30 A. M. March 21, 1939.)

March 21, 1939. 9:48 o'clock a. m.

. . . Hearing resumed pursuant to adjournment of the previous day. Appearances same as heretofore noted.

802 Thereupon: LESLIE TYLER BROWN was recalled as a witness by the libelants and further testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Mr. Brown, I believe that you telephoned to Mr. Dyer last night and told him there was a correction you wanted to make in your testimony?

A. I did, sir.

Q. Is that a fact?

A. Yes, sir.

Q. What is the correction that you wanted to make?

A. I want to say that I left the boat in the spring of '28 instead of '27 as I said yesterday.

Q. And how have you come to make this correction?

A. I suppose it just stuck in my mind. I got home and asked the wife when I left the Seminole; she said '27. I says "I am still not satisfied". And I asked the daughter, and she apparently didn't want to get into the argument, but she finally got in the argument with us, and we dated from the September '26 hurricane, it was a good date to start from, and we started from there. Our home was practically destroyed, and we had to move. We lived so many months in one house, and the rents were too high; we moved from there to another one, so many months; and the owner of this original house came for us to come back to his property, to take care of his property and would give us lower rents; and we went back and stayed there so many months, and were there when I left the Seminole, which figured out '28 rather than '27. I had no other records of it, and I had no other way to arrive at that conclusion.

Q. I understand that now your recollection is that you left the Seminole in the spring of 1928, is that right?

A. Yes, sir.

Q. Do you recall any more nearly than that, approximately the time?

A. No; I say the spring of '28; the date I don't remember.

Mr. Matteson:

That is all.

Cross Examination.

By Mr. Underwood:

Q. Mr. Brown, where was the Seminole when you left her?

A. At John Seybold's property in the Miami River.

Q. And what was going on at the time?

A. Lay-up, practically laid up; just laying there waiting for orders.

Q. No work being done?

A. Oh yes, we done our general routine of work.

Q. Just ordinary daily cleaning up?

A. Yes, sir.

Q. No general work?

A. I don't remember no general work being done at that particular time, any more than routine.

Mr. Underwood:

That is all.

(Witness excused.)

Mr. Botts:

If the Court please, on yesterday Mr. Underwood mentioned the fact that there were some exceptions to my petition in there.

The Court:

I would prefer to hear it when I hear the other matters.

Mr. Underwood:

I think I can agree with Mr. Botts that if your Honor does overrule the exceptions, it can be considered that I have filed what amounts to a general denial of the testimony heretofore taken and that which will be taken, and that it may be used: can we agree on that?

Mr. Botts:

Certainly.

The Court:

All right; we will proceed.

825 Thereupon: BENJAMIN F. McCOY was produced as a witness by the libelants, and having been first duly sworn, was examined and testified as follows:

Direct Examination,

By Mr. Matteson:

Q. Your full name?

A. Benjamin Franklin McCoy.

Q. Where do you live, Mr. McCoy?

A. 166 Sunset Avenue, Palm Beach.

Q. Your brother is William McCoy?

A. My brother is William McCoy; William F. McCoy.

Q. And are you an officer of the McCoy Bros. Indian River Navigation Company?

A. I happen to be president of it.

Q. And did that company own a vessel known as the Blue Lagoon?

A. It did.

Q. And did that corporation own the Blue Lagoon at the time of the fire on June 24, 1935?

A. It did.

Q. And in what state is this corporation incorporated, do you know?

A. She was incorporated in the State of Florida in 1913.

Q. And this corporation is one of the libelants in this case, is it not?—making a claim for loss?

A. Oh, yes, we are claiming damages for the loss of the boat; that is, the company is.

Q. What sort of a boat was the Blue Lagoon?

A. She was 52 feet long and 16 feet wide; a houseboat.

Q. What sort of motive power did she have?

A. She had gasoline motors; Palmer.

Q. Was this boat the Blue Lagoon stored at Pilkington's yard at the time of the fire?

A. She was stored at Pilkington's yard right alongside of the Seminole.

Q. Will you tell us when she was taken there, and what your arrangements with Captain Pilkington were?

A. Why we had stored the Blue Lagoon, I don't know whether it was once or twice or three times, previous to this—that is, previous to the last time. When we went there why, to lay up the boat in storage under a shed, Mr. Pilkington, the first time, he said we would have to take all the gasoline out, as he had no place to store gasoline; and of course we went up there with as near empty tanks as possible. Then we would take the gasoline out of the car at various times and put it—I mean take the gasoline out of the boat tanks, draining it at the carburetor of the engine, and put it into the car. We had a Lincoln, had a pretty big tank capacity. This particular time, this last time we went up there, I remember we took out about fifteen gallons of gas and put it into the tank of the car—of the automobile, the Lincoln we had. That holds twenty gallons, the tank does, of the Lincoln. Then there was some surplus gasoline over, so we put—filled a five-gallon can, and another five-gallon can about half way; so the total we took out there was about,—oh about 22 or 25 gallons we will call it. And of course we carried that on up with us; and we got up to Palm Beach and we poured some, I remember, into the tank again; well, that is the tank of the car. The first notification we got that the boat had burned up, was the mail carrier got in there this Monday evening with a paper; it was raining like the deuce; and said "Does this interest you?" Says "There has been a fire down at Lauderdale." So we found out there was a fire down there, and we went down the next thing in the morning. Now coming back to Pilkington, Pilkington tols us that all boats had to have the gasoline out of there; didn't specify any boat, whether the gas was out of there, but he said all boats had to have their gasoline out of there, ours included; so we took ours out, as I

told you. And this particular time I didn't ask him whether the Seminole had any gas or anything else; but, let's see; Monday, Monday night, that's when they started, when they got the pumps out there to pump her out—the Seminole. Was it Monday night?—no, Tuesday night; Tuesday night; because we got down there Tuesday morning. It was dark; that is, darkness had come down; and the barge was out there with the pumps in it, to do the pumping. The Seminole was sunk, but the water was above her gun'ales about—well the water was all over her, flowing into it, you see; and they estimated as soon as the tide would go down why then the gun'ales would be above the water, then they would start pumping. And I think they estimated that would be about ten o'clock; around about; but the point was, it was just getting dark, seven o'clock, something like that, getting dusk anyway; we noticed quite a smell of gasoline—it was noticeable.

Q. Where was this that you noticed this?

A. At Pilkington's.

Q. Where were you when you noticed this smell of gasoline?

A. Oh we was right on the shore there. Well the Seminole laid over there about 100 feet from there; we was between Pilkington's house and the Seminole; that is the Seminole I mean was away over there on the outside of that, where she was sunk; the Blue Lagoon in between; and another one. So we noticed the smell of this gasoline; the tide was a little—I think the tide was ebbing down a little bit, and I went and asked Mrs. Pilkington, I says "What do you cook with around here? Do you cook with gasoline?"

Mr. Underwood:

Your Honor, I object to this conversation.

Q. Well don't tell us about the conversation with Mrs. Pilkington; just tell us what you saw and observed, Mr. McCoy.

A. Well, I saw this much then; the tops of those poles were afire; we tried to put them out with fire extinguishers that we got, some of them was floating in the water, half discharged; and the fire extinguishers, that is these old—you know, you turn them upside down—why they wouldn't reach the tops of those poles. The only reason we wanted to put them out was there was a smell of gasoline there; gasoline was strong. While we were there we all had—we all went and took refuge under, you might call it the back space or back porch of Pilkington's, because of an intense, heavy rain that came down, one of those tropical showers, that practically put all those fires out. Very soon after that why—oh—well no, you can't introduce conversation, again.

Mr. Underwood:

If your Honor please, may we proceed by question and answer, in the usual way?

Mr. Matteson:

If your Honor please, I think certainly that saves a lot of time; Mr. McCoy was there, and he is telling us the story of what he saw. I think he understands he is not to refer to conversations. It seems to me this is the easiest way to do it.

The Court:

Let's proceed in the present way for the present.

Q. Go ahead, then.

A. Why while we was there we smelled the gasoline so strong, and one woman spoke up and she said "If you had kept all the gasoline"—

The Court:

No.—Perhaps we had better ask questions.

Q. Well, you were telling us what you observed there in the course of that evening with respect to gas. Now will you tell us that?

A. Then the gas—that is the wrecking pump I will call it—wrecking outfit was on a little barge; after this shower they started pumping.

Q. Where were you when they started pumping?

A. I think I was in a rowboat, and got out aboard with them; but the gasoline as I say was around there. Now after a while they commenced to lower the water inside of the Seminole, because the tide had went down laving her gun'ales, as I would call it, leaving her gun'ales above water; no more water was running in, excepting what was running in through the broken pipe connections. As the water went down the gasoline got stronger, very much stronger; the fact is that when it got away down, the centrifugal pump was throwing over gasoline and water; you could look at it out at the end of the little—oh I think they had about four inch pipe—discharge pipe; might have been larger than that, might have been six inches; but you could notice it, that when the discharge stream struck the surface of the water it wasn't water alone, it was gasoline, and as I say the smell was so strong that we was afraid; at least I was afraid that the thing might blow up. Because on top of the spark plugs why it was liable to create a spark, you see.

Q. Now before we get any further, Mr. McCoy, you said that you could tell when the discharge stream hit the water, that it was not all water. Now tell us how you could tell that.

A. Well I can't really tell you exactly, but it would act different; the water—when water strikes down onto the surface, which is pure water alone, it leaves a whole lot of bubbles; but this seemed to act different; it had a dif-

ferent kind of a roll to it, like; seemed as though some of the bubbles were extinguished much quicker. I tell you, I can't exactly tell it in technical language, excepting that it looked different; same as one person looks different from another.

Q. Perhaps right now I had better ask you, Mr. McCoy, how much experience have you had with gasoline and gasoline boats?

Q. Well the first one we built was around about 1900, I think, called the Yankee Doodle; we put a gasoline engine in her; and we have built various boats at various times, and I have generally done the installation of the machinery. We built one boat called the Uncle Sam, that had a 20-horse gasoline engine, Standard; the pipe run from the tank and run on the outside of the keel or the garboard, right underneath; that was to keep the gasoline on the outside of the boat; and then the pipe came up to the engine.

Q. We will leave that for a minute:

A. All right.

Q. How many boats have you built or operated, that were propelled by gasoline fuel?

A. Well, what we built was the Hibiscus, she was 110-foot; the Siesta, is 100-foot; well we operated boats up and down the river here, and across the Everglades, some of them under government inspection and some of them weren't; but we have never had an accident in gasoline in all that time of different—

Q. Well have you ever operated a shipyard, Mr. McCoy?

A. Well not a shipyard, but a boat yard you would call it, at Holly Hill, and we built various boats, as I said.

Q. You and your brother operated that yard?

A. Yes. I done the installation of the machinery.

Q. And do you hold any certificate as an engineer?

A. Yes, I hold a Diesel engineer's license.

Q. Unlimited?

A. Unlimited.

Q. How long have you held such a license?

A. Oh gosh, I don't know; I think some time during the war I got it.

Q. You have held it ever since that time?

A. About twenty years, I guess.

Q. About twenty years?

A. I should say that.

Q. Still in effect?

A. Still in effect; yes, sir.

Q. How much experience have you had as a licensed engineer on oil propelled vessels, oil or gasoline.

A. On gasoline?

Q. Yes.

A. Well gosh, I have had—oh I don't know; gosh, I have been captain, and I have been engineer, and I have been combined, both at one time: in regard to the actual operation of gasoline, I can't say how many years. But that would—I think you might leave it out.

Q. Did you have any connection with the operation of the Blue Lagoon?

A. Yes, I was the engineer of her; my brother he did the steering; and down below I would run the engine; because we didn't have it connected up in regard to the bow controls or anything.

Q. And how many years had you had the Blue Lagoon at the time of the fire?

A. '29, '30, '31, '32, '33, '34, '35—about seven years.

Q. And for what purposes had you operated her during that period?

A. Well, we used it for our own pleasure for a while; then we thought we could turn it into a commercial boat and carry parties with it; but we didn't carry very many.

Q. Now in connection with this experience that you have had as an engineer and boat constructor, and othe

capacities, had you seen mixtures of gasoline and water before this?

A. Oh yes, plenty of times.

Q. Does gasoline float on water, or not?

A. It floats; it certainly does float, right on top of water.

Q. And is it in the light of your experience and observations prior to that time, that you reached the conclusion on observing the discharge of the pump on this occasion, that it was a mixture of gasoline and water?

A. That's what I did; because you could see kind of a bubble, you know; not a bubble exactly; a bubble of course contains air inside of it; but these were—you might call them solid bubbles; go off to one side; whereas the other bubbles of air why they would go a little ways and bust, you know, like a soap bubble. In other words you might call it gobs going off; they would float off by themselves and then evaporate and disappear.

Q. Now did you observe any other evidences of gasoline on the Seminole, while you were there?

A. I did. Carl Holmes and Lowney and Capt. Patten and Bill and myself, they had got the boat pretty well pumped down and she was floating up, but there was water coming in still in certain places; they was going around, Lowney had on boots, I think, and so did Carl Holmes—or shoes—or overalls and shoes to keep their feet from being cut by glass, you know; and they were going around, you know, finding these connections. I thought I would have to the same thing; I only had on shoes, and clothes, I didn't have any boots to get in the water, so I went around hanging from—well you might call it those stanchions or beams sticking up; so I went from the—

Q. Are you referring to these stanchions or beams—

A. Those are the steel of the Seminole.

Q. Part of the structure of the Seminole?

A. Yes, part of the structure. I went around from the—it was on the starboard side that this pump barge was located, and I went around, went around to the stern, I discovered there where you could see a stream of water coming up, you know; and I told them there was a broken connection; so they come along there and stuck a pipe in—or suck a—

Q. Plug?

A. A plug out of a bag or something like that, he had with him. Then I came around to abreast of the engine room on the port side, and Lowney, Jack Lowney was with me; he had a flashlight, and he was flashing it along, you know, in various places.

Q. Where was he? Was he inside of the boat, or outside?

A. He was inside of the boat, and I was right along, like here and Lowney was right here, and here is this bulkhead, forward bulkhead of the—containing the tanks. Well that is just about the width of it; there was one tank, two tanks, three tanks, four tanks, and here is this forward bulkhead.

Q. You mean the bulkhead separating the tanks from the engine room?

A. Bulkhead separating the tanks from the engine room; and I says to—"Here is the matter right about here, the port motor and the starboard motor".

Q. Now if you can—the reporter can't take down on the record your motions; so I think if you will just try to describe it in words, that will be a little better.

A. All right. Well anyway the space between the port motor and the forward bulkhead of the engine room, and I noticed a coil in the water, like a spring, again, and I says to Lowney, I says —

Mr. Underwood:

If your Honor please, I object to the conversation.

The Court:

Don't repeat the conversation; what you said to some one else, or what they said to you.

A. All right. I looked at that spring of water, and it looked to me like water at first, then I looked closer, and I says to myself "That is gasoline": well I don't know whether I am—whether I am wrong or not, as to what I said to myself. Well I can say now—wait a minute; I can't say how I verified it, because—

Q. Well perhaps something that you have said or done there may be admissible then. You saw this coil in the water?

A. Yes.

Q. Now did you call anybody's attention to that?

A. I did; I called—but if I can't tell what I said to him, why—

Q. Well first of all, did you call some one's attention to it?

A. I did.

Q. And who was that?

A. Jack Lowney; he had the flashlight in his hand; he had the flashlight, and I says "For God's sakes don't"—

Mr. Underwood:

I object to what he said.

The Court:

He can tell what he saw, and describe it, and state the fact, that he commented on it to some one else; but as to what was said between him and that some one else, is incompetent.

Mr. Matteson:

Then we will try to keep within those limits now.

Q. I think you said you called Lowney's attention to it?

A. Yes.

Q. As a result of or following that, what did Lowney do?

A. He stuck his fingers into this spring and smelled of it.

Q. And as the result of that what did you do?

Mr. Underwood:

That is leading. * * *

Q. —if anything.—I will add that.

The Court:

I don't think that is leading; he may answer that.

Q. As a result of that, what if anything did you do?

A. Well I told him what to do; and we called other people over there,—Carl Holmes, Capt. Patten; and my decision that it was gasoline coming up on that water and evaporating,—rolled; had a different characteristic entirely from water coming up.

Q. Were there any orders given at that time?

A. Well, I gave orders, but I can't tell what they were —what my orders were. That is of course, I wasn't in authority, or anything like that; but I simply—what you might say safety orders, precautionary, so we wouldn't have an explosion there and endanger us all.

Q. Now what did you do?

A. What did I do? I went over to the—I went back and got over to the barge where—well Bill was over on the land, and I says to Patten—there it goes again.

Q. Did you stay there or did you not?

A. I did not stay there; it was too dangerous for me, too dangerous for Bill. I warned other people how dangerous it was, and I got out; and we went to the hotel; this

was around, I should say around about twelve or one o'clock, in the morning.

Q. Now before we leave this, then: you saw something welling up there, which you say—

A. I would say was gasoline.

Q. —you decided was gasoline. Can you give us any idea of the quantity that you saw?

A. Quantity? From the amount of gasoline out of that one particular place I couldn't say; but the amount of gasoline totally, that we had smelled and that had been pumped overboard, I would say it was hundreds of gallons. It was the most dangerous place I had been in for a long time; and so as I say we got out of there, because I was really afraid. Because if the thing went up, why there would have been about a dozen people that couldn't have escaped, because the gasoline was over the surface of everything, all the surface of the water.

Q. When did you come back to the yard?

A. I came back to the boat, that is back on the shore, oh I should judge it might have been seven o'clock, might have been eight o'clock; most likely eight o'clock. And they were—they had just found the body and was putting it into a canvas; and I got out aboard the Seminole just as they carried the body past me; just as they carried the body past me.

Q. What did you do? Where did you go?

A. Oh I looked around the place, naturally, where they —where the body had been found. Just about there, why —or near to it, a little over at this side, the left of it you might say, the port of it, why I saw a gasoline can; I saw it lying there.

Q. Just a minute; are you referring to this can that I hold in my hand, and which has been marked libelants' Exhibit #13?

A. That looks just exactly like it; I would say that was it.

Q. Where did you—

A. And I noticed that the—excuse me.

Q. I was going to ask you more particularly just where you saw it.

A. Well I should say it was—well I will call it midway between the port engine and the port side of the vessel, about two of three feet back from the bulkhead—forward bulkhead.

Q. Did I understand you to say port side?

A. The port side, yes; the port engine and the port side of the vessel.

Q. Well, that is all right; that is clear enough. Now just when was it that you saw this can there? Just when was this?

A. Oh that was just at the same time the body was there; no. the body was out then, the body had just been taken ashore.

Q. You mean the body of Captain Abel?

A. Yes, body of Captain Abel had just been taken ashore. I say about eight o'clock in the morning; it might have been, you know we don't look at our watches under those circumstances.

Q. But do I understand that you went out to the Seminole right after that?

A. I was out there when they was taking the body; they had wrapped the body up, and I was aboard of the Seminole, and they picked the body up and just carrying it by me.

Q. And it was right after that—

A. I saw that can.

Q. You saw the can?

A. Yes, sir.

Q. Before I forget it, Mr. McCoy, what kind of a pump was it that they were using to pump out the Seminole?

A. They had a centrifugal pump, direct connected to an automobile—either a four or six-cylinder automobile engine.

Q. Gasoline engine?

A. Gasoline engine, yes.

Q. What sort of an exhaust did it have?

A. What kind of an exhaust?

A. Why I think it only had a short chunk of pipe up there, just a short piece of pipe sticking up; I think so; I didn't pay much attention to that, to tell you the truth.

Q. Did that—the fact that that type of engine was in use in pumping out the boat, have any bearing on your thought that it was dangerous there, or not?

A. The only danger it would have is from liability of setting fire to the gasoline that was already floating on the water. The engine did not miss, because it was all—it was a steady roar—a steady purr out of that engine, and consequently she was not pumping any gasoline—any gasoline odors out of her exhaust; it was all pure carbon monoxide—that is the exhaust, regular exhaust smell. There was no gasoline smell came from that engine; it was entirely from what was pumped.

Q. Well was there any danger of the engine setting fire to anything, or not?

A. Yes, there was danger in this way, that if something would happen and she would start to miss—a wire would drop off, start a spark on top of the cylinder heads, we will call it,—the body of the engine there, and those gasoline fumes, it was a liability to set it off, yes; but there wasn't anything like that.

Q. Now getting back to this pumping that we were speaking of; you said that you saw the discharge from the pump going overboard, and in your judgment that was at least partially gasoline. Now where were they pumping from at that time?

A. They were pumping out the Seminole; I didn't notice just where the suction pipe was, but it was right in the Seminole, that was what they was pumping; pumping out the Seminole—the interior of the Seminole; the Seminole's hull.

Q. Well do you recall where the suction pipe was at that time—where in the Seminole?

A. No, I couldn't, because that's not clear in my mind at all.

Q. And this spring that you spoke of, I want to be sure that we have that located particularly, too.

A. That's located between the bulkhead—it was located right amidships, forward of the engine—of the two engines, and the bulkhead; of course the two engines, one is one side of amidships and one is the other side; and here is this spring right here.

Q. All right.

A. But it might have been a foot or two over to the port side.

Q. Now, could you see what the source of this was? Did you see what the source of this gasoline was?

A. No, I did not; I didn't follow out, because the water you see—but I guess there must have been; I guess there must have been about four feet of water in the hull yet, so I didn't want to get my clothes dirty to dive down and find out. This spring was very near, I would say a little off to one side of where the body was found, a little to the right of it.

Q. Now did the diver do anything with respect to this spring?

A. We left, let them fight it out; we wasn't going to get burned up.

Q. Now when you were there, what had happened to Blue Lagoon as far as we could see.

A. Well, we just saw some charred sticks sticking up out of the water, and that was what was left of the Blua Lagoon as far as we could see.

Q. Was she a wooden vessel?

A. She was a wooden vessel, yes. There was nothing left of her above water line.

Q. And how was her hull, the wreck of her hull lying with respect to the Seminole?

A. Well, it was lying right alongside of where we had left her, right alongside of the Seminole; right alongside of the Seminole. When we left her, that is when they were both afloat, we could step from the Blue Lagoon to the Seminole; well, a distance from here to the desk,—about four or five feet.

Q. Now, I want to go back to the wreck when you came back the next morning: you told us that you observed at that time the gasoline can or what you have referred to as the gasoline can.

A. Yes.

Q. Now, tell us what else you saw and did that morning.

A. Well, of course, I saw a lot of tangled, blackened-up machinery, and the Universal plant—looked like the Universal plant there, of the auxiliaries. But there was one thing there I noticed, that there was no shut-off valves next to the carburetor; and that was all—

Q. What carburetors are you referring to?

A. The carburetors of the main engine; I didn't notice the auxiliaries,—I mean I didn't specifically get down to the auxiliaries, but there was this line of the gas line running right back to the carburetor of the Winton. Of course, the manifold of the Winton is up, of course runs right along from cylinder to cylinder,—the cylinder head; and the carburetor was down on the floor, approximately on the floor, with the gasoline line leading forward; I didn't look to see where that gasoline line was, but I noticed that next to the carburetor, where in ordinary practice we always put a valve to shut off, there was no shut-off valve at all, whatsoever.

Q. Now, tell me what else you observed in the engine-room of the wreck that morning.

A. Well, I had been aboard the Seminole about three years before, when she was hauled out down at Coconut Grove, they was putting in a steel plate in her bottom, and I went down in the engineroom and I saw there was a lot

of machinery crowded together, but— and so I just thought what a shame it was that all this stuff had been burned up.

Q. I would like to show you this Exhibit No. 11 and ask you if you recognize that, if you ever saw it before?

A. I don't know. As I say, I can't because I did not,— I honestly did not go looking around in among the valves or the piping.

Q. Did you observe whether or not there was a drain line for gasoline in the engineroom?

A. Well, in one way. Of course the water was out of her then, and I got down—you see the Seminole was originally a steam yacht, and they had a coal bunker that they put these gasoline tanks in; and this coal bunker, or the coal hole, why—; at least I took what was the coal hole was an opening in the forward bulkhead of the engineroom. I got down on my knees and looked underneath this: I could see the bottoms of the gasoline tanks, sitting on kind of a steel framework, but the pipes was broken from the explosion and I couldn't tell much; the fact is, I didn't try to trace out anything.

Q. I show you this photograph, Libelants' Exhibit 9, you recognize that?

A. Yes. I kind of think I do. This looks to me as though it is—, well, if this is the forward bulkhead, this is the forward hole.

Q. You are referring to this dark part of the picture?

A. This dark part out here, yes.

Q. From which a line is drawn and the letter "A" is put; is that what you are referring to as the coal hole?

A. Yes.

Q. So you got down where you could look down underneath there?

A. Yes.

Q. What did you see?

A. Well, I saw the bottoms of the tanks sitting up approximately, I would say the bottoms of the tanks were

sitting along like that, you know between the coal hole and sitting on—, well, angle irons and framework of that kind, because I could see the bottoms of the tanks.

Q. Was there any indication or any trace of a lead pan under the tanks at that time?

A. No, everything was all open, everything was all open, because lead, you see—, it might have been down in the bottom of the boat melted.

Q. What did you notice about the bottoms of those tanks?

A. Oh, that was the same day the body was found; might have been half an hour later.

Q. Yes, well what did you notice about them? What did you notice about the bottoms of the tanks?

A. Oh, what did I notice about the bottoms of the tanks?

Q. Describe them to us.

A. Well, simply looking into this hole here, and you could see the—and look this other way and see the other tank.

Q. Were the bottoms flat, concave or convex?

A. The bottoms was concave setting there. I have often thought that the proper way to set these tanks in was the reverse—

Mr. Underwood:

If your Honor please—

A. Excuse me.

Q. Did you notice any of the valves on the gasoline tanks?

A. No, I can't say that I did. That was just a—, I notice that there was some piping there, and what I took would be the gasoline manifold and the filling manifold; but in regard to just what they were, I didn't look at anything particularly.

Q. Can you identify this piece of piping and connections, which is Libelants' Exhibit No. 2?

A. No, I can't say that.

Q. Or did you see anything like that there?

A. Well, as near as I can recall from the looks of it, angles, or elbows and 45's and everything else around there—, unions.

Q. Can you tell us how the tanks were connected with the engine room?

A. Well, as near as I can recall from the looks of it, there was a gasoline outlet, about four or five or six inches from the bottom of the tank, maybe seven inches, and that seemed to have a short pipe, or a short piece that run over to and through the bulkhead; and then there was a pipe,—I think they was all connected on to one pipe running athwartship, which would make a manifold out of it; but that is about all I looked at. To tell you honestly, I didn't try to trace it at all.

Q. Can you identify this photograph, Libelants' Exhibit 4?

A. Well, I saw something like that there, yes. There would be the bottom of the tank, here would be the valve; then there would be a—, that's the bottom of the tank in there, and the connection head goes up; so as to get this up as high as the connection head, they put the discharge—, what will you call it? The bushing and then screwed the pipe in—, a short piece of pipe; then they put the valve on the outside here, so they could get at it; and there would be another pipe that would run athwartship, connecting from one tank to another.

Q. I show you Libelants' Exhibit No. 14.

A. No, I don't remember seeing that part there at all. I do distinctly remember seeing that can. The fact is, I called somebody's attention to it at the time.

Q. Did you try any of the valves that you observed?

A. No, I did not.

Q. I show you Libelants' Exhibit No. 6 and ask you if you can recognize that?

A. That's the top of the tanks. This is the—, Yes, this is the starboard side—, passageway. One, two, three, four—those are the tanks across there. You could see the bottom of them when you got down here and looked underneath this bulkhead and looked in there. In regard to the—, there was a tangled mass of piping, as I say, I didn't try to describe—, to look it through, or trace them out, or anything like that; but I simply recognized that possibly that—, I didn't know whether that one is or not —, but the description of what he told me afterwards—

Q. Well, never mind about that. Is that the way the tanks looked when you saw them?

A. Yes.

Q. Referring to Libelants' Exhibit 6, who was there when the body of Abel was taken off the Seminole; do you recall?

A. Well, you see, we had just got there, and just who was there, I couldn't say.

Q. Do you remember any of those that were there at that time?

A. Why, I think Captain Holm, Captain Patten, Jack Lowney, and there was the Undertaker waiting on shore, and there was two or three other people.

Q. Was the Coroner there?

A. I don't know. I wouldn't know the Coroner if I seen him. I understood he was there, but I wouldn't recognize, I wouldn't know him. But I would—, but I distinctly remember seeing the Undertaker standing on the shore, or at least who I took to be the Undertaker.

Q. Where is your brother, Bill, now?

A. Where is he now?

Q. Yes.

A. He is up at Lake Worth, sick.

Q. Is he able to come to the trial?

A. I don't hardly think so. It would excite him too much. The after effects on him would be too bad.

Q. Has he been ill for some time?

A. He has been ill since the middle of January—, middle of December. He had ptomaine poisoning that brought on a heart attack.

Q. I show you these pictures, Mr. McCoy, and ask you if you know what they are and who took them.

A. Why, I took that one, the top of the tanks.

Q. And when was that taken?

A. I think that was taken the same day.

Q. That was the day the body was removed? Are you referring to the day the body was removed?

A. No, I am not, because—I forget what day it was. We had the camera down there and took them.

Q. About that day?

A. Somewheres around about that time. I couldn't say when.

Q. The Seminole was still in the wreckage in the shed there?

A. Oh yes. This is the Seminole wreckage, that is the Seminole.

Mr. Matteson:

We offer that one in evidence.

(The said photograph was received in evidence and marked Libelants' Exhibit No. 91.)

A. That boat over there, that's that steel barge.

Q. Now, I will show you the next one.

A. Well, this is Bill, Bill McCoy.

Q. There is a group of three persons here and the one at the left is Bill McCoy, is that right?

A. Yes. Bill McCoy, and in the center is Jack Lowney, and the next one on the right is Carl Ho.n.

Q. That's the diver?

A. That's the diver. Both of them divers.

Q. In this picture do any of the vessels appear?

A. Yes: in this picture that outside is that car float they was going to run across Miami Bay here, with cars on. The next one, well, I be darned if I can—, I think that is the stern of the Seminole. She has got her angle run down there. The next one ought to be the Blue Lagoon, but I wouldn't be sure of it because it is kind of distorted. There is the stern running down.

Q. Now, you have named these vessels, reading from right to left as they appear in the picture, is that right,

A. Yes. Now, let me look at this. No, I can't identify that thing, because I haven't got—my glasses are not strong enough. But I know this much, there is the barge, and these vessels here, but which is which there, I couldn't say now.

Q. But this is a picture that was taken at the yard, shortly after the fire?

A. Oh yes. I think that was taken the same day that the body was found. I think so.

Mr. Matteson:

I ask to have that marked in evidence.

(Said photograph was received in evidence and marked Libelants' Exhibit No. 92.)

Q. Now the next one.

A. Well, this next one, that is the Seminole's tanks, looking over to the port side, showing that steel railroad float over there. That is the little island over there, and beyond that is the New River. This is the top of the tanks—, of the two port tanks. You might call it, of the Seminole.

Q. That was taken about the time of the fire?

A. Yes, sir. Shortly afterwards.

Mr. Underwood:

The day the body was found?

Q. The day the body was found?

A. No, I couldn't say about that now. I didn't keep any track, you know, of that, and I wouldn't say.

Mr. Underwood:

Not before that?

A. Oh, no. Not before that, not before the fire.

Q. Not before the day the body was found?

A. No; that is, I don't know, I had the camera there, but I think I was busy doing something else.

Mr. Matteson:

I would like to mark this one in evidence.

(Said photograph was received in evidence and marked Libelants' Exhibit No. 93.)

Q. Now, this one.

A. That one is the—I don't know who took that one; Bill might have taken it. That's me standing up there at the engine room.

Q. And what vessel is that?

A. I am standing on the Seminole; and this is the Blue Lagoon,—what is left of her, in here.

Q. Just at the foreground of the picture, from the Seminole,—just in front of the Seminole as the picture is taken?

A. Yes, this is the—we are looking across the wreckage of the Blue Lagoon to this port side of the Seminole.

Q. I see; and when was this taken?

A. Gosh, I don't know; it might have been taken the day after the fire,—the day after the body was found, or it might have been taken of a Tuesday, or a Wednesday, or a couple of days later; I wouldn't say. Let's see, wait

a moment; no, that was taken after she was pulled up; was taken after the body was found.

Mr. Matteson:

Ask to have that marked in evidence.

(Said photograph so identified was received in evidence and marked as Libelants' Exhibit No. 94.)

Q. Now, have yo told us all you observed about the engine room of the Seminole that you recall at this time, after the body was raised—after the body was recovered?

A. Why, I guess so, excepting my—when Carl went down looking for the body I held the air hose and line, and I told him—well, cut that out.

Q. You did hold the air hose and the life line?

A. Oh yes, I held the air hose, the life line; my brother and Captain Patten they worked the air pump, putting the air to him. I was afraid in getting down to those two engines, the two main engines, that some of that tangled piping and other things would slip and imprison this diver down there; so at my request he quit there for a while, but we had been at it an hour or two then; he would get in there, away up underneath that stuff, with the bubbles coming up; and I thought if that stuff ever slipped on him, it would be good-bye Carl Holm.

Q. Well, were you around there after that? You have told us the morning now after the body was recovered.

A. We were there that Tuesday morning; that was just after the fire; Wednesday morning the body was discovered, and I don't think we was there after Wednesday; we might have been. I know we made a trip or two down occasionally and stayed for an hour or so at different times.

Q. Did you see John Thomas at any time?

A. Why yes, I saw John Thomas; the first time I saw him was in the Samaritan Hospital up there at West Palm Beach.

Q. And when was that?

A. Well, now, I couldn't say, because it was very early in the—he had just been brought up a day or two, or a week from Lauderdale, where he had been in the hospital; and when I saw him he was laying in bed there, with this, what I call a gallows frame, to suspend his broken leg from.

Q. Was that some time in July?

A. That was in—yes, because it was just a short time up there, and I think we was going north, and what day we went up, I don't know, but I know we went and saw him there at the hospital just as soon as he was available to be seen after being brought up from Lauderdale.

Q. And who went to see him with you?

A. My brother Bill and myself.

Q. And did you talk with Thomas at the hospital?

A. Oh yes, we went in there, and I talked to him, and of course the first thing to do was to tell him he was looking pretty good, and the next thing to ask him about the fire, what in the world was the cause of it; so he told me—

Mr. Underwood:

Wait a minute. If your Honor please, may we caution the witness to go a little slowly here, we are getting down to the point, now.

The Court:

Before you tell any conversation, wait for any objections that may be made.

Q. Did he tell you about what happened at the time the fire started Answer yes or no.

A. He told me all about it. Well, do I talk now?

Q. Yes, that's fine.

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Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 246

CHARLES CORYELL, ET AL., PETITIONERS,

vs.

JOHN S. PHIPPS AND GEORGE J. PILKINGTON

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 20, 1942.

CERTIORARI GRANTED OCTOBER 12, 1942.

No. 246

Office - Supreme Court, U. S.
FILED
JUL 20 1942
CHARLES ELMORE CROPLEY
CLERK

VOLUME II.

TRANSCRIPT OF RECORD

UNITED STATES
CIRCUIT COURT OF APPEALS

FIFTH CIRCUIT.

2 — }

No. 10185

CHARLES CORYELL, ET AL.,

Appellants,

versus

JOHN S. PHIPPS and GEORGE J. PILKINGTON,

Appellees.

Appeal from the District Court of the United States for the Southern District of Florida.

U. S. CIRCUIT COURT OF APPEALS
FILED
DEC 17 1941
CLERK

(ORIGINAL RECORD RECEIVED DEC. 17/41.)

The Court:

That calls for yes or no; you answered yes, did you?

A. I can't hear very good.

The Court:

I say, that calls for a yes or no answer.

A. Oh, that calls for a yes or no answer? Oh, yes, he told me.

Q. Now, will you tell us what Thomas told you at that time about the cause of the fire?

Mr. Underwood:

If your Honor please, I object to that question.

The Court:

I think it is for the purpose of impeachment alone.

Mr. Underwood:

So far as Thomas being an adverse witness is concerned, I would like to say this: I have given to Mr. Botts, at his request, an enumeration of the expenses paid by the Palm Beach Company on behalf of Thomas, and the monies paid to Thomas, from the time of the fire down to date. There is no proof here that Thomas is an adverse witness; there was no evidence of adversity on the stand. He wasn't difficult to handle; he was pleasant, and he answered all their questions apparently to the best of his recollection, and there isn't any proof yet that he ever told anything to the contrary. He talked with them before the fire, talked with several of them, talked with Mr. Matteson, Mr. Dyer, Mr. Jones, and he didn't sign a statement for me. There is no proof that he is an adverse, cantankerous witness at all.

The Court:

I don't want to argue with you at all, Mr. Underwood, but sufficient appears there to show that he was reticent in regard to receiving pay from the Palm Beach Company. He was asked questions which should have elicited that information on direct examination, and he only brought that out on cross examination.

Mr. Underwood:

Well, my feeling was that he understood the question as I myself did until I read it in the record later. He was asked about benefits.

The Court:

He was asked the same question over and over,—not the same question, but asked in so many different ways by Mr. Botts as to whether he was receiving any remuneration from the Palm Beach Company, which I think he should have answered Mr. Botts and given the information which he did on cross examination. So I think that under that phase of it he is sufficiently hostile to justify overruling your present objection to the question, which is asked for an impeachment purposes. I will say this, however, in regard to the impeachment of Thomas, I don't think at all the time that elapsed before he was carried to the Palm Beach Hospital, but I think he was probably correct. that he was greatly under the influence of narcotics at the time that he had these alleged conversations; he claims that, and from the character of his injuries I would say, without any direct evidence, as to what narcotics he had administered him, that he must have been "doped" up, as the expression does, for some time after being carried to the hospital. So I mention that to give you my views as to what he said, in advance, of his not being able to remember what the statement was.

Mr. Matteson:

Well, we are not referring to that conversation now.

The Court:

While I have overruled your objections, as I recall the testimony Thomas was very indefinite about these conversations about which he was asked; in other words, he denied outright certain conversations, others he didn't remember, and he stated that he was under the influence of narcotics at that time. So, while I have overruled this objection, I am going to allow him to answer it. I don't attach any great deal of importance to your impeachment.

Mr. Matteson:

Well, after the record is made, your Honor, will be able to judge that clearly.

Q. Was your interview with Thomas on July 13, do you recall?

A. Well, I couldn't say that that is the exact time or not; but as I say, we went to the hospital.

Q. Have you some memorandum that will refresh you, that will refresh your recollection as to that date?

A. No, I can't; I have nothing that I remember; but I made,—I went home and made some notes and typewritten them out, that is what I thought, kind of an idea, and then I think I mailed a copy down, or kept it, I don't know; but the notes themselves, or the scribblings that I made on a piece of paper, why I chucked them in a wastebasket.

Q. Did you go down to Mr. Batchelor's office and prepare memorandum there, do you recall?

A. That, I can't say; it seems to me that I wrote it out and sent it down to him, or took it down to him. It might have been some other time we made it out.

Q. I show you this paper and ask you if that refreshes your recollection of anything?

A. Well, I be darned if I know; that is too good typewriting for me; that is not my typewriting, but it is evidently about what I told him though.

Q. About what you told him?

A. Told,—that is written, that I either had written or told Batchelor at the time. Because, I say, it is not my typewriting; my writing isn't as good as that.

Mr. Matteson:

Will you mark this for identification?

(The said paper was marked Libelants' Exhibit No. 95 for identification.)

Q. This memorandum says "Saw Thomas"—

Mr. Underwood:

I object to reading the memorandum.

Q. I will show you, Mr. McCoy, this statement and ask you if this is what Thomas said to you at that time:

The Court:

Are you relying on that being a verbatim, in effect, statement of what you asked Thomas, and he said he did not remember?

Q. I will ask you to read it over, Mr. McCoy.

The Court:

Let me ask you, for what purpose are you offering the witness that paper?

Mr. Matteson:

He has said that in substance it was what he reported to Mr. Batchelor from his notes, of his conversation with Thomas at Palm Beach.

The Court:

Well, are you offering it merely for the purpose of refreshing his memory?

Mr. Matteson:

Yes.

The Court:

Well, in effect, I don't think he said,—Do you want him to read and then state whether that refreshes his memory?

Mr. Matteson:

If your Honor please, I am a little bit confused under the practice here. I understood that your suggestion was to ask him if he didn't make specific statements, quoting those statements.

The Court:

Yes, but those statements must be the ones that you asked Thomas.

Mr. Matteson:

That is exactly what we will do.

The Court:

If that paper was made by Mr. McCoy,—I understand him to say that he didn't make it, but he said that he did see and talk with Mr. Batchelor. Now if you make it clear that that paper was written out by Mr. Batchelor in a conference with Mr. McCoy, then it would be competent for you,—if he wants that paper to refresh his memory, he can utilize that paper.

Mr. Matteson:

We have marked it for identification, and if he needs it, we will have him refer to it.

Q. I want to ask you, Mr. McCoy, that if on the occasion of the conversation with Thomas, that you have just referred to at Palm Beach—

A. It is fresh in my mind.

Q. —did he say to you, "Him" (referring to Abel) "and I met at the engine room window and he crawled through. I said 'don't strike a match, as I smell gasoline'; 'from where I stood, I could see Abel at the switchboard, and also a view of the switchboard. Abel was there for about half a minute and we saw the glow like a short circuit on the switchboard, and then a blue flame". Did he make that statement to you at that time?

A. He certainly did.

Mr. Underwood:

I object on two grounds; those that I have mentioned before, and on the ground that the date has not been fixed. Thomas was asked particularly as to the date, and this witness does not fix the date.

The Court:

He has fixed it as best he could as I understand it. I overrule the objection. Now, is that the statement that you asked Thomas, whether he made that and he said he didn't remember?

Mr. Underwood:

Yes, sir. That is it.

Q. Now, Mr. McCoy, you have described to us your experience in the construction and operation of gasoline boats and the installation of gasoline engines. I show you this Exhibit, Libelants' Exhibit No. 2, which is said to be part of the gasoline line connecting one of the tanks of the Seminole, either with the other tank, or with the gasoline feed lines.

A. That wasn't large enough to connect between, from tank to tank.

Q. Wait just a minute.

A. I should think that would run to one of the auxiliaries.

Q. Well, I am not asking you that, Mr. McCoy. You told me that you couldn't identify anything that you saw here.

A. I could not; but I am only judging from the size of it.

Q. Now, please listen to my question, and answer the question that I ask you. I said, assuming that this is a piece of the gasoline line connecting one of the tanks of the Seminole with the other tanks, or with one of the gasoline feed lines,—

A. Correct.

Q. In the light of your experience as an engineer and a constructor and an installer of gasoline engines, will you tell us whether that is a safe and proper line to be used for that purpose?

A. Well, today I would not—or that it ought to have been a copper pipe, or brass, bent, not all them darned elbows and going around those little short places; go to work and put on a piece of copper pipe, and copper tubing, of the same diameter, the copper is soldered; take and flow it around almost like a piece of lead; fit it in the corners and everything, and it wouldn't break from vibration, like that stuff will.

Q. You spoke of the connections on it; what is wrong with those, if anything?

A. Supposing that that type is stretched out, as it ought to be, we will say, when the little auxiliaries are running, there is a great deal of vibration; not right away but ultimately it will break off at one of these threads in there, because I have had it do the same thing various times. We had it on a boat up in New York.

Q. Is there—

A. It localizes right at the fitting,—the vibration.

Q. Is these any difficulty about keeping the treaded connections tight in a line in which there are connections like these?

A. A gasoline line really ought to be sweated, what they call sweated. The threads,—the male threads are sweated, are tinned; the female threads are sweated and then put together with—put a blow torch on them, and that makes them absolutely gas tight.

Q. Well, can you tell whether these have been treated in that way?

A. From the outside appearance I would say no, they hadn't; they had not.

Q. From your experience can you tell us, if that process was not followed, if there would be any difficulty in keeping connections always tight?

A. I think that ultimately you would have to tighten them up, tighten them all up again, after running,—that is, I mean perhaps a series of years there is bound for some of them to get loose.

Q. I show you this Exhibit, Libelants' Exhibit No. 11, which is said to have been a pair of valves used at the end of a line, the purpose of which was to permit drawing off of gasoline in the engine room; these valves being the shut-off valves at the end of that line; and I ask you whether in your opinion these are proper and safe gasoline valves?

A. Well, it looks to me as though that one valve was leakir, and they stuck another one in there to rectify the leak.

Mr. Underwood:

If your Honor please, I move to strike that out.

The Court:

Granted.

Q. That wasn't what I asked you. I asked you about the valves, as to whether they are proper gasoline valves.

A. I couldn't tell until they are taken open. There might be a combustion seat under there that would eat away under gasoline; it might be suitable for water.

Q. Are you familiar with this type of valve?

A. No, that's a water valve, I think, from the looks of it.

Q. What is the difference?

A. Well, it is the same as water takes; that is gasoline would seep through the smallest possible kind of opening, whereas water would clog itself, and wouldn't go through there with the same pressure or half the pressure. Cast-iron will keep gasoline in; it wouldn't keep kerosene in, because it will work right through cast-iron.

Q. How about the gasoline.

A. Gasoline is the same as kerosene; seeps right on through. The only thing, the difficulty of gasoline, is that it evaporates, and you don't notice the leak like you would with kerosene or water.

Q. Now, what can you tell us, Mr. McCoy, in the light of your experience, as to the propriety of having a draw-off valve in the engine room of a gasoline vessel?

A. A draw-off valve in the engine room should not be allowed on account of, that when you draw gasoline, there is fumes, you can't help it, the fumes get around, and if you have got any open fires, might be back of a bulkhead, and the gas stays down and goes underneath these openings in the bulkhead, comes up to the fire and you have got an explosion.

Q. Well, my question was, do you consider that it is proper or safe to have such a connection for use in the engine room of a gasoline boat?

A. I do not.

Mr. Botts:

May I ask this question: Would you be able to procure the tools that will be necessary to take this open, so that this could be done after lunch, you could take it open and tell us about it?

A. Why yes, certainly.

The Court:

We will recess until 2:00 o'clock.

(Thereupon a recess was taken to 2:00 P. M., March 21, 1939—the same day.)

March 21, 1939—2:00 o'clock P. M.

Afternoon Session.

Appearances same as heretofore noted.

871 BENJAMIN FRANKLIN McCOY resumed the stand and was examined and testified further as follows:

Direct Examination (Cont'd.)

By Mr. Matteson:

Q. Mr. McCoy, you told us about observing the tanks on the Seminole, the gasoline tanks, and you told us about looking at them from underneath?

A. Yes, sir.

Q. Now will you tell us from your observation of these tanks and what you saw of their installation whether in your opinion, in the light of your experience, they were proper tanks for gasoline on a boat of this size?

A. I think the tanks, the way they were set there, were improperly installed.

Q. For what reason?

A. In the place of—they could not be altogether drained out because of the fact that the gasoline discharge, as I said, was four inches or five inches or six inches, maybe seven, above the bottom and that left a pocket in the tank where all water and dirt and everything like that would seep. If, on the contrary, they reversed these tanks, with the convex side down, and used that for the discharge, then those tanks could have been thoroughly drained if the drain pipe was below the bottom of the tank, and the result of that water laying in there and dirt why it just simply formed corrosion, and it is only a question of time that these tanks would leak.

Q. You talk of water in the tanks. Of course these were gasoline tanks.

A. Yes, but there is a certain amount of water that gets into gasoline for some reason, atmosphere conditions; a tank will "bleed", as they call it, and cool off, and air goes into the tank through the vents. I mean a tank when it is about half full of gasoline. On a warm day the air causes expansion and out goes the air. Everytime it comes in it brings in a certain amount of moisture and that moisture is condensed in the tank.

Q. Is that what you observed as the result of your experience?

A. Yes, sir, that is what I have observed as a result of my experience, because I have observed tanks and put in all kinds of gasoline and for some reason I would always get a certain amount of water about it.

Q. Now will you tell us, Mr. McCoy, as a result of your experience, as to what provision should be made for the ventilation of the engineroom of a yacht the type of the Seminole when she is laid up?

A. The bilges should all be opened, that is, I mean the floor coverings and hatches and of course along the passageway and all windows should be opened so that a draft of air can go through, because if there is any slow leak-

age at all in a compartment which is closed up it stays there, and the first thing you know you have an explosive mixture, which means that something might just accidentally set it off.

Q. The testimony is that this engineroom had a skylight on the top which was closed, it had a hatch on the deck above which was closed; it had a window in each side, both of which were closed; that in the deck above there were two cowl ventilators about 14 inches in diameter which came down from above the deck. Would you consider that that was sufficient ventilation for an engineroom such as the Seminole had when the boat was laid up?

A. I would not. Gasoline fumes are heavier than air, and the air being the lightest it would come to the top and the gasoline fumes would stick down, stay down. You couldn't ventilate that type of engineroom through these ventilators as you described unless you had a power ventilator system on them.

Q. How important do you consider this matter of ventilation?

A. Well, I consider it one of the most important matters. When we laid up the Blue Lagoon we always took up the floor boards and opened all of the windows so as to allow the air to go through her. Now up there in the north when I was Captain of the Saggitta—when I was Captain of her—she was a gasoline boat 85 by 10; I took her to Seabury's and perhaps she would have two or three hundred gallons of gasoline in her, and there they told you you could take all of that gasoline out and if we didn't do it they would take it out. Then they would disconnect the union at the carburetor and open all the valves and drain all of the gasoline that was in the gasoline line and out of the carburetor, and then the boat was ready to be taken off the drydock and put into the storage shed, and then they would still have the windows open so as to allow proper ventilation.

Q Now you just touched on a point that I was coming to. I want to ask you about the safety of laying up a boat of the gasoline type with gasoline in her tanks. What can you say about that?

A. Well, if the boat catches fire with no gasoline in it, it is simply a wood fire, but if you have gasoline in the tanks, and the tank goes off, you have something else to fight, something that throws a fire in all directions. There is where the danger comes in.

Q. In the course of your experience have you become acquainted with the practice in a considerable number of yards as to the storage of vessels with gasoline in them; are you familiar with the practice as to the storage of vessels with gasoline—

A. Well, up there at Seabury's in New York, which was a consolidated shipyard—I had three or four—oh, yes,—I have had years of experience there, and they always stressed the idea that all gasoline must be out of the vessel before they would lay her up, and that was a high grade yard; they used to boil gasoline for power—

Q. Never mind that. Have you observed the practice in other yards besides the one you mentioned?

A. Well, about the only one was down here—yes, up at Daytona we stored boats with McDonald's Yard and they requested that we take all gasoline out of the vessel, and Pilkington was the same way, insisted on it.

Q. Now I would like to ask you this question as an engineer: assuming that the engineroom of a gasoline vessel has been closed up for some time without adequate ventilation, would you consider it a safe or prudent thing for anyone to go into the engineroom and throw an electric switch without first ventilating the engineroom?

Mr. Underwood:

If your Honor please, I object to that as a hypothetical question without sufficient facts stated; there is no de-

scription of the boat or the engineroom in it, and the time and conditions are not included.

The Court:
Are you directing that to any boat?

Mr. Matteson:
I am directing it generally, if your Honor please.

The Court:
Read the question.

(Preceding question read by the Reporter as above recorded.)

The Court:
The question does not incorporate anything about the presence of gasoline at that time or at any approximate period before.

Mr. Matteson:
I intentionally left out the question of gasoline, if your Honor please.

The Court:
Read the question again.

(Preceding question re-read by the Reporter as above recorded.)

The Court:
I will have to sustain the objection. I think the use of the word "safe" is improper in the question.

Mr. Matteson:
I will amend the question by striking out the word "safe".

The Court:
Do you still make the same objection?

Mr. Underwood:
Yes, the same objection.

The Court:
The objection is overruled.

Q. Answer the question.

The Court:
Read him the question now.

(Thereupon the preceding question was read by the Reporter as above recorded, the word "safe" therein being eliminated in the reading of the question.)

A. Well, if I went aboard a boat and everything was closed up tight I would not think of and I would not want to strike any matches or any lights.

Q. Now the question was about throwing an electric switch.

The Court:
Read the question to him.

(Preceding question again read by the Reporter as above recorded.)

A. I would not.

Q. Will you explain to us why not?

A. Well, you take an electric switch, these knife-switches that are commonly used, sometimes when you throw them on you can see a little bit of an arc, not when the switch is in place and not quite so much of an arc as

when the switch is withdrawn, and if there is any presence of any vapor explosive it is liable to set it off.

Q. Would it make any difference to you whether you actually smelled gasoline or not?

A. If I went into any vessel and didn't smell gasoline I would want to make sure that there was no gasoline because I might have a cold and couldn't smell it, but, as you say, to go into one that is absolutely all closed up, and had been closed up for a matter of days, and put on a switch,—no, I wouldn't do that.

Q. Would the same apply to striking a match?

A. A match is a darned sight worse; excuse me—a match is worse.

Q. Is there any other reason that you can think of why you might not smell gasoline in such a place, although it was present?

A. Of course I am speaking of a gasoline boat, a Diesel driven boat, and not on a sailing vessel or a boat that has gasoline auxiliary—

Q. We are talking about a gasoline boat.

A. On a gasoline boat I would not. That is your question, I believe.

Q. Of course we are all talking about that. The question I put to you was: is there any other reason that you can think of aside from the reason that you have given us to the effect that you might have caught a cold and couldn't smell the gasoline, although it was present?

A. I said I might have a cold and couldn't smell it, and then there is another thing, the quantity of gasoline vapor—it might be down around the floor and up around my head there would not be any, or very little or not enough to be susceptible whereas down there on the floor, near the floor, it would be dense, and it would depend on what kind of gasoline you have. We have had gasoline in the old days, 76, but that has gone—

Q. Now I want to go back to this interview that you had with Mr. John Thomas that you told us about this

morning. Will you tell us about what John Thomas, condition was as you observed it at that time?

A. When we first went into the room he was in bed, of course, with his leg strapped up on the frame, and he was half-sitting up, and he had one of these cheap magazines in his hand, a pulp magazine or whatever you call it—you know, 5, 10, 15 or 20's; I don't know whether it was a True Detective or what that he was looking at, and he laid it down and greeted us, and said "Hello Bill, hello Ben", or something like that, and of course then we got down to asking him in regards to the fire and so forth.

Q. Did he appear to be in pain at the time?

A. No; he appeared to be very cheerful.

Q. Did he appear to be under the influence of narcotics of any kind?

A. No, not the way he talked to us.

Q. Did there appear to be anything the matter with his intelligence or his ability to express himself at that time?

A. No, I have seen people under narcotics and they were very hesitant in their speech, but he came back with his answers very quick, and the fact is that he kind of thought he got a raw deal in getting hurt and nobody else did.

Q. I want to ask you again about your observation with respect to gasoline on the Seminole. At the time that you say you came down there and smelled gasoline from the shore, what observation did you make then as to whether or not the gasoline odor was coming from the Seminole?

A. Well, a slight wind seemed to be in that direction from the Seminole, and she was only boat over there; everything had disappeared under the water; she was the only one afloat— not afloat—I mean sunk—the wooden posts was entirely consumed, and it seemed that the smell came from her, because her tanks stuck up above, and I think the gasoline came out of her vent pipe or

filling pipes; she had a two-inch pipe and a hole in each tank—I don't know the size of that vent pipe that ran across the top; that may have been half-inch—

Q. After observing these conditions you described from the share, then do I understand that you went out to the boat?

A. Yes, because the barge that brought—

Q. You are speaking of the pumping barge?

A. Yes; they brought it up there but I don't think she was located yet.

Q. Now what observation did you make at that time which would tell you whether or not the gasoline which you observed came from the Seminole?

A. Well, I will tell you. We didn't make any particular observation. What we were trying to do was to put out the fire. The smell of gasoline was so acuate that we were afraid it would ignite on the surface of the Basin there and would catch some of us while we were walking over to the boat, the Seminole and—

Q Now when you were on the Seminole at that time did you observe any other source from which gasoline might come?

A. After she was pumped out?

Q. When you were there on the pumping barge?

A. No, sir; we didn't try to look around because the smell, as I said, was just a strong smell of gasoline and the pump barge had not started pumping yet, and, as I say, most likely it was coming out from these tanks, you know, sticking above the water, the upper ends of them of course would discharge the gas fumes and—

Q. At any time while you were there at that time making these observations with respect to the gasoline on the Seminole which you have told us about, did you observe any other source from which the gasoline might have come?

A. No, I didn't.

Q. What was the condition of the rest of the boats in the yard at that time?

A. The one that was five hundred feet westward up the river was the only one—I think she was half submerged, and there was a schooner or two that were pulled out and pushed down the river about a couple hundred feet from where the shed was, or where it would be. I know that smell came from the Seminole, the Seminole alone.

Q. I want to ask you just one more thing about the lay-out of the Blue Lagoon. Do you remember the date that you brought her there?

A. We had been laying down at Fort Lauderdale; we brought her up to Pilkington's on a Friday morning. We drained out the gasoline, as he told us we had to do, as he always required that to be done twenty-four hours before she was put under the shed; that was to allow the engines to cool down. So then on the morning of Saturday—not Saturday—

Q. Which is it; Saturday morning or not?

A. Saturday; it wasn't Saturday morning, because it was just one o'clock in the afternoon of Saturday—his men right after lunch caught hold of the Blue Lagoon by hand and untied the line and moved her into the storage shed, and we helped them perhaps by pushing her and we put her alongside the Seminole. Then as we were through moving out the stuff we wanted to take off, personal luggage and so forth,—we moved that out and put it in the car and then we opened up all the windows, pulled up the floor boards for ventilation down below—we pulled up the floor boards which allowed any breeze to flow through and go right down there through the bilges, which would take out any gasoline odors that might be possible there. When you drain a gasoline tank there is always a lot of smell in a gasoline tank that is explosive and will be there for years, so by lifting

up the boards the breeze could go in there and take away any smell and keep the bilges sweet and clean, take out any gasoline odors.

Q. Who did the work of preparing the boats for storage?

A. My brother and I. Do you mean the Blue Lagoon?

Q. The Blue Lagoon.

A. Brother and I. We drained out the gasoline and carried the gasoline ashore.

Q. You spoke of opening windows, was that done after you got under the shed or before?

A. Well, I will say that we went down, went around, and saw that every window was open.

Q. When was that?

A. When we were in the shed and ready to give the keys to Mr. Pilkington.

Q. What did you do with the keys?

A. Gave the keys to Mr. Pilkington; there was just two keys; no, just one key. You could go through the deck-house and unlock the screen door from the inside, unhook it—there was only one key and that was given to Pilkington.

Q. You spoke of this boat being put in there on Saturday afternoon.

A. About one o'clock.

Q. When was that with respect to the fire?

A. The fire was the next Monday about one or two o'clock.

Q. You got there just a couple days before that?

A. Oh, yes; just our usual luck, and she wasn't insured.

Mr. Underwood:

That is all.

(Discussion off the record between counsel and witness.)

Mr. Underwood:

I think we can agree that the witness attempted to open the valve marked "Crane 150" and was unable to do so; that he then opened the valve marked Crane 125 and removed the stem and the attachment on either end.

Re-Direct Examination.

By Mr. Botts:

Q. I will ask you this, Mr. McCoy, is this valve, marked 125 which you opened,—are you able to say from your experience whether or not this type of valve is designed and approved for water or gasoline?

A. I would say it was for water; I wouldn't say it was for gasoline.

Q. Is this type of valve an approved valve for gasoline?

A. No.

Q. Why not?

A. That is just my personal idea and experience. I would say it wasn't suitable for gasoline; it might be all right at the start, and then later on it would wear, or a little piece of dirt or grit might get into it.

Mr. Botts:

I think that is all I want to get from this witness.

(Recess.)

Cross Examination.

By Mr. Underwood:

Q. Mr. McCoy, what is your idea of a proper valve for gasoline?

A. One they call a plug valve, or approaching to the needle type. When you get one which is flat like that, it takes extreme pressure.

Q. I am sorry, but your finger movements do not show on the record.

A. All right; I will say "acute angle" then.

Q. Do I understand that you say a plug valve is proper?

A. Yes, certain types of plug valve.

Q. Any plug valve would not be proper?

A. No, not any plug valve.

Q. What is the difference between a plug valve that would be proper and one that would be improper, according to your views?

A. Well, what I call a plug valve is a valve that has an extreme—that is acute, not as acute as a needle valve, and pushes down more on the inside of the seat, pushes down more on the inside of the seat than it does on the top flat surface. Now I don't call these valves of the—we will just say ordinary "seat cocks"; I don't call them plug valves.

Q. And you say this particular valve that you opened, Exhibit 11, is not a plug valve, is that right?

A. I would not call that a plug valve, no, because on account of the angle of the part that goes down.

Q. It is a ground seat valve, isn't it?

A. Is that a ground seat?

Q. Yes.

A. Yes, it is a ground seat.

Q. It is not a composition seat, is it?

A. No, I don't think so.

Q. Are you sure?

A. No.

Q. You can't tell from that whether it is a composition seat?

A. Bring it over here and let me scratch it.

Q. All right.

A. Yes, that is just the same.

Q. Is it a ground seat valve?

A. Yes, it is a ground seat valve; they all have to be ground.

Q. Now, Mr. McCoy, I will show you a picture of a valve and will ask you if you will tell me whether this is a plug valve?

A. Yes, I guess that is what they would call a plug valve, but a plug valve to my notion has got more of an angle.

Mr. Underwood:

The portion of the page now being marked, which I showed to the witness, is an outline of the valve at the upper lefthand corner of the page. Mark this for identification.

(Thereupon the paper above referred to was marked Respondents' Exhibit "L" for identification.)

Q. What difference do you see between the valve shown on Respondents' Exhibit "L" and the valve marked Crane 125 that you have just examined?

A. That valve over there has not got the angle that this has; that one over there looks more of rounding.

Q. You mean the angling between the plug and the seat?

A. Correct, right up in here (indicating).

Q. Right?

A. Yes.

Mr. Underwood:

Witness draws two lines upward from the points where the plug and seat contact, and I will make this a little heavier and mark them each "A".

(By Mr. Underwood):

Q. It is your testimony, is it, that the angle between the plug and the seat makes the difference between a proper valve and improper valve, is that right?

A. In one way, yes. What I was going to say is this: that valve seat is no good for gasoline, and the more you get down to the needle valve, which is an acute angle, the better seat you have.

Q. Do you say that this valve marked Crane 125 is a flat seat valve?

A. No, I don't say it is a flat seat valve, but I say to my notion is not—

Q. Do you want to finish your answer; to your notion it doesn't what?

A. It is not a proper valve for gasoline.

Q. I am trying to find out why. We have gotten down to the point where it is a matter of angles.

A. Angles, yes.

Q. Do you say there is not an angle on that plug?

A. Yes, there is an angle there, but not sufficient to my notion.

Q. You think it ought to be a more acute angle, more nearly approaching the vertical?

A. Yes.

Q. How much more?

A. There is another thing here (pointing); do you see that; do you see that defect there?

Q. I see a notch there.

A. That would leak a whole lot.

Q. Do you know when it came there?

A. No.

Q. What angle from the vertical would you say that is?

A. Well, I don't know, to tell you the honest truth, unless—

Q. What angle from the vertical do you say is a proper angle for a gasoline valve?

A. Well, what is the angle of a lead pencil, the ordinary lead pencil point in a sharpener?

Q. What angle do you say is a proper angle for a gasoline valve?

A. The angle of a lead pencil that is sharpened in the ordinary sharpener.

Q. We were down to the point where you say it has to be a needle valve to be proper for gasoline?

A. Not exactly a needle valve; it takes too much bend on a needle valve.

Q. By the way, do you know what the figures mean on these valves, Crane 125 and Crane 150?

A. No, unless they mean something in the nature of a catalog number.

Q. You think it is the model number, perhaps?

A. Yes. Some of them are model numbers and some of them have pressure numbers.

Q. Don't you know as a fact, Mr. McCoy, these figures on there are pressure figures?

A. I haven't looked at these pressure figures; bring it over here and let me look at it.

Q. All right.

A. I thought you were referring to the number up here (indicating); I never looked at these numbers.

Q. Look at it now and tell me what they mean to you?

A. They mean 150 pounds pressure and 125 pounds pressure.

Q. That is what they are built and represented to withstand, is it not; isn't it?

A. Wait a minute—

Q. Isn't it?

A. No.

Q. You say that it is not?

A. It depends on what the valve is designed for; if it is for water it is for 150 pounds pressure of water, but not for 150 pounds pressure of air.

Q. How about steam?

A. Steam?

Q. Yes.

A. I haven't had experience with steam. I know about steam pressure valves to. If you take a 150 pound water pressure valve and you put it under 150 pounds of steam, it is according to what the composition of the seat is, just the same as your hot-water.

Q. Do you know whether that 150 and that 125 are to represent that the valve will hold 150 and 125 pounds of steam?

A. No, I don't know about that.

Q. You don't know whether that is true?

A. No; in regard I wouldn't say.

Q. We are talking about gasoline, aren't we? You made a bargain with Pilkington about the storage of your boat there?

A. My brother made the bargain, so much a foot per day.

Q. Were you present at the time your brother made the bargain?

A. No, I wasn't there; I don't hardly think I was.

Q. Have you talked—

A. My brother may have told me about what the charges were.

Q. Have you talked with Pilkington about what duties he was to perform?

A. Oh, yes; I knew what he was to do.

Q. Tell me what he was to do.

A. Well, he was to deliver the boat at the end of the season in as good condition as he got it; in other words, he was to keep it ventilated; he said he would go over it—he said every day he would go through these boats and see that they are properly ventilated, and that the windows are open, and that no gasoline fumes in them, and no danger of fire.

Q. Did he agree to inspect the boats from time to time?—

A. He agreed that he was to go through them every day, and he said—

Q. And he agreed to do that?

A. Yes, sir.

Q. Did he agree to protect them and the property aboard of them from fire?

A. In regard to what now?

Q. Did he agree to protect your boat and the property on board from fire?

A. Did he agree to protect what?

Q. The boats.

A. The boats in the case of a fire?

Q. Did he agree to protect the boat from fire?

A. No, I can't say exactly that he did; he said he would go through and inspect them daily, go through them daily, and to see that they are properly ventilated, and to see that there wasn't any danger of fire. That is what he said—

Q. In other words, he agreed to inspect the boats for possible fire hazards, isn't that correct?

A. Yes, and to see that she wasn't leaking; that was another consideration; leaking of water from the outside. He agreed that if there was anything wrong with the boat he was to look after it, and remedy it; if she leaked he was to call up the shipyard and tow her down there and get her caulked and bring her back in the shed again.

Q. That is one of the things he agreed to do?

A. He told us—that if—he told us that if the boats get to leaking that he had no facilities to haul them out, and that he would haul them out and tow them down the river and bring them back again at our expense.

Q. Those are the things that he agreed to do for the storage price you agreed to pay?

A. No; that would be at our expense; if he saw that anything was wrong with the boat it would be rectified at our expense.

Q. Probably I did not make myself clear to you. Is it the fact that Mr. Pilkington agreed to inspect the boats from time to time?

A. Yes, daily.

Q. Inspect them for fire hazards as a part of his bargain for which you agreed to pay storage?

A. Not in regard to the fire hazards; if he saw that there was something wrong there that we had left and started to smoke, he would check it over—he said that if anything out of the ordinary happened it was to be taken care of at our expense; in regard to fire hazards I would say that exactly.

Q. Let us put it this way: the price that you paid included the right to leave your boat there and to have it inspected by Mr. Pilkington?

A. That is right.

Q. And if he found anything wrong there we would—

A. He would either notify us—if the boat had sunk he would notify us, and if the boat leaked he would call the shipyard and tow her down there and bring her back.

Q. And that included ventilating the boat and inspecting the boat?

A. Yes; and the boat was to be ventilated.

Q. Now when you got your boat there—I think you said the Saturday just before the fire—

A. What?

Q. The Saturday before the fire?

A. No, Friday before the fire.

Q. She was put under the shed?

A. No, she wasn't put under the shed until the next day.

Q. Saturday?

A. Saturday.

Q. When was it that you did whatever you did about getting her ready for storage?

A. Friday and Saturday morning. We didn't run any more engines after we got it to the dock Friday.

Q. Now you said something about draining gasoline out. Tell me what you did.

A. All right. Our gasoline tank was situated on the upper deck right back of the wheel; there was a pipe that went right along on the upper deck—I don't mean on the extreme hurricane deck, but on the upper deck—alongside of the house—and came right down and came across and then came down, and there was three valves on that line. Of course the three valves were open when we run it up there. To draw that gasoline out I disconnected the union where the pipe came into the carburetor.

Q. How did you do that?

A. With a Stillson wrench; just the same as I did right there.

Q. What kind of a line was this that led to the carburetor?

A. It was a three-eighth inch line; three-eighths on deck; from the deck it was galvanized, and down in the engineroom it was copper.

Q. Galvanized pipe on deck?

A. Yes.

Q. Copper pipe below the deck down to the engineroom?

A. Yes.

Q. And down to the carburetor?

A. There was copper; it was copper tubing, three-eighth inch.

Q. What kind of a union was it; how was it disconnected?

A. It was a piece of brass pipe into the carburetor, and a short nipple and a valve, and then a nipple and then this union with an elbow—then this union with the nipple and the elbow hooking up; then this tubing went into that elbow. I think they had a special fitting to be fitted into it.

Q. Is that the fitting that you disconnected or was it some other fitting?

A. No; the fitting right next to the valve.

Q. You did not disconnect the tubing?

A. No; disconnected that pipe right next to the valve.

Q. Where did the tubing begin?

A. Right under the deck.

Q. Below the deckhead?

A. Yes.

Q. What was the character of fitting at that point?

A. Well, that was a—let's see—it would be on the—it would be an elbow going down, and then there would be one of these tube fittings that fit into the tubing, and also fit the female threads.

Q. Was that such a fitting that you could unscrew it with any monkey-wrench?

A. Yes.

Q. Was the fitting fastened on the lower end of the tubing on the pipe that led into the carburetor such a fitting that you could take it apart with a monkey-wrench?

A. Yes, some of those were; whether this particular one was I couldn't say.

Q. What type of carburetor did you have?

A. Schebler.

Q. Do you know what model?

A. I don't know; it was just the ordinary old type Schebler; the top of it was put on with screws, and you could take the top of it off.

Q. Tell me about draining off this gasoline; how did you do it; did you disconnect this fitting near the carburetor?

A. Of course this tubing is flexible, and the carburetor is just about that far off the floor (indicating).

Q. Indicating about eight inches?

A. Yes. Then I could take this tubing and bend it up like that (indicating), and let the gas flow into this can or this here pan that I had, that is, a kettle, one of the cooking pots—then I could hold my hand over it.

Q. Something like the size of—

A. It may have had a handle on it—

Q. How deep was it; what was the diameter of it?

A. Come to think of it, I know it was one we had for boiling ham and cabbage in and I remember it set up about that high (indicating).

Q. Making it about ten or twelve inches, we will say?

A. Not that much.

Q. About eight inches?

A. About nine inches, we will say; I would say it was about 12 by 14 inches in diameter.

Q. Then you got a pan full of that and—

A. Not entirely full; about three-quarters full, and then we would have a gasoline can alongside with a funnel setting in it—

Q. What did you do with the end of the pipe when you got the can as full as you wanted it?

A. Just put my finger right over it.

Q. Stopped it with your finger?

A. Yes.

Q. And then you poured the contents of the pan into—

A. Into the can—a five-gallon can.

Q. Through a funnel?

A. Yes.

Q. Then what did you do?

A. When the can got full?

Q. Yes.

A. I would either take it ashore or Bill would take it ashore; as a rule Bill would take the can ashore.

Q. On this occasion did you stand there and hold your finger over the end of the pipe until your brother took the can ashore?

A. How long would that take?

Q. I am not criticising you; I am just asking you what you did.

A. I know. I don't know what I did on this particular occasion, but sometimes I would carry the can ashore, or maybe I would have another can alongside there and would shove it right over there. We had on that boat ten five-gallon water bottles, glass; we had six five-gallon cans empty, the ordinary tin cans, you know what they are, with wooden jackets on them.

Q. All right.

A. Now I could draw out generally all of the gasoline that was in the tanks, because we wouldn't put much in; perhaps down at Fort Lauderdale I would measure the gasoline in the tanks and find out how much I had; I might take a five-gallon can and dump it in there to be sure we had enough to get up there. One time when we went up there we only drew out about ten gallons because—.

Q. Have you told me the method by which you ordinarily emptied your tanks of gasoline?

A. That was the ordinary method, yes.

Q. Did you ordinarily do that?

A. Ordinarily did that, yes. It was only a step to the valve over there, and I couldn't step over there and shut the valve off while this gas was running into the pan.

Q. Now I think you said that you put what you got in the tank of your automobile?

A. We did.

Q. And drove away and came back on some other occasion?

A. No.

Q. And got the balance. Am I wrong about that?

A. Yes, that is wrong, because when we went out with that gasoline we were bound north, and we took all of the gasoline with us, because we were not going to give it to Old Pilkington, and he had no place to store it, so if we did leave it there it was our loss.

Q. I understood you to say on direct examination that you took what you could and then you came back?

A. We took it and put it in the car; on one occasion we put in about fifteen gallons of gas, put it in the car, and we had another can which we filled up and another can part full; if you want to get right down to exact, we took about twenty-two and one-half gallons or possibly twenty-five gallons, took that much along with us. We carried the cans along with us, and as we emptied the cans we would throw them alongside the road.

Q. Did you say this morning that you on one occasion at least put what gas you could in the car, and not being able to take any more, left some in the tanks of the boat and came back another day and get the rest of it out?

A. No, I didn't; if anybody got that down that way he is crooked.

Q. Was that the only method of getting gasoline out of the tanks on your boat?

A. That was the only method, because we had no pump small enough to go into the hole, and if we did pump that tank empty as far as we could, there would still be gas which would seep and drain over to where the discharge was, where that valve was. Now if we had attempted to pump out the gasoline line, that half-inch line along there on deck and then the three-eighth inch line into the engine room would have been full of gasoline, which would have been hazardous, just the same as if it kept on leaking or had leaked; so that's the reason we emptied it right down there; that was the easiest place to do it, do it by gravity.

Q. It was your practice to do it that way?

A. Yes. The boat was outside of the shed, you understand; it had not been put under the shed, in the storage shed, yet, but it was laying at the wharf there, and everything was fully ventilated, and no fires.

Q. Just what type of boat was the Blue Lagoon?

A. Well, she is called a house-boat, 52 feet long and 16 feet wide, having a deck-house about 18 feet long.

Q. How many persons could it accommodate?

A. Well, we did have once—do you mean to sleep or what?

Q. Yes, to sleep.

A. Well, actually she had only four berths; that would be four people.

Q. What boats did she carry?

A. You say what is the most she carried?

Q. No. What boats did she carry?

A. She didn't carry any boats; we towed it behind us.

Q. What kind of a boat was it that you towed behind you?

A. A row boat, about 16 feet long.

Q. How big was your enginercom?

A. It was the full width of the boat, excepting what was taken up for the bathroom; the bath room was about 8 by 5.

Q. The bathroom occupied one corner of the engine room?

A. Yes, on the starboard side.

Q. What was the fore and aft dimension of the engineroom?

A. I would say about 16 feet.

Q. How many motors did she have?

A. One Palmer, 36 H. P. gasoline motor, four cylinders, 6-3 8" by 8.

Q. Did you have windows in the engineroom?

A. We had one, two, three, four—we had on the starboard side—no, on the port side—we had three windows that were approximately two feet by two feet; then in the bathroom there were two windows two feet by two feet.

Q. Did the bathroom have a window into the engineroom?

A. No, sir. There was about that much (indicating) from the top of the door and about that much (indicating) from the bottom of the door for ventilation to go through.

Q. About eight inches at the top and about four inches at the bottom?

A. Yes.

Q. All right.

A. There was a window on the deck end looking over the after deck, and a screen door; that was just a screen door; it wasn't what you would call a door, because we had a piece of celotex that we would put up there in case of cold air coming in.

Q. It wasn't a solid door?

A. No.

Q. That is the door that led into the after end of your engineroom?

A. Yes.

Q. And what windows did you have on the starboard side?

A. Two in the bathroom and one on the extreme after end of the—

Q. Of the starboard wheel?

A. Yes, and then another one, as I said, about amidships looking over the after deck, and then this screen door; so we had plenty of ventilation there.

Q. Did you have any ventilators?

A. We didn't.

Q. What was the draft of your vessel?

A. Twenty inches.

Q. The engineroom was below the main deck, was it?

A. Yes.

Q. From the after deck you went into the door and down some steps?

A. Yes.

Q. How far above the bilge was the engineroom floor amidships?

A. Amidships?

Q. Yes.

A. About one foot. I cleaned that out many times, so I know.

Q. And that distance reduced to zero as you approached the sides?

A. Oh, yes.

Q. And that is the ventilation you had in your engineroom?

A. Well, you can't call that all the ventilation we had. That was all open at the forward end under the floor; the floor stopped where the forward deck begun; the floor stopped where the after deck begun, that is, up on top.

Q. You mean there was no bulkhead forward of the engineroom that went down to the skin of the ship?

A. No.

Q. And there was none such aft the engineroom?

A. No.

Q. The bilges were open throughout?

A. Yes, from one end to the other.

Q. You have told me now about all of the ventilation the engineroom had.

A. Of course, there was a pasageway up forward, and there were two windows, and when we laid at anchor the wind could blow right in there; some of it would blow underneath that forward deck and go right down and go underneath that floor all the way to the after end, and sometimes it would reverse itself.

Q. Now have you told me about all of the ventilation?

A. Well, now, come to think about it, there was a stairway just at the forward end of the engineroom; there was a passageway about six feet long, and then this stairway went up into the deckhouse. We had a deckhouse there, as I say, about eighteen feet long.

Q. You mean that had windows and the wind could go in and out?

A. Yes.

Q. Anything else?

A. That is about all. The fact is that she was ventilated. There was no doors on these stairs or passageway at the after end to shut off anything.

Q. Now on the night of the fire, as I understand your testimony, you were at Mr. Pilkington's house under the back porch taking refuge from the heavy storm, is that right?

A. The night of the fire?

Q. The night following the fire; Tuesday night.

A. Yes. We had taken refuge there to get away from the heavy rain.

Q. Was that on the side of the house nearest to the Basin or farther away from the Basin?

A. The Basin was up and down the river and the house runs up and down the river and this porch is on the—I don't think it would be—I think it would be athwart-ships of the river.

Q. Could you see the Basin from this porch where you were?

A. I could if I went to one end of the porch.

Q. But it was on the porch that you first observed the odor of gasoline?

A. No.

Q. Isn't that what you told us?

A. No. I smelled gasoline—we smelled gasoline out there on the bank. I should say that the house sets back from the basin about twenty-five feet, maybe more; the house would be twenty-five or thirty feet back, and we were standing out there on the ground next to where the boat was—I mean where the boat shed had been, and we could smell that gasoline.

Q. I don't understand where you were standing when you first smelled the gasoline. Were you back beyond where the shed had been, upstream, so to speak?

A. No, no; we were standing about abreast of the Seminole, because she was the only object above water that we could recognize; all of the other boats were burned and out of the way.

Q. Were you nearer to the shed than to Pilkington's house or were you farther away from it when you first smelled the gasoline?

A. We were nearer the shed, nearer what had been the shed. The upright poles which had been holding the roof were right close up against the shore, and we were within about, I would guess, ten feet of those poles that held the shed up.

Q. You smelled gasoline there?

A. Yes.

Q. And that was the first time you smelled it?

A. Yes.

Q. And then it came on a rain and you went to Pilkington's porch, is that right?

A. From the time that we had been there—I don't know how long it was before the time we stood there and smelled the gasoline, but we went out on the porch; no, we went out to the boats and it came on the rain, so we left; we were out to the Seminole and it came on the rain, so we left there and went back; in the meantime, before the rain, we had attempted to put out these fires on top of these poles.

Q. Just tell me whether I am right or wrong. I made a note of your testimony when you testified this morning, and according to my notes you said that at seven o'clock in the evening you noticed the smell of gasoline when you were at Pilkington's on the porch; is that right or is that wrong?

A. That is wrong.

Q. Did you smell gasoline when you were at Pilkington's on the porch?

A. Yes, we did.

Q. But you had smelled it before then?

A. Yes.

Q. Was there a general odor of gasoline all around the place?

A. There was a general odor of gasoline, and if I remember right there was a slight wind blowing from the Seminole.

Q. Was there a general odor of gasoline all around the place?

A. No, not after you got way back, but there was right over at the river bank.

Q. All around the shed or all around what had been the shed?

A. Yes.

Q. And around Pilkington's house?

A. Yes, we got a "whif" of it once in a while on Pilkington's back porch.

Q. Do you know whether any of the other boats that had been stored there had gasoline in them or not?

A. I don't know, excepting one, and that had—that was the Seminole.

Q. Now after the rain stopped you went out to the Seminole and were on the float where the pump was, is that right?

A. We went out to the Seminole, these fellows that were there, and some of them stood out there in the rain.

Q. I think we can shorten this if you will try to answer my questions.

A. I will try to do the best I can.

Q. I want to get through with you if possible earlier than five o'clock, if I can.

A. All right.

Q. After you left the house when the rain stopped where did you go; to the Seminole?

A. To the Seminole.

Q. And you climbed around her?

A. Yes, and also on the pumping barge.

Q. About what time of night was that?

A. Oh, I should say that was about—you mean after the rain had stopped—I should say it was nine o'clock; it might have been ten o'clock, and it may have been eight or about nine.

Q. What source of light did you have when you climbed around the Seminole?

A. Well, there was some car that was driven down there and the flash of its headlights was out there, and it seems to me—I don't know—that Pilkington gave us some out there with a cable; I think we run an electric light cable over there; I don't know whether Pilkington had a gasoline generating plant or not, but we had some electric line, and we also had the light of this car; as a matter of fact, I think it was two cars that came right along there and fixed their lights and shown them out there.

Q. Did you have any light on board the Seminole?

A. We had some electric line from somewhere; I never gave it much thought, but it seems to me that there was a cable run over there.

Q. I would like for you to be reasonably sure about that. Are you sure you had lights on the Seminole at the time the pumping was going on?

A. We had some—well, I am not sure of that either—because the lights from these cars threw the light out there, and I know there was a half dozen flashlights in use among the different people.

Q. On the Seminole?

A. On the Seminole and on the barge and so forth. You must understand that the Seminole was still under water.

Q. What part of her were you climbing around?

A. You see she had a steel hull.

Q. Just what part of her were you climbing around?

A. I might say the upper part of her ribs, going from one to the other.

Q. You say you saw this spring of gasoline?

A. I did; I discovered it.

Q. Where was the spring?

A. Oh, I should say it was about amidships between the bulkhead and the two engines.

Q. Where was it fore and aft?

A. About two feet from the forward bulkhead.

Q. How much water was there in the Seminole at that time?

A. As I said before, I think it was somewheres around four feet.

Q. Four feet of water in her at that time?

A. I think so.

Q. You were not down in the engineroom then?

A. Oh, I might say—

Q. Were you down in the engineroom then?

A. I wasn't down on the engineroom floor, no, because I was standing on some of the old machinery that was laying there, perhaps a generator—

Q. Were you within the engineroom compartment when you saw this spring?

A. Yes.

Q. What were you standing on?

A. Standing on one of these old generators that was burned up.

Q. Do you know where it was?

A. Over on the port side.

Q. Ahead of the windows?

A. There wasn't any windows.

Q. You could tell by the spacing of the frames where the windows had been?

A. No; I remember these frames; they were all about the same distance.

Q. You were standing on this auxiliary generator and saw this spring; right?

A. Well, there may have been something laying on top of the auxiliary, some of the old stuff laying down on top of it.

Q. I am trying to visualize myself what it was you saw, in the first place; how high was the water in the engineroom with reference to the place where you were standing?

A. I think it was down below my feet, I would say, about two feet; I don't know; it may have been only 18 inches.

Q. Could you come close to indicating the level of the water in the engineroom at that time from a picture of the forward bulkhead?

A. I think the water, according to that coal hole—I think it was just about level with that coal hole; that is what I think it was.

Q. You are telling me your best thought on that subject?

A. Yes.

Q. That is as close as you can come under the circumstances; right?

A. That is about it; I am not positive of that, though.

Q. There were no waves in there?

A. Absolutely none.

Q. It was just a flat surface of water?

A. Yes.

Q. Now you say you saw a spring. How high above that flat surface of water did this spring come?

A. Oh, that spring was—it wasn't exactly bubbling up, but it had a little bit of a crown to it, and it levelled off; it may have been, I believe, about six or eight inches in diameter; if you want to come right down to the

crown of it, I would say the crown was perhaps a half inch high.

Q. Above the flat surface of the water?

A. Yes; it seemed to be about that high.

Q. Was that a constant or continuous thing?

A. Yes.

Q. Was it apparently a viscuous substance?

A. No.

Q. Was there any difference between its color and the rest of the water around it?

A. There wasn't much difference in regard to the color.

Q. Did it bubble?

A. No, it didn't bubble.

Q. Just a smooth—

A. Just smooth—it would kind of roll like that, you know, and you could get a different kind of reflection on it.

Q. Sort of like you pour molasses?

A. No; molasses is slow in comparison with gasoline flowing.

Q. Did you see any pipe from which that came?

A. No; I didn't investigate because I had on what might be called dry clothes, and I didn't feel like going down into the water, but this fellow Lowney was below me, and his head only came up to about here (indicating).

Mr. Matteson:

Indicating his waist.

(By Mr. Underwood):

Q. You say you saw a solid bubble. What do you mean by that?

A. Well, a bubble has got air in it, but this stuff would come up; you wouldn't call it a solid bubble; you might call it a gob.

Q. Would it float?

A. Yes, it floated off to one side and gradually disappeared.

Q. You saw how many of these springs?

A. I only saw that one myself, but I want to say this much—

Q. We will come to that later on.

A. Gasoline covered the whole darned place in there.

Q. Now just how did you reach the conclusion that it was gasoline. You have said nothing about putting your finger in it or tasting it; you didn't do that, did you?

A. No, because I had a nose and I could smell it. Do you want to know what I said to this other fellow?

Q. I didn't ask you that.

A. All right.

Q. You smelled it?

A. Yes, I smelled it—smelled gasoline.

Q. You didn't taste it?

A. But I says it is gasoline—

Q. You mean you now say it was gasoline?

A No, I said it before.

Mr. Underwood:

I move to strike that out.

The Witness:

That is what I said to him.

Mr. Underwood:

I move to strike that, if your Honor please. I haven't asked the witness what he said to anybody.

The Court:

The motion is granted.

(By Mr. Underwood):

Q. Let me make sure I am right: this place where you saw this spring was midway between the two motors, is that right?

A. About midway but it may have been a little more to the port side as I said.

Q. Did you observe the remains of the controls by which the motors were operated?

A. No I did not.

Q. Did you observe the remains of the telegraphs?

A. No.

Q. You know where the forward end of the motors was?

A. Yes.

Q. Was that about on a line between—

A. That this spring was?

Q. Yes.

A. Well it was about half way between the line; draw a line right across there and it would be about half way between there and the forward bulkhead, of the engineroom; I think it was a little to port of amidships where the spring was coming up.

Q. How long did you watch that spring?

A. Oh, I looked at it about two or three minutes.

Q. Did you observe it when you first went there?

A. When I first stepped into what would be the engineroom?

Q. Yes.

A. No, because I was looking back around, and Lowney incidentally flashed his flashlight around like that (indicating), and we were looking for leaks in the side of the vessel, and he flashed his light there, and I saw it then and there.

Q. You don't know how long it had been in operation before that?

A. No.

Q. You looked at it two or three minutes, is that right?

A. Wait a minute. I didn't stand and look at it two or three minutes, or anything like that; I just gave it a glance and ascertained that it was gasoline, but I didn't verify it by tasting it.

Q. You smelled it?

A. I smelled it. Other people tasted it and verified it—

Q. You cannot tell us what other people thought. Do you understand that?

A. All right.

Q. In about three minutes after you first saw it you left?

A. I wasn't looking at the spring all of this time; I called the other fellows over and I says—

Q. Don't tell us what you said to them.

A. All right.

Q. You left there in about three minutes after you first saw it, is that right?

A. Yes.

Q. You didn't see it again?

A. Let me see now—

Q. You say you smelled it and you went ashore, is that right?

A. Not immediately; I called my brother and told him to get out of there.

Q. You went over on the barge first?

A. I think he was over on the barge.

Q. You left the Seminole and went over on the barge?

A. Yes, and came back.

Q. Came back where?

A. We had to pass by this spring then to get on this row boat.

Q. You didn't have to go through the engineroom to get on the row boat, did you?

A. No. I don't know just how we got across there, but I remember we observed the spring again.

Q. Do you remember what was above your head when you were standing in the engineroom, if anything?

A. Nothing.

Q. You mean that the roof of the engineroom had been blown away?

A. It wasn't there over my head.

Q. You mean it wasn't there at all?

A. Not at all, not over our side.

Q. What do you mean by "our side"?

A. On the port side where I was standing.

Q. Was there any roof left on the engineroom at all?

A. It didn't seem to me that there was; still again, it looks to me as if there might have been; I don't know, to tell you the truth.

Q. You saw the spring and you went from the spring over to the barge, and then you went back across the Seminole?

A. Across the Seminole and took one glance at the spring, and there was more of it up there.

Q. You mean it was higher than the flat surface of the water?

A. Yes, it was higher.

Q. How high was it at that time?

A. Well, by that time—in the meantime the pumping—

Q. How high was it above the surface of the water at that time?

A. Just enough to be a little noticeable; perhaps another one-eighth of an inch.

Q. I want you to tell me—

A. Well, it was flowing a little faster; that's all.

Q. A little higher?

A. Yes.

Q. Was it as much as half an inch?

A. Just about the same as it was, but it was a little stronger than what it had been.

Q. A little higher above the flat surface of the water?

A. There wasn't so much surface of the water then; a lot of it was then gasoline.

Q. The surface of the liquid in the bottom of the boat?

A. Yes, gasoline—

Q. And that was coming up?

A. Yes.

Q. How far above the surface did it come this second time?

A. Possibly half an inch.

Q. You looked at that for a moment?

A. Just glanced at it.

Q. And kept on going?

A. Yes, because we were afraid we would catch fire and I would not be here.

Q. What is your estimate of how much gasoline came up out of there?

A. I have no estimate.

Q. You made an estimate this morning.

A. Maybe I did this morning.

Q. You have no estimate as to how much came out of the spring?

A. No.

Q. You would not hazard a guess about that?

A. No.

Q. You are willing to make an estimate as to how much was pumped out by the pump, are you?

A. Well, just generally; of course the pump was running about half—

Q. Do you know the size of the pump?

A. I think it was around about a four or six inch pump; not over six inches, and not less than four; it was more likely four inches, and that seemed to be running about half or three-quarters—

Q. You mean half or three-quarters speed?

A. About half or three-quarters discharge on the discharge.

Q. How fast was it running?

A. I don't know.

Q. What is the capacity of the pump?

A. I don't know; I just gave it one glance and that was all.

Q. You have estimated how much gasoline that pump pumped out?

A. I estimated it that gasoline was all over the place, and I said it was a considerable quantity.

Q. You made an estimate of how much gasoline that pump pumped out, haven't you?

A. When you get down to estimating, that is something else. When you estimate you take a pad and pencil and figure the exact—

Q. That is not what you did, is it?

A. You mean did I guess?

Q. Was it a guess?

A. It was a guess, yes, but because an estimation is something you have to figure exact; you are supposed to take how much the pump is discharging per minute and you are supposed to—

Q. When you said "hundreds of gallons" that was a guess?

A. That was a guess, absolutely a guess, but I can say that there was most likely hundreds of gallons.

Q. Is that an estimate or guess?

A. Guess.

Q. Did you help rig that pump up?

A. No; the whole thing came right up there on the barge complete; all they had to do was to throw the suction connection into the Seminole, I understand.

Q. Where did the suction lead to?

A. To tell you the truth, I don't know, but I imagine it was about amidships just forward of the engineroom on the starboard side.

Q. On another day I think you said—I think you said on the following day you were down there and put your head through that little hole that leads into the former tank space and looked up.

A. I think that was the same day.

Q. The same day?

A. Yes. And there was the smell of gasoline all around there and everything.

Q. Did you observe any pans under those gasoline tanks?

A. No.

Q. Do you say there were no pans?

A. There were no pans, because I could see, getting down like this and looking right up—I could see the bottoms of the tanks resting on this angle-iron framework, and there was no pans that were setting under there.

Q. By putting your head through that opening you could see the bottom of all four tanks?

A. Not in one glance.

Q. But there wasn't anything between your head and the tanks except this framework; is that what you said?

A. What framework?

Q. On which the tanks rested.

A. It looked like a lot of stuff; I didn't want to dirty my clothes crawling in there.

Q. You are sure you observed no pans?

A. Absolutely no pans.

Q. Your eyesight is good?

A. Pretty good when I have glasses on.

Q. Did you have glasses on at that time?

A. Absolutely.

Q. Did you have plenty of light to see by?

A. Of course; there was plenty of light; there was light that filtered in around the tanks and light from the holes and so forth; most of the light would come down around the tanks and you could look in there. I

could see this angle-iron sitting there; I don't know the size of that.

Q. You are very definite about there being no pans there?

A. Absolutely definite.

Q. By the way, you have spoken about operating a boatyard; I wish you would tell me what type boatyard you operated.

A. That was in Holly Hill, between Daytona and Ormond.

Q. What kind of a yard was it?

A. The yard itself really didn't exist—

Q. Did you have a dry-dock?

A. Yes; we had what you call a screw dock, a screw about ten feet long connected to a beam 12 by 12, one at each end, and then we had a wrench that we took a half turn with, and then we would go to the next one and take half a turn, and go to the next one and take a complete turn, and so we would finally get our boats above the level of the water.

Q. Did you build any boats there?

A. Brother and I built boats; from 110 feet down.

Q. I show you Exhibit 6 which was shown to you this morning. Do you know when that picture was taken?

A. I don't know anything about that one; I don't seem to recognize it, excepting that it was the top of the tanks. Did you say "when"?

Q. Counsel have agreed that this was taken in December, 1938.

A. Of course I just saw the Seminole this morning for the first time since the fire.

Q. Do you recollect that you observed the position of the tanks in the Seminole on the night they were doing the pumping?

A. No, but on the following day—when they were pumped out—I could get right down underneath them practically, and you could look underneath the tanks.

Q. That is the time you put your head through that little bunker hole?

A. Yes.

Q. Do you know when these tanks got displaced?

A. The first day after the fire one of them was displaced like that.

Q. And that is when you saw it?

A. Yes, that is the way it was when I saw it.

Mr. Underwood:

Indicating No. 2 tank, the second tank from the port side.

A. If I remember rightly, when I took a picture of her these tanks were not sitting there; I mean—

Q. Getting back to this pumping: when you saw the discharge the first time was there plenty of gasoline in it?

A. No, it was solid water.

Q. When did you notice that gasoline was coming out?

A. When it had gotten down, I would say, about half way; they were still going around stopping up these leaks in her.

Q. How much water was there—how much liquid would you say there was in the Seminole when you first saw gasoline coming out of the discharge of the pump?

A. It was before we discovered the spring, and I should say,—oh, I don't know—the water was about half way down; in other words, they had been pumping about an hour and a half.

Q. Had the tops of the motors appeared yet when you first saw gasoline coming out of the discharge?

A. Yes.

Q. How far were they above this liquid when you saw the gasoline first coming out of this pump discharge?

A. Of course, I didn't make any—she was starting to raise a little off the bottom.

Q. About how much was there in her?

A. How much was there in the boat?

A. (Q.) Yes.

A. I can't say exactly—come to think of it now—when I saw that gasoline spring.

Q. We have got that fairly well fixed.

A. Oh, you have got that all fixed?

Q. I am interested now in how much there was in her when you first saw gasoline coming out of the pump discharge.

A. Well, they must have pumped fully half an hour after I first noticed the gasoline, the gasoline spring; maybe one hour.

Q. Would you say there was six feet of water in her when you first noticed gasoline in the discharge from the pump?

A. Of course I had no method of measuring it; I didn't have any measuring tape, or anything like that, but just judging—I never thought of anything like that.

Q. Do you remember seeing the valves on the tanks?

A. They were not above water yet.

Q. They were not yet visible?

A. No, they were not visible at all.

Q. Do you remember the bracket that set on the bulkhead in the forward end of the engineroom on the port side; I think there were two such brackets—were they noticeable?

A. No, they were not showing yet.

Q. They were still under water?

A. Still under.

Q. At the time when you first saw gasoline coming out?

A. Coming out of the discharge pipe?

Q. Yes.

A. Well, I was thinking about other things afterwards; well, I think it was about half an hour before we found the spring.

Q. According to your best recollection, as I understand you, when you first saw gasoline coming out of the discharge—

A. There was such an awful light; there was some dirt and then there was—

Q. What I am trying to fix is the height of the water in the engineroom when you first noticed gasoline coming out of the discharge; do you understand that?

A. Yes.

Q. Had these brackets come into view yet?

A. Well, I think about four feet of water. In regard to the spring I really don't know what I am gauging it by. I didn't go down to the keel; I don't know how deep the keel was, but I said six or seven feet; I don't know exactly. I will tell you where the spring was.

Q. I am not talking about the spring any more.

A. All right, we will come back to the discharge.

Q. All right.

A. I would say there was quite a lot of water in there.

Q. Could you tell me how far below the steel side of the boat the water was when you first saw gasoline coming out of the discharge?

A. It seemed to me it was about two or three feet; that is about what I would judge.

Q. How many nurses did you see in Thomas' house when you were there and had your conversation with him?

A. Up there?

Q. Yes.

A. Why, I think there was one nurse, and then his wife came in, that is, in maybe a half an hour or a quarter of an hour—well, I don't know whether the nurse stayed or whether she went out; I think most likely she went out, but Mrs. Thomas stayed.

Q. Did you ever have any medical training?

A. Me?

Q. Yes.
A. No.

Mr. Matteson:
You spoke of a conversation at "Thomas' house". The one Mr. McCoy talked about, was in the hospital, I believe.

Mr. Underwood:
You are right.

(By Mr. Underwood):
Q. Your conversation with Thomas was in the hospital?
A. Yes.
Q. I did not mean to mislead you. I did say "house". You understood I was talking about the conversation in the hospital?
A. That is the way I understood it. You asked me how many nurses?
Q. Yes.
A. That is correct.
Q. Now you have talked about a piece of pipe and fittings that were shown to you this morning?
A. Yes, sir.
Q. And you said something about the connections.
A. All right.
Q. As I understand it, Mr. McCoy, your objection to that is that vibration may ultimately cause them to leak, is that right?
A. That is right. I have had it to occur, break off at the connection.
Q. You mean they would break right off?
A. Break right off. I don't mean they would break off all at once, but if the vibration continued ultimately they would break off.

Q. And you know that vibrations, of course, depends on the metal and the kind of vibration—

A. Yes.

Q. And a great many other things?

A. That is right.

Q. Of course you have seen a great many boats that were piped with brass pipe and fittings, haven't you?

A. I have.

Q. And this copper tubing is something a little bit recent, isn't it?

A. Well, I don't know when I first saw it used; on the Sagatti we used a flexible woven pipe.

Q. You don't use that any more?

A. No, but that was used to get away from vibration there; finally we put on this copper tubing and it would spring up and down.

Q. Of course copper tubing will vibrate, won't it?

A. Yes, but it has coils to neutralize it, or whatever it is; the vibration will strike it and it will spring up and down, but it doesn't throw the vibration right up against the fitting.

Q. The effect of the vibration depends in part upon how well the pipe is supported, does it not?

A. Yes, and what it is attached to. Right along here (indicating) you have to have supports. If you have something like an engine bumping up and down on a Ford automobile you have to make some proviso for absorbing that vibration up next to these coils.

Q. That is the primary thing with tubing, isn't it?

A. The primary thing is with regards to vibration and tight joints.

Q. On your boat, the Blue Lagoon, you didn't have tight joints on the tubing?

A. How did you know we didn't?

Q. You told me that you could unscrew or disconnect both of them with a—

A. With a monkey wrench; that is correct.

Q. Those were not sweat joints?

A. No; they were set up tight.

Q. In other words, a joint that you set up tight is all right?

A. It is, according to what it is.

Q. A joint with a brass pipe, if set up tight, is all right?

A. Whatever it is, it is all right.

Q. Isn't it?

A. Wait a minute; there is always a qualifying matter; it is, according to how much vibration that is put to it. It will be tight after you run it a week, and perhaps it may not be.

Q. And it may be five years that it will be tight?

A. Five years?

Q. Or maybe ten years?

A. Yes.

Q. Or maybe twenty?

A. Or maybe a hundred.

Q. You don't know, is that right?

A. No; it depends on the amount of vibration.

Q. In other words, it depends on the amount of vibration; I might take one and put it in there and it might last six months, and it might last longer; it depends on how long the vibration continues.

Q. Then your testimony, as I understand it, is that vibration, is sufficiently long continued, will cause the pipe to break off at the fittings?

A. That is right, more or less at the fittings.

Q. You mean fatigue occurs and it breaks?

A. That is right.

Q. Now you say that in gasoline tanks there is always a certain amount of fluid that goes in with the air and gets into the space on the bottom, is that correct?

A. Correct, and I have been told by gasoline men—

Q. I am sorry, but you cannot tell what you have been told.

A. All right.

Q. Of course if you have your discharge valve from the tank at the very bottom that water will flow out into the line into the carburetor, is that right?

A. Wait a minute—

Q. Is that right?

A. No.

Q. Let me put my question—

A. You might have a strainer put in there; you might put a strainer in there, or whatever you call it, something like a catch basin, and the gasoline will come on, and the water will drop into this catch basin, and the gasoline in the meantime goes over to the carburetor, and every once in a while you have to open this catch basin and take out the water mixed in it.

Q. How often do you do that operation?

A. Well, on a boat you ought to do that at the beginning of every run.

Q. Do you do it during the run or does that depend on the amount of gasoline you get?

A. No, but always at the start of the run you would always do that, to get the water out which had dropped into this catch basin.

Q. Do you say that the result of that water going in such a tank with a draw-off valve above the bottom would be to have rust in the tank?

A. It would set there and finally rust. We had a tank similar to the Seminole's, only smaller, a riveted galvanized tank; we had it setting on the "Eagle", and we would put gasoline in there, and we had the draw-off valve down just about level with the crown of the convexed head, and that tank ran four or five years and finally it started leaking down around the bottom, and

it was simply from the water, some salt water had gotten in there and caused corrosion down below, and when it started to leak we had to throw it away.

Q. Do you say water corrodes galvanized iron?

A. Salt water will do it, yes.

Q. Do you say that fresh water corrodes galvanized iron?

A. If the fresh water—now, you understand there is a lot of other stuff going in there; that water has been laying in the gasoline—

Q. What water?

A. Any kind of water. Fresh water will go in there and when it condenses and so forth it is filtered through your gasoline.

Q. That is bound to be fresh water, is it?

A. It is not fresh water after it goes through the gasoline.

Q. It is not bound to be salt water, is that right?

A. There may be some salt water getting into it somewhere. Now, you understand that one of the ingredients of gasoline is sulphuric acid.

Q. Which gasoline?

A. Any gasoline.

Q. Are you a refiner?

A. No, but according to what I have read—

Q. Let's come back to what you know.

A. I know this much, that we had a tank—

Q. You said on direct examination that you are going to get water in the tank—

A. Generally—

Q. Do you say that will rust the inside of galvanized gasoline tanks?

A. What in the world makes them rust if—

Q. I am asking you; is that what you say?

A. Yes, that is what I say, because some of the water has got to be contaminated with some of these acids or something that is in the—

Q. In the gasoline?

A. In the gasoline. Now, you take water and run it through gasoline and it is not fresh water any more; it has absorbed something, and it lays down there with dirt and everything else.

Q. Of course, you don't know what the Seminole's tanks had in them, do you?

A. In what?

Q. In the Seminole; whether it had any water in its tanks or not?

A. No; I am not absolutely sure; but I would say there was water down in them.

Q. In other words, you would guess there was water in there, like you did guess about the several hundred gallons of gasoline?

A. Yes, because it stands to reason.

Q. I don't want you to reason with me. I want you to please answer my questions: On the Blue Lagoon when you laid her up I think you said you took out the floor boards?

A. We did.

Q. What was the reason for that?

A. Ventilation.

Q. Do you mean to say that the breeze that would flow through the windows would go down into the bilges?

A. Certainly would.

Q. How do you explain that?

A. Let me explain to you another thing.

Q. Tell me that first, please.

A. All right. How would it get there; how would it blow—

Q. Yes, when she is laid up at Pilkington's.

A. You would lay down there and you could feel the breeze that came along from the other side; it doesn't go in all at one time, you know—

Q. I want to find this out first: you mean to say that that was adequate ventilation for the Blue Lagoon's bilges.

to let the breeze blow in the windows and that it would go down into the bilges, do you?

A. Wait a minute; not too fast; we had additional ventilations. Up here was the engineroom (indicating), and this is up forward (indicating); and this (pointing) was where we had the wheel, with the ropes for the wheel; these ropes came down here (indicating) and extended from that point on down here; the ropes came down here to the floor, and the floor was cut out, and the steering wheel was about this high (indicating).

Mr. Underwood:

That is all.

Re-Direct Examination.

By Mr. Matteson:

Q. About how high was this rope that you spoke of?

A. That was just about the height of this box. Now, what I am getting at is this; that here (indicating) is a box about 20 inches by 16 inches—

Q. What was in the box?

A. Simply the wheel ropes and that was down, went down to the floor, and the floor was open, and it was also open into the forward bulkhead of the Blue Lagoon.

Q. You mean these wheel ropes went through a shaft?

A. Yes.

Q. Where was the shaft?

A. About the height of the window sills; now we had a removable hatch on top of this steering box, and when we took that box and set it up the draft would come in there and blow into our bilge forward, and then right back, while she was laying still; if the wind was from the bow it was setting up just like that (indicating).

Q. Going back to the engineroom?

A. Well, it would carry right on through because there was a passageway 28 inches high and six feet high that

was right there, and that ventilated the engineroom and ventilated the after deck; in other words, there were two holes in the after deck, one was 2 by 3 and the other one 30 by 30.

Q. The after bulkhead of what?

A. The Blue Lagoon.

Q. And whatever breeze goes down there goes down into the bilges and dissipates anything that might be down there?

A. Yes, in addition to our wheel box up forward.

Q. You think that was a help too?

A. Absolutely.

Q. Have you had much experience with knife switches?

A. Well, I can't say that I have had much. We have had knife switches at different times.

Q. You have told me there is a little bit of an arc at some switches.

A. Yes.

Q. But you never had experience enough with knife switches to know about that?

A. Yes; we had one on the Siesta.

Q. When does a knife switch arc?

A. Sometimes when you are just putting it in it will arc.

Q. Will a knife switch arc when you close it fairly rapidly?

A. I will tell you honestly that I haven't paid a great deal of attention to them, but since this fire I have looked at them and have seen them. If they are low voltage you won't notice the arcing very much, but when you get up to 110 volts you will see them arc sometimes, but not always; you will always get an arc when you pull them out.

Q. Whether or not you get an arc when you are closing a switch, Mr. McCoy, doesn't that depend on whether the points are clean?

A. The points may be clean and still there may be an arc.

Q. If they are clean smooth you won't get any arc, but if they are not clean smooth you may, is that right?

A. I think so, but I don't know for sure.

Q. Now you were asked something about gasoline vapors in an engineroom, and you said something about gasoline in the old days of '76. The old days of '76 are gone. You didn't mean the old days of '76, did you?

A. No, because I wasn't living at that time. I was talking about the old naphtha days.

Q. What did you mean by "76"?

A. That is what they called the degree of gasoline; 76 degrees. I suppose it was some kind of a hydrometer measurement. You could put your hand into it and hold it up like that and it was absolutely gone.

Q. You mean it vaporized very fast?

A. Yes, vaporized very fast. But now with the low gas that you get today; for instance, kerosene has a heavier vapor than gasoline—

Q. I am talking about the temperatures at which gasoline vaporizes; do you know anything about the temperatures at which gasoline vaporizes?

A. No, sir; only from practical experience by sticking my hand in it.

Q. Your hand is pretty cool when you pull it out?

A. That is right.

(Recess.)

(By Mr. Matteson):

Q. You told us about breaking this gasoline line when you laid up a vessel in order to draw off the gasoline; was that the lowest point in the line where you broke it?

A. Yes, it was absolutely the lowest point in the line.

Q. After you emptied it in that fashion was there any gasoline left in the lines of the system anywhere?

A. There was no gasoline left in the lines.

Q. Did you make it a practice to open that line for the purpose of drawing off gasoline at any other time than when you laid up the vessel?

A. Excepting when draining the tanks for laying up the boat. Pilkington told us we had to get the gasoline out.

Q. You were asked about the capacity of the Blue Lagoon and you said there were actually four berths, and you started to add something else—

A. I don't get your question.

Q. You were asked about the sleeping capacity of the Blue Lagoon.

A. Yes, and I said there were four berths, and I was going to tell him that we had slept eighteen aboard there.

Q. I want to ask you this: When you drew off the gasoline for the purpose of storage at Pilkington's, what were the conditions with respect to ventilation of the boat?

A. Every window and every door was open, and the floor boards forward were up, and that wheel box, as I said before, was there—and the screen door was open, pulled it open so as to allow as much air as possible to get into there; and we took the window screens out of the windows—

Q. And where was the Blue Lagoon then?

A. It was outside of the storage Basin at a little wharf, perhaps 150 feet away.

Q. She was not under the shed?

A. No, not under the shed.

Q. Mr. Underwood asked you a question; he asked you if you smelled the odor of gasoline all around the shed

and you said you did. Just what did you mean by that?

A. I mean that when I stood on the shore I could smell gasoline as if it came over from the Seminole; as if it was over on the Seminole; I could smell gasoline, and when we got in the barge at Pilkington's, got about 50 feet away, there was a headwind blowing along there, and every once in a while we would get a strong whiff of gasoline; there was a little bit of a wind along there; just enough of a breeze so that you could tell that the smell came from the Seminole.

Q. What I want to get clear is this: when you answered that question as you did, Mr. McCoy, did you mean for us to understand that you could smell gasoline at the west-end of the shed as well as at the—

A. No; the west-end of the shed was 535 or more feet up from there. Of course we didn't go up that way; we stayed right around the Seminole; there was nothing up there.

Q. Is that the place where you smelled the gasoline?

A. Yes, down around the Seminole.

Q. Did you tell us what price per foot Pilkington charged you for the Blue Lagoon?

Mr. Underwood:

I object to that; it has no materiality here.

The Court:

He said he didn't make the contract with him; he said his brother Bill made the contract.

Mr. Matteson:

I was asking him if he knew what the price for the storage was.

The Court:

I don't think it is material.

Mr. Matteson:

It is not very important. It is just a detail that I was adding.

(By Mr. Matteson):

Q. In answer to one of Mr. Underwood's questions you spoke of there being cans in the engineroom.

A. We had aboard there these cans; also, as I said before, we had these water bottles and we had some cans. We had these cans and a funnel; we kept these cans on the upper deck.

Q. And the tank was on the upper deck?

A. The tank was just back of the wheel box.

Q. Was that an open or enclosed tank?

A. The tank was enclosed; it had an opening cut around the valve and another one over at the other side, so there would be a circulation of air through the tanks to remove any fumes, if there was any.

Q. These cans that you spoke of, were they used in the engineroom?

A. No, they were empty; when they were emptied we would store them under the after deck, store them up; we would store them and cork them up.

Q. You spoke of a catch basin for catching water or condensation in the gasoline line: did you have in mind such a contrivance as this, which is a part of Exhibit 17?

A. Yes, something on that line; it has a strainer, and you would pull it off at the bottom and you would get probably a couple teaspoonsful.

Q. The one you have in mind would have a larger receptacle at the bottom?

A. Yes, larger.

Q. When you and Mr. Underwood were discussing this piece of pipe, Exhibit 2, consisting of a number of pipes and connections, I believe you called attention to something with respect to it; was there something that

you wanted to say about that, something that you wanted to add about it?

A. That union is expanded.

Q. You are referring to this?

A. I am referring to this hole (indicating) in it; it has expanded so much that it rubs all the way up here on these threads (indicating).

Q. You are referring to this?

A. A little above that.

Q. Just let me describe it on the record; you refer to this brass union that is next to the nut where the valve is connected?

A. Yes.

Q. All right.

A. Now, you see that nipple, and you see some of the threads show, but you don't see any threads showing here (indicating); so I would say that is a second-hand union used over again.

Q. The threads don't show at the other side of the union?

A. That is right, and as a general thing you can't make these things tight; I would take that and throw it away.

Q. I think you called attention to some condition with respect to the upper part of this valve that was taken apart?

A. Yes.

Q. What was that?

A. Well, I would say that it wasn't a suitable gasoline valve because it is liable to leak. Another thing is here (indicating); you see there (indicating) is a crack, and this thing is weak and would leak right there, unless it was tightened up with a Stillson wrench.

Q. Is this the part here (indicating)?

A. Yes, that extends right across here (indicating); don't you see something there that looks like a crack or

something; it looks like a crack to me with my eyes, but I do not have my magnifying glass with me. Now, if that was screwed down tight it would leak right through there (indicating); it don't take so much pressure to push gasoline through a little bit of narrow opening like that.

Q. Did you note or do you note any other condition about the surface of this valve; I am talking about the surface that goes against the seat?

A. I think it is too flat seated to make a good gasoline valve. I don't think you could get enough pressure to push down—the seats are bronze, which of course is a good thing too, but I think you would want a better quality of valve than that for gasoline. I have some ideas myself.

Q. You told us that when you had a pipeline for conveying gasoline made up of brass pipes and threaded connections, that vibration would set up fatigue and eventually the pipe might break. Is there any other objection to that sort of a setup that you know of?

A. Well, I can't say just now, but I did have one to break with me.

Q. Even if they don't break is there any other danger?

A. Brass?

Q. A pipeline made up of threaded connections, all brass.

A. Of course so long as they don't break there is nothing to worry about, but they are liable to break, and as a general rule they will break quicker than one without all of these connections.

Mr. Matteson:

That is all.

Re-Cross Examination.

By Mr. Underwood:

Q. This union that you spoke about, Mr. McCoy, you say this is a second-hand union?

A. Well, it may have been brand-new when he put it on there.

Q. What is your objection to that, that the threads do not show on the other side of the union?

A. Absolutely.

Q. Does that merely—

A. I can take it and see right here (indicating) that the thing is expanded, and you can see it too.

Q. Do you say that that was its condition before the fire?

A. Why sure; nobody touched it since, so it must have been.

Q. Do you say that the fire on the Seminole could not have done that?

A. Yes, I will say that it could not have done that.

Q. It could not have expanded it, is that right?

A. Wait a minute—

Q. You answer my question: do you say that the fire on the Seminole could not have expanded it, if it is expanded?

A. Yes, but not in this kind of condition; you couldn't screw it up after it had been expanded.

Q. Do you say that that was expanded prior to the fire?

A. I do.

Q. Do you say that that necessarily made it leak?

A. I won't say that it leaks exactly, but I will say that this is a poor fitting on a gasoline line.

Q. Why?

A. Because it is liable to leak.

Q. What makes it liable to leak, the nature of the fitting or the fact—

A. Because it has expanded.

Q. Do you know whether that was the original shape of that union or whether it was expanded by turning up this nipple in it so far?

A. Wait a minute—

Q. Did you ever see this nipple?

A. No, I never—

Q. Then you don't know whether that was in shape before or not?

A. Wait a minute—

Q. Will you please answer my question; do you know?

Mr. Matteson:

If your Honor please, I submit that counsel is arguing with the witness.

The Court:

Go back and read the last few questions.

(Thereupon the preceding four questions and four answers were repeated by the Reporter as above recorded.)

The Court:

Strike out everything after the first question.

A. Every union that I ever purchased—

Mr. Underwood:

Now, if your Honor please, may the witness be instructed to answer my question?

The Court:

Read him the question.

(Thereupon the question was read by the Reporter as above recorded.)

A. I don't know whether it was the original shape of the nipple or not, or whether it was the original shape of that union, or whether it was expanded by screwing of that one particular nipple, but I say that that union has been expanded and has been screwed up evidently.

Q. Did you ever see this union before today?

A. I paid no attention to it; it was laying up there with the rest of the junk; I suppose I saw it, but I didn't make any inspection of it.

Q. You never observed it?

A. I never observed it until I saw it here today.

Q. I have taken this Exhibit 2 apart. I want you to look at the smaller piece, that is, the valve attached to the union that we have been talking about, or so much of it as remains, and will you look inside of that and tell me if you see the end of the nipple?

A. Yes.

Q. Does that appear to be up tight against the union?

A. Yes, it appears to be tight. I will admit that, but as I say, I have never been able to find any of them to hold gasoline; in fact I wouldn't approve of it on a gasoline line.

Q. You condemn all such things?

A. I condemn any of these that are expanded—I don't know what you call it; if you will look at the end of it, you can see that it is expanded; you can hold it up and look at the different angles. If you would put calipers on it, you could get the diameter of it.

The Court:

Where did you say it is?

The Witness:

Right in here; you could see it right in here; you can see it right here (indicating). If you had calipers you could see it easily. Of course, you can't take "appearances" for gasoline—

(By Mr. Underwood):

Q. Of course you don't know whether this actually leaked or not, do you?

A. No.

Mr. Underwood:

That is all.

The Court:

We will recess until 9:30 tomorrow morning.

(Thereupon a recess was taken to 9:30 A. M., March 22, 1939.)

March 22nd, 1939, 9:40 o'clock A. M.

Hearing resumed pursuant to adjournment of the previous day. Appearances same as heretofore noted.

947 Whereupon DR. ROBERT E. BLOUNT was produced as a witness by the Libelants, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

Br. Mr. Matteson:

Q. Doctor Blount, you are a doctor of medicine?

A. Yes.

Q. How long have you held that—

The Court:

What is your full name?

Q. Your full name?
A. Robert E. Blount.
Q. Where do you live?
A. Fort Lauderdale.
Q. And the street address?
A. 360 Southeast 26th Avenue.
Q. You are a doctor of medicine?
A. I am.
Q. How long have you held that degree?
A. Seven years.
Q. Were you in Fort Lauderdale on June the 24th, 1935?
A. I was.
Q. With what hospital were you connected at that time?
A. Memorial Hospital.
Q. Do you recall the admission of a patient by the name of John Thomas on that date?
A. I do.
Q. Have you recently examined the records of his case?
A. I have.
Q. Did you yourself personally have to do with the treatment of John Thomas?
A. I did.
Q. Will you please, Doctor, tell us as nearly as you can from the time of his admission, through the balance of that time, what you recall about his condition, his treatment and what occurred?
A. This boy was brought into the hospital approximately two o'clock on the 24th of June, brought in by ambulance. He had a temporary splint that the ambulance attendants had put on his left leg. He had lacera-

tion over the brows, and a deep laceration in the neck on the right side; superficial burns about the face, and upper arms. On admission he was administered a quarter of a grain of morphine, seven and a half grains of caffeine; an ampule of tetanus antitoxin; an ampule of coramine. Cleaned up his cuts, they were sewed up; a Thomas splint was applied to the left leg, which was fractured in the lower third of the femur. The patient was put to bed, he required no other treatment other than his fluid intake, until around seven o'clock that evening; he was given another quarter of a grain of morphine, and another seven and a half grains of caffeine to counteract any depression that his morphine might have given him. About eleven or eleven thirty that night—well, I saw the boy at 8 o'clock, about eight o'clock that night, and dressed his cuts on the head, and on the neck; and stayed there for approximately half or three-quarters of an hour, and then left. That night about eleven, or eleven thirty, he required another quarter of a grain of morphine and then no more was administered to him until along the next morning. He was reasonably comfortable,—of course the matter of superficial burns and attendant shock, any one in that position; he was at that time objectively in good shape, and there wasn't much in the way of treatment required other than that, for several days.

Q. During this period from his admission there, until eleven o'clock that night, what was his condition with respect to his consciousness.

A. Oh, he was conscious.

Q. What was his condition with respect to lucidity?

A. He was lucid.

Q. Now, did you receive a telephone call from someone?

A. I did.

Q. And who was that?

A. Garry Miller.

Q. Do you remember at about what time?

A. Oh, I would say between seven thirty and eight that evening.

Q. And what was the nature of the telephone conversation?

Mr. Underwood:

If your Honor please, I object to any such conversation; immaterial, irrelevant and not binding.

Mr. Matteson:

It is not evidence of a fact; I don't want to lead the witness; I am trying to be careful and avoid Mr. Underwood's objections, but I think it will be perfectly clear and pertinent when the conversation develops, and not prejudicial to Mr. Underwood in any way.

The Court:

Subject to a motion to strike, he can answer the question.

A. Mr. Miller asked permission to see the patient.

Q. And was that permission given?

A. It was.

Q. And who gave that permission?

A. I did.

Q. Did you see Mr. Miller after that?

A. I saw him at the hospital.

Q. And about what time was that?

A. About eight, between eight and eight thirty.

Q. And will you tell us under what circumstances you saw him?

A. They came into the hospital with my permission to see the patient, and he wanted to ask him some questions in regard to the accident. I saw no objection to

him doing it; asked him not to stay more than fifteen minutes; and I was there all the time Mr. Miller was in the patient's room; and I was still there after he left.

Q. Was there anyone with Mr. Miller?

A. Two other gentlemen.

Q. Do you know who they were?

A. I do not know; no, sir.

Q. During the time that these gentlemen were in Mr. Thomas' room, what was Thomas' condition at that time?

A. His condition was satisfactory.

Q. Was he in your opinion at that time able to think and express himself clearly?

A. Yes.

Q. Any reason why his mental functions should not be alert and active at that time?

A. No, I think not.

By Mr. Botts:

Q. Doctor Blount, I would like to ask you this question: At the time when Mr. Miller and the other gentlemen of whom I was one went into Mr. Thomas' room, I will ask you if, in your opinion, Mr. Thomas was in a mental and physical condition to have made a coherent and intelligent statement? Was Mr. Thomas, in your opinion, in a mental and physical condition so that he could have stated truthfully circumstances immediately antecedent to his injury?

A. Yes.

Q. Doctor, how long did you continue to treat Mr. Thomas?

A. Until the time of his discharge.

Q. And approximately how long was that, can you recall?

A. A little over two weeks, I believe.

Q. I will ask you this question: While Mr. Thomas was under your care, did you observe any occasion when

he was unconscious, delirious, or apparently suffering from any loss of memory, or delusion?

A. Well, that will have to be answered separately because each one of those things has—I mean, he doesn't suffer from all; but he will say that following the time of the open reduction of that left leg, that on the second day of July, for about 48 hours following that, he was not entirely rational all the time.

Q. But except for that period, he was rational?

A. Except for that period he was rational.

Q. Now then, I believe you have stated that prior to about eight thirty before myself and the other gentlemen visited the patient, that he had received two different doses of a quarter of a grain each of morphine?

A. That is correct.

Q. Was that through the mouth or hypodermically?

A. Hypodermically.

Q. I will ask you whether or not the amount of morphine that you have indicated was given to him, would be sufficient to render the man incapable of exercising his mental processes?

A. In this particular case I will have to answer it this way; I don't think in this particular case, due to the fact that he was suffering from several injuries, the amount of morphine that he had would not be enough.

Q. That is all—what is this other that you say you gave him to counteract the—

A. Caffeine and coramine.

Q. And what is the reaction produced by those drugs?

A. Well, they are heart and circulatory stimulants, usually given to counteract the depressive action of morphine.

Q. In other words, the morphine would produce—would tend to decrease the pain, but those other drugs would tend to keep his other functions—functioning of heart and circulatory system up pretty well to par, is that the idea?

A. That is the purpose.

Q. Thank you, that is all—I will ask you this up; do you recall now, having seen me, that I was one of the gentlemen who was there with Mr. Miller?

A. I do now, yes.

Cross Examination.

By Mr. Underwood:

Q. When were you granted permission to practice medicine in Florida, Doctor?

A In 1933.

Q. What month?

A. I took the State Board in June; it was approximately six weeks following that, six to eight weeks, I believe it was in August 1933; I am not positive.

Q. Were you an interne at the hospital at that time?

A. At Lauderdale?

Q. Lauderdale.

A. No, sir.

Q. You were practicing by yourself?

A. Yes, sir.

Q. Did you serve an interneship before you passed the State Board?

A. Indianapolis.

Q. Indianapolis?

A. Yes, sir.

Q. You had been practicing medicine for two years, slightly less, when this occurred?

A. Yes, sir.

Q. Have you told us all you know about the things that you administered to this man on that afternoon with the exception of the anesthetics that were required in putting on this splint?

A. He had an ethyl chloride injection with some ether in adjusting and applying the Thomas splint to the left leg.

Q. Why didn't you tell us about that when Mr. Matteson and Mr. Botts were asking you questions?

A. Beg pardon?

Q. Why didn't you tell us about that when Mr. Matteson and Mr. Botts were asking you?

A. They weren't asked.

Q. Don't you remember being asked to say what you administered to this man?

A. I didn't administer the anesthetics.

Q. What was administered to the man?

A. Yes, sir.

Q. Were you being frank with us, Doctor?

A. I am frank, now; I don't mean to evade.

Q. I think so.

A. I think not.

Q. Did you notice that I had this hospital report in my hand when I stood up?

A. No, sir.

Q. The first thing that was administered to him was a quarter of a grain of morphine, wasn't it?

A. Yes, sir.

Q. The next thing was acoramine ampule, wasn't it?

A. Yes, sir.

Q. The next thing was the caffeine ampule?

A. Yes, sir.

Q. And then the tetanus injection, 1500 units?

A. Right.

Q. And then you applied the Thomas splint?

A. Yes.

Q. As an anesthetic, he received ethyl chloride and ether, didn't he?

A. Yes, sir.

Q. Will you tell us what a thromboplasin is?

A. It is a blood clotting drug, because he was bleeding profusely, from his incisions, or his cuts, I mean.

Q. That was administered?

A. Yes, sir.

A. 5 c.c's?

A. Well, I wouldn't know; whatever the accustomed dose is.

Q. You don't know what the accustomed dose it?

A. No, sir.

Q. After that, another coramine ampule at 6:45 P. M.?

A. I believe so.

Q. At seven o'clock another quarter grain of morphine, is that right?

A. That's right.

Q. The patient was pretty restless, was he not?

A. Yes, sir.

Q. And he vomited large quantities of undigested food, did he not?

A. At one time.

Q. About that time, didn't he?

A. When he was reacting from his anesthetic; I believe it was at that time.

Q. About seven thirty?

A. I think so.

Q. He was still reacting from the anesthetic at that time?

A. He had reacted.

Q. Was the vomiting a part of the reaction?

A. Yes, sir.

Q. And that was about seven thirty?

A. I believe so.

Q. Actually, Doctor, this man was in considerable pain, was he not?

A. I should think so.

Q. Well, isn't it a fact that you know so?

A. No, I don't know so.

Q. Can't you tell that?

A. You can judge.

Q. And your judgment is, that he was?

A. Yes.

Q. It was for that purpose that you administered some more morphine at eleven p. m. at night; isn't that right?

A. That's right.

Q. Did you have a discussion with the man yourself?

A. The man, Thomas?

Q. Yes, in regard to—

A. In regard to what?

Q. Anything apart from what a doctor ordinarily talks to a patient about.

A. Not that I remember.

Q. Did you ask him any questions about his condition, or did you just go and look and do your job?

A. I don't understand what you mean.

Q. Did you ask Thomas any questions about his physical condition, or did you just observe and act on your own judgment as to what he required?

A. Oh, no, you don't do that.

Q. What did you do on this occasion?

A. Like you do with anyone in the same circumstances.

Q. Well, did you hold any discussion with him about the cut on the back of his neck?

A. I don't see, I mean I don't understand what you are after; I don't know what you mean. Why discuss the—

Q. I appreciate your reluctance to answer my question.

A. No, I am not reluctant, don't misunderstand me; I am not reluctant at all.

Mr. Underwood:

May I ask that the question be read? I think it is a perfectly plain and simple question.

Q. ("Well, did you hold any discussion with him about the cut on the back of his neck?")

A. Well, the only thing I would say, was probably in regard to pain.

Q. I would like to have you tell me what you remember of any discussion you had with Thomas; not what you would do or might do.

A. I don't remember discussing his cuts with him at all.

Q. Do you remember discussing his burns with him?

A. No.

Q. Do you remember discussing his broken leg with him?

A. Oh, yes.

Q. Well, now, tell us what transpired in your conversation with Thomas about the broken leg?

A. If I remember correctly, the only discussion that came up about the broken leg, was the manner in which he was able to escape from the position that he found himself, to where he was picked up out of this—either on this island or on the bank of this river, with the broken leg. I marveled at the fact that a man with a broken leg could extricate himself from the wreckage of the boat and got as far away from it as he did, at the time. There was just talk of that nature, that is, I was interested in the fact that he, with the broken leg, had gained as much distance from this wreck that he had; which is natural in any one, be he layman or physician.

Q. Is that the only discussion that you remember having with him?

A. I believe so.

Q. Was he entirely lucid and clear in that discussion?

A. Yes.

Q. You think he was?

A. Yes, I know he was.

Q. Was anybody else present during this afternoon?

A. Doctor Hendricks was there when he came in and the girl on emergency service; I don't know who the nurse would be; but Hendricks was there at the time that he was admitted.

The Court:

Did the witness state the time he was admitted to the hospital?

Mr. Underwood:

He said two o'clock, your Honor.

Q. Is that right, Doctor?

A. About that time, yes.

Q. Did you administer any tests to Thomas to determine his mental condition that afternoon and evening, pior to this conversation?

A. Nothing other than ordinary conversation.

Q. Now, you have remembered only one conversation, and that's the one about the broken leg. I ask you if you adrainistered any tests to the man to determine his mental condition, and you tell me "nothing but ordinary conversation"; is that right?

A. That's right; no tests were made.

Q. Had you ever seen Thomas before?

A. No, sir.

Q. It is true, isn't it, Doctor, that a given amount of morphine affects different people to a different degree?

A. True.

Q. One thing I neglected to ask you, Doctor; what is your present recollection as to when Thomas first began to exhibit the effects of shock?

A. The second or third day, I believe; I am not positive.

Q. Not until then?

A. I don't believe so.

Q. You are sure about that?

A. Well, I am not sure, but that's as close as I could come to it.

Q. Do you remember whether he slept any from the time he was admitted to the hospital to the time these gentlemen called on him?

A. I don't believe he did.

Mr. Underwood:

That is all.

Re-Direct Examination.

By Mr. Botts:

Q. Doctor, what is a Thomas splint?

A. Well, it's a temporary—more or less a temporary splint, used, not in a reduction of a fracture of this nature, but more or less to immobilize it. It has a metal ring, padded with leather, that fits in the groin, supported on either side by a bar that runs the length of the leg, under the foot. That is the splint in itself; in other words, it is a ring that fits in to the groin, and a metal—

Q. The purpose of it is to stretch the leg out to its normal length?

A. No; just a support; it is immobilization that keeps them from having any further damage than has already been done.

By Mr. Matteson:

Q. Doctor, will you let me ask you about this anesthetic, that you were asked about. What was the effect of that?

A. You mean, after effect?

Q. Well, at the time; how long was he under anesthetics?

A. Not more than fifteen or twenty minutes, I don't believe, at the longest.

The Court:

What was the question?

(The preceding question was read by the Reporter.)

Q. What was the nature of the anesthetic that was given him, do you recall?

A. What do you mean by the nature of it?

Q. What was it?

A. Ethyl Chloride and ether.

Q. Now, at eight o'clock, was there any after effects from this anesthetic, that would make it impossible or difficult for Thomas to function properly mentally?

A. Well, I would rest his head and neck and talk with him, and he was conscious, perfectly able to carry on a conversation, aside from being uncomfortable.

Q. If you had thought there was any doubt about his lucidity or ability to talk with people, would you have permitted these gentlemen to interview him?

Mr. Underwood:

Object to that as speculative, your Honor.

Mr. Matteson:

I should think the Doctor ought to be permitted to answer that, if your Honor please. He has been somewhat attacked here, and I think it is just a matter of defending himself.

The Court:

All right, I will overrule the objection.

A. Will you repeat the question, please?

(The preceding question was repeated by the Reporter.)

Q. Will you answer that question, Doctor? Did you understand the question?

A. Yes, but—that wasn't the reason that Mr. Miller was given permission to interview the patient. I gave him permission because I thought the man was well

enough to talk to him; I didn't think it would do him any physical damage.

Q. That was what you were taking into account?

A. Yes.

Q. And did you as a matter of fact think he was able to talk?

A. I had just finished talking with him and he was able to converse intelligently.

Q. Doctor, will you tell us about your medical education, preparation?

A. That is rather hard to do. All I can do is tell you where I went to school.

Q. That is what I would like to know.

A. Indiana University 1926 to 1932; was graduated in June, 1932; served five months of interneship in the University Hospital, and resigned due to financial embarrassment, and came to Fort Lauderdale and was associated with Doctor Lingerman in his office from the first of December until the first of June, 1933; then I opened my own office.

Q. You went into practice?

A. I opened my own office in 1933.

Q. Are you still practicing in Fort Lauderdale?

A. Yes.

Q. Are you attending here as a witness under subpoena?

A. Yes.

Mr. Matteson:

That is all.

Re-Cross Examination.

By Mr. Underwood:

Q. Do you remember a conversation with Mr. Riley on the afternoon of June 24th about the time you were administering the Thomas splint?

A. Wasn't Mr. Riley the man from Palm Beach?

Q. Yes.

A. Yes.

Q. Is it not a fact, Doctor Blount, that you told Mr. Riley at that time that Thomas was suffering mainly from shock?

A. Possibly, yes.

Q. Do you deny that?

A. No, I don't deny it.

Q. Do you remember telling me a while ago that your recollection was that he didn't begin to suffer from shock until the second day, or third day?

A. True.

Q. Now, which is right?

A. Well, they are both more or less right. Any one—wait a minute let me answer; anyone who has undergone that type of injury, any injury for that matter, is in some physical shock; in other words, there is a certain amount of nervous upset due to anything of that nature. However, the shock that we refer to as the popular type of shock is the lowering of the blood pressure, producing sweating and usually a lowering of temperature.

Q. You are thinking now about objective symptoms?

A. Well, those are objective and subjective both; and sometimes irrationality, usually retention of urine; that's the type of shock that requires treatment and care. Your initial shock is disseminated by some form of sedation. Do you understand what I mean?

Q. I think so. Have you finished?

A. Yes, sir.

The Court:

Who is Mr. Miller?

A. Gary Miller?

The Court:

Yes.

Mr. Underwood:

An Attorney in Lauderdale. I don't know what his official position is; I never have cleared that up.

The Court:

Did you allow him to see the patient because you thought he occupied some official position?

A. I didn't go into it with him at all. He said he wanted to ask him some questions in regard to this accident that he had had and asked me if I thought he could see him. And I said I saw no objection to it, if he would only stay ten or fifteen minutes. I didn't even ask him the nature of his business.

The Court:

Suppose it had been just a curiosity seeker, if you had know that it was just a curiosity seeker, and not a member of the family or a friend of the family—

A. I think not, sir.

The Court:

And not an official, would you have allowed that?

A. I don't think so.

The Court:

Why wouldn't you?

A. Because you just don't do those things. Members of the family are never denied a chance to see him.

The Court:

That is all.

Re-Direct Examination.

By Mr. Botts:

Q. As a matter of fact, Doctor, don't you recall Mrs. Thomas was in the hospital at the time we interviewed him?

A. No, I don't remember that; I don't remember that Mrs. Thomas was there. I know she was there later, but I don't recall of her being there then.

Q. Mr. Gary Miller is the County Attorney in Broward County, is he not?

A. I believe that is his official position.

Q. And he was also the County Attorney at the time this accident occurred, was he not?

A. I believe he was.

Re-Cross Examination.

By Mr. Underwood:

Q. Were you in the room when these three men were there?

A. No, I wasn't.

Q. And you weren't present during this supposed conversation?

A. No, I wasn't.

Mr. Underwood:

That is all.

Mr. Matteson:

That is all.

Mr. Matteson:

If your Honor please, John Thomas, when he was on the stand, was excused subject to being recalled; and in view of the testimony the doctor has given as to his condition, I move that he may be recalled tomorrow morning, so that he can be questioned about this occurrence. I think that can be accomplished by us sending him a telegram to be here.

The Court:

I believe the arrangement was that he would come back.

Mr. Matteson:
That he would come back on call, yes.

The Court:
Is there any objection to that by respondents?

Mr. Underwood:
None at all.

Mr. Matteson:
Then I will make that arrangement, if your Honor please. In fact, I think the telegram ought to be sent by the Marshal. We would be glad to pay the expense of it, if we can tell the Marshal to send such a telegram.

The Court:
All right.

968 Thereupon J. M. PATTEN was produced as a witness by the Libelants and having previously been duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Matteson:
Q. What is your full name?
A. J. M. Patten.
Q. Your address?
A. 709 Avenue Minorca, Coral Gables.
Q. Your occupation?
A. Now a marine surveyor.
Q. What is your age, Captain Patten?
A. 61, very near 61.
Q. How long have you been a marine surveyor?
A. About seven years,—that is in Miami. When I was connected with the Shipping Board in Philadelphia I attended many surveys there. I had some big steamers.

Q. But you have been in active business in Miami as a surveyor for the past seven years, is that correct?

A. Yes, sir.

Q. Prior to that time what was the nature of your experience?

A. I have a record, if you want me to read it all. That is a pretty long story. (Handing paper to counsel.)

Q. You have handed me here a record of your experience.

A. My marine experience, yes, sir.

Q. Without going into details on this, you have served as seaman, quartermaster, officer and master of various vessels; is that correct?

A. Yes, sir.

Q. Do you hold any license?

A. Yes, sir.

Q. What licenses do you hold?

A. (Witness hands documents to counsel.)

Q. You show me a license to master of steam and motor vessels, serial number 146256, issued by the Bureau of Navigation, Steamboat Inspectors, United States Department of Commerce, issue number 8-9, any gross tons upon the waters of all oceans; is that right?

A. Yes, sir.

Q. With various pilot commission attached?

A. That is right.

Q. And you also show me a license to engineer of vessels propelled by gas, fluid, naptha, or electric motors, issue 6-6—by the Steamboat Inspection Service, Chief Engineer of Vessels in gross tons; is that right?

A. Yes, sir.

Q. These licenses are still in effect?

A. Yes, sir; that last one is not in effect, 65 foot, I let that die out.

Q. The last one I spoke of?

A. No, the one you haven't read yet; that is a 65 foot license.

Q. The last one you have just referred to is to license to operate to navigate or operate vessels not more than 65 feet in length?

A. Yes, sir.

Q. That one you say has run out?

A. Yes, sir.

Q. The others are in effect?

A. In force.

Q. What sort of vessels have you served as master of?

A. Steam yachts, tugs, lighters, steamships, steam yachts, Diesel yachts.

Q. During the war what service were you in?

A. Which war?

Q. 1917?

A. In 1917 I was in command of the Winchester, the Amoline, the Sachem and the Rogday, that is a wrecking ship.

Q. And what was your rank?

A. I went in as Lieutenant and shortly promoted to Lieutenant-Commander.

Q. After the war what was your experience?

A. Well, I was with the Shipping Board; I was marine-superintendent for the Lykes Brothers Steamship Company in New York; took a tug down to New Orleans.

Q. With the Shipping Board at New York you held the position of assistant port Captain for a year and at Philadelphia as marine superintendent for almost three years; is that right?

A. I was assistant port Captain for a year; and promoted to port captain, then sent to Philadelphia as marine superintendent, and promoted to district director.

Q. And you left Philadelphia in May 1927?

A. Yes, sir.

Q. And since then what sort of vessels have you served on?

A. Three Diesel yachts; that's about all I can recall.

Q. And in your business as surveyor of vessels, here in Miami, of which you have told us, what types of vessels have you surveyed?

A. Mostly gasoline, probably some Diesel, some auxiliaries.

Q. And over this period of seven years, can you give us any idea approximately how many vessels you have surveyed?

A. That is hard to say unless I went through my files.

Q. Can you approximate it?

A. I will say a thousand, and be safe.

Q. And what were the purpose of these surveys?

A. Well, there were different kinds of surveys; surveys for purchaser, to see if he is getting a good vessel, which he needs; and there is condition survey for insurance companies, at which you find out what is necessary to make the boat safe and make a report of it, and there is damage survey.

Q. Those are the general classifications?

A. Yes, sir.

Q. Now, Captain, do you remember the fire at Fort Lauderdale on June 24, 1935?

A. Yes, sir, I do.

Q. Did you go up there to the Pilkington yard on that date?

A. Yes, sir; I was called up.

Q. Will you tell us how you came to go?

A. It was along somewhere around seven o'clock I believe, it was raining pretty hard, and I received a call, I think from Hunter-Lyons first, the insurance agent, who stated—

Q. Never mind what he stated, Captain.

A. Well, anyhow, I received a call from—later on from Mr.—Captain Pilkington's Yard, requesting me to come up.

Q. And from whom was that telephone call?

A. Mr. Miller.

Q. And in response to that request did you go up there?

A. Yes, sir; immediately.

Q. What Mr. Miller is that?

A. I understand he is district attorney or County Solicitor up there in Lauderdale.

Q. Is that Mr. Gary Miller?

A. Yes, sir.

Q. What time did you get there?

A. I know I made it in about 35 minutes; somewhere around half past seven.

Q. What conditions did you find when you got there?

A. Well, what was once a boat shed full of yachts, reminded me of mammoth tallow candles, there was the piling burning all at the top, and all the yachts but three,—there were three yachts that were partly scorched, and the Seminole she was sunk; and the rest of the yachts were just part of the wreckage stuck above the water.

Q When you got there whom did you see?

A. Saw Mr. Botts and Mr. Miller, Captain Pilkington, —am I going too fast?—and Mrs. Pilkington.

Q. What did you observe with respect to Captain and Mrs. Pilkington?

A. Well, the poor old chap was about ready to—

Mr. Underwood:

If your Honor please, I don't see where that is material and I object to it,—the physical condition of Captain and Mrs. Pilkington.

Mr. Matteson:

Yes, I think it is quite material at that time; what I have in mind, is that Mr. Underwood, just made some

suggestions of some statements that may have been made by Captain Pi'kington at that time, and his physical condition is important.

Mr. Underwood:

Not at that time.

Mr. Matteson:

You haven't testified, but I think we should have a picture of the circumstances.

The Court:

I don't see the materiality; I think the materiality ought to be shown before the testimony is admitted.

Mr. Matteson:

If your Honor please, of course it will be difficult to call witnesses back every time and read and re-examine them on a point that it seems to me—I won't press that.

Q. How long did you stay there at the yard at that time?

A. Until five in the morning, that is the following morning.

Q. Did he leave the yard during that evening some time?

A. Yes, sir; I went up to the hospital with Mr. Botts and Mr. Miller.

Q. And about what time was that?

A. I wouldn't be positive; it was somewheres around nine o'clock.

Mr. Underwood:

May I have that answer read, please?

(The answer was read.)

A. Might have been later than that; I don't know.

Mr. Matteson:

Will you read the last answer, please?

(The answer was read.)

Q. Well, you went up there with Mr. Botts, did you say?

A. Over to the hospital?

Q. Yes.

A. Yes, sir.

Q. And was Mr. Miller with you?

A. Yes, sir.

Q. When you got to the hospital, what did you do?

A. The three of us went up, I think, one flight of stairs, to the room where Thomas was in bed.

Q. And did you go into that room?

A. Yes, sir.

Q. Whom did you see there?

A. Saw a man lying in the bed, which I assumed was Thomas; I never met the man before.

Q. Did you see Mr. Thomas when he testified here on the stand?

A. Yes, sir.

Q. Was that the man?

A. That's the same man.

Q. Did you see anyone else there?

A. I believe there was a nurse there; I didn't pay particular attention to who was in the room.

Q. When you went into the room, just tell us what—first of all what you observed, with respect to Thomas' condition.

Mr. Underwood:

If your Honor please, I object to this witness stating any conclusions as to the physical condition of anybody present.

Mr. Matteson:

I haven't asked him for any conclusions. I have asked him for what he observed, if the Court please, and I think we are entitled to have everybody who was there to say what they saw and observed.

The Court:

Overrule the objection.

Q. I will ask you, Captain Patten,—don't give any conclusions, just say what you saw and heard.

A. Well, the man had a bandage around his head, and around his neck, which showed—I have taken a first aid course, years ago, and I was always interested in surgery; and it showed me he had an injury in the back of his head or back of his neck. His leg was covered up, I couldn't see what was under there.

Q. Just tell us what transpired after you got in the room.

If your Honor please, may he be instructed at this point not to give any conversation until he is asked that direct question, and we have an opportunity to object.

A. I will try not to.

Q. I understand that; just don't give what was said, but just tell us generally what occurred.

A. Can I say that a man asked questions?

Q. Yes; who asked questions?

A. I think it was Barry Miller and possibly Botts; I am not sure now, but I know the questions were asked.

Q. Were you present when the questions were asked?

A. Yes, sir.

Q. Did Thomas reply to the questions?

A. Yes, sir.

Q. What did you observe as to whether or not Thomas had any difficulty in replying to the questions?

A. Well, Thomas talked in a low—

Mr. Underwood:

If your Honor please, we are getting into conclusions here.

A. I am not going to say what he said, I am describing.

Mr. Matteson:

He said Thomas talked in a low—I assume he was going to say "voice".

A. I am not going to say what he said.

The Court:

Objection overruled. Answer the question.

A. Thomas seemed to be collected, talked in a low voice.

Mr. Underwood:

If your Honor please, that is precisely what I objected to; "he seemed to be collected"; that seems to be a conclusion.

Mr. Matteson:

I think certainly that is an observation that any human being can make with respect to a conversation with another.

The Court:

That has always been a close question with me. I shall overrule the objection to that.

Q. You were saying he spoke in a low voice?

A. A low voice and seemed to have all his faculties, answered the questions that was put to him; he was not irrational.

Q. Now, I want to ask you, Captain Patten, whether in the course of that conversation Mr. Thomas said to Mr. Miller or to Mr. Botts or to yourself: "Captain Abel went down toward the engine room, to inspect the boat. I could smell a slight odor of gasoline and warned Abel to be very careful as one always has to be careful in a boat which is laid up."

Mr. Underwood:

If your Honor please, I object to that question. In the first place, that is not the question that was put to Thomas, as to his conversation with Patten.

Mr. Matteson:

Where do you find it?

Mr. Underwood:

Page 19.

Mr. Matteson:

All right, I skipped one, then. There is one here and there is one here. I will ask him about both of them.

Mr. Underwood:

That was to Miller, though.

Mr. Matteson:

I said, to Miller or to Botts or to himself.

Mr. Underwood:

As far as Patten is concerned, Thomas was confronted with only one question, as I read the record. At any rate, I object to it also on the ground that it is not proof of any fact in this case; and on the ground that Thomas did not deny having made such a statement; and on the ground that they cannot impeach their own witness.

The Court:
This question is for purpose of impeachment?

Mr. Matteson:
Yes, sir.

The Court:
Overrule the objection.

Mr. Underwood:
What page is that?

Mr. Matteson:
20.

Q. Did Thomas make the statement which I read to you?
A. Yes, sir, but you haven't given all of his answer.
Q. Of course not.
A. He did include that, yes, sir.
Q. Now, I will read you something else and ask you if Thomas at that time made this statement.

Mr. Underwood:
Will you tell me the page?

Mr. Matteson:
Now, on page 19.

Q. "Captain Abel crawled through the engine room window, and I told him I smelled a slight odor of gasoline, and for him to be careful".

Mr. Underwood:
Same objection, your Honor.

The Court:
Overruled.

A. Yes, sir; he made that statement.

Q. At that time (this is on page 21) did Captain Thomas make this statement: "When the explosion happened I was looking at Captain Abel through the engine window; and in order to get lights, Captain Abel threw the knife switch located in the engine room; when he threw the switch, why, the switch arced, and there was an immediate explosion".

Mr. Underwood:
Same objection.

The Court:
Overruled.

A. Yes, sir, he made that.

The Court:
Now, read that question again.

(The last question was read by the Reporter.)

Q. Without telling me what else was said, Captain, I want to ask you whether there were other questions and answers?

A. Yes, sir.

Q. —in that interview?

A. You didn't complete it so far.

Q. Was anything written down at that time?

A. Just as soon as we could leave his bedside, with propriety, we all three went down to the desk in the hospital and I believe it was Mr. Botts wrote, took it down on the stationery of the hospital,—that Thomas' report.

Q. You say Mr. Botts wrote it down?

A. I think it was Mr. Botts, I am pretty sure.

Q. Did you see what was written down?

A. Yes, sir.

Q. Did you read it?

A. Yes, sir.

Q. Was what was written down a correct statement of what Mr. Thomas said?

A. I believe it was word for word.

Q. I show you these two sheets of paper and ask if you can identify these. What are those two pieces of paper, Captain Patten?

A. It is a letterhead of the Memorial Hospital, Fort Lauderdale.

Q. Well, what is the writing on it?

A. A statement of—Thomas' statement to us.

Q. Well, is that what was written down at that time?

A. Yes, sir.

Mr. Underwood:

By whom?

Q. By whom was that written?

A. I am pretty positive it was Mr. Botts.

Q. And this is the statement that you just told me was a correct statement of what Thomas said?

A. Yes, sir.

Q. At the time of—

A. That was written within three or four minutes after we left Mr. Thomas.

Mr. Matteson:

I would like to have this marked for identification.

(The paper so identified was marked Libelants' Exhibit No. 96, the same comprising two sheets.)

Q. Now after this conversation at the hospital, what did you do then?

A. I returned to the shipyard.

Q. And what did you observe and hear when you got there that time?

A. Well, the first thing that I did was to try to get Mr. Pilkington and his wife settled down; I tried to get the old gentleman to lie down; he was nervous and all gone to pieces.

Q. What did you do after that?

A. Later on I asked Mrs. Pilkington for a list of the boats that they had stored under the shed, so that I could notify the insurance companies of what had happened.

Q. Was the fire burning all that night?

A. All the tops of the piling was burning, and there was a big houseboat away down at the lower end and her superstructure was still burning, but the worst of the fire was over at that time; it was along towards morning.

Q. Did you have anything to do with the Seminole after that, or any time?

A. Yes, Carl Holm tried to recover the body by diving, just with a helmet.

Q. When was that?

A. That was the following day, in the morning.

Q. Were you there at that time?

A. I helped work the pump to give him air.

Q. From what did he dive?

A. From what?

Q. Yes, did he have sort of a boat there?

A. Had a float there; I am pretty sure it was on a float.

Q. And you say he dove into the Seminole?

A. He didn't dive; there wasn't much room for diving. There was so much steel and davits, and part of the superstructure was down in there, that it really was a dangerous thing for a man to do down in among that stuff.

Q. He put on a diving helmet, did he?

A. Yes, and from his bubbles, we could see, he couldn't very far.

Q. Was that attempt given up?

A. Yes, sir.

Q. What happened after that?

A. I believe Holm to get a pump and pump her out

Q. Was the pump brought there?

A. Yes, sir.

Q. And when was that used?

A. It was used the next night, that would be Tuesday night.

Q. What time did they start to pump, do you recall?

A. I don't know whether I have got that in my records or not.

Q. Well, just generally, what time of day? Was it in the evening or afternoon?

A. It was late in the evening; I imagine around ten o'clock, something like that. I know we got her pretty well dry towards morning, before daylight,—just before daylight.

Q. Were you on the vessel or in the vicinity while this was going on?

A. Yes, sir; I was at the pump, sir.

Q. What kind of a pump was it?

A. As near as I can recall it was a three or three and a half—about three or four inch discharge, centrifugal pump.

Q. What was the motive power,

A. Looked to me like an old automobile engine.

Q. Will you tell us what you saw or observed on the Seminole while this pumping was in operation?

A. Well, they first put the suction down; first they went around outside, in diving helmet and plugged up all the scuppers, any place they could see the boat, the hull was leaking; and we had to wait until extreme low

tide so that the water got about an inch below her gunwale aft, otherwise you would be pumping the whole river. Then they put the suction of the pump into the engine compartment, or into that alleyway; I think they put it in the compartment first, and couldn't get it low enough, so then they found a place where they could get it pretty well down in the bilges. Started to pump, and that worked all right. And after we had pumped for an hour or so, I was on the float where the pump was. I smelled gasoline pretty strong; and the wind at that time was blowing from the westward, and the pump was discharging towards the east, that is, down the river. And I made a remark—

Q. Tell us what remark you made, Captain, just tell us what you observed.

A. Well, I said, it's—

Q. What is that?

A. I said, it was my remark, not somebody else's.

Q. That is all right; don't tell us about your remarks; just tell us what you saw and observed.

A. Well, I smelled a very strong odor of gasoline, sniffed around there and went around to the windward of the pump and I couldn't smell it there, so I come back and put my hand on the discharge water and smelled that, and we were evidently pumping a lot of gasoline out of the hull.

Q. And you determined that by sampling the discharge of the pump?

A. I didn't taste it; I smelled it.

Q. What else did you observe while this pumping was going on,—or at least what else was done that you recall?

A. Well, I see some of the men look at what they called a spring, down in the hull, so I went over and looked at it, and it was evidently some pipe that—

Mr. Underwood:

If your Honor please, this is an expert witness; I don't mind his saying what he saw.

A. Well, I saw it then.

Mr. Underwood:

It is not the spring I am objecting to, it is "evidently some pipe".

The Court:

Don't tell anything except what you saw.

A. Like I found what did cause this spring?

Q. Just tell us what you saw, step by step.

A. I saw of course all the water in this hull of the Seminole, the engine compartment was absolutely smooth, but there was a connection somewhere between the two engines, and forward of the two engines.

Q. Between the two engines and the bulkhead?

A. Yes.

Q. Forward bulkhead in the engine compartment?

A. No, sir; I didn't measure it, but it was somewheres in that vicinity.

Q. Describe that commotion to us.

A. Well, it looked like as if you was in a bath tub and had a hose underneath the surface, with not much pressure on; it made a little submerged fountain.

Q. What did you see done when you observed this?

A. It was either Carl Holm or his assistant that reached out and put a plug in it.

Q. In what?

A. In the pipe.

Mr. Underwood:

Could he see?

Q. Are you telling something that you saw?

A. Yes, I saw that.

Mr. Underwood:

I understand the question was, what did he put the plug in; am I right about that, or wrong?

Mr. Matteson:

That is the next question.

Mr. Underwood:

Sorry to interrupt you.

Q. What was it that you saw this plug put in?

A. At that time I didn't see what it was put in; I did see when the water was lowered in the hull that it was a pipe.

Q. What else, if anything, did you observe about the fountain there?

A. I don't understand just what you mean.

Q. What did you,—tell us its appearance, and what it was,—anything you say about it.

A. Well, at first I thought it was water, but when I looked at it closely I,—it didn't seem to be water, it seemed to be some other fluid, of a lighter density, come up and kind of rolled off in bubbles, not like water,—drops of water would merely go over with the water, but these kind of rolled over like a mushroom.

Q. Now tell us anything that you noted or observed while you were on the Seminole with respect to gasoline.

A. You mean before or after she was pumped out?

Q. Tell us from the beginning, all that you noted about it.

A. Well, while we were pumping her out, as I said before, there was a very strong mixture of gasoline and water coming through the pump.

Q. Did you observe or note anything else?

A. Well, I would have to tell what the other fellow said, that tasted this gas.

Q. Don't tell what anybody said, but you can tell what you saw or heard or smelled or tasted, or anything that came to you through your senses that you noted.

A. Well, I smelled gasoline inside of the hull, too.

Q. Now tell us just what you smelled and when you smelled it; tell us all about it.

A. Well, I smelled it after I observed this so-called fountain, water and gasoline bubbling up, and after she was pumped out, we went down—after they removed the body I helped drag him in a sheet over the debris; then I went down in the engine compartment with the Coroner, and the odor of gasoline was very strong down there; and I looked in the bilge and dipped up a handful of gasoline out of the bilge and let the Coronor smell it.

Q. Did you smell it?

A. I sure did.

Q. What was it?

A. Gasoline, because as soon as I took that out and held it up after a couple of minutes, it all evaporated. Water wouldn't do that.

Q. Can you tell us where this gasoline that you saw or smelled was with respect to the Seminole?

A. It was coming out of a small pipe.

Q. Did you afterwards identify the pipe?

A. No, sir; I don't think I did. We got so busy in removing the body and one thing and another that I didn't pay attention to that pipe. But after the water was lowered, we could see it, where Holm had stuck a plug and a piece of burlap in this pipe, a small plug.

Q. What I am trying to get at, Captain, according to your observation at the time there was or there was not a considerable quantity of gasoline in the Seminole?

A. There certainly was a lot of gasoline in there, but I have no idea what the amount was.

Q. Why do you say that?

A. I had no way of measuring or separating the gasoline from the water and measuring it.

Q. Why do you say there was certainly quite a lot of it?

A. Well, from the length of time we were pumping out this mixture.

Q. Can you give us any idea about this mixture, whether there was a trace of gasoline in it, or much, or a lot, or what?

A. Well, it was so strong around that I sent word over, "no lights to be lit, or cigarettes around Pilkington's house", and warned everybody within hearing not to strike a match or light a cigarette there; in fact some of the boys there beat it off the premises.

Q. Do you remember seeing Ben McCoy or Bill McCoy there?

A. They were there until the gasoline got too strong for them.

Q. When you smelled this gasoline and observed on the Seminole, what was the condition of the other vessels in the yard?

A. They were all gone, that is, you could see part of them stuck up above the surface.

Q. What had happened to them?

A. They were, I would say, totally consumed, everything that would burn on them.

Q. Did you observe any conditions indicating the presence of gasoline anywhere outside the Seminole?

A. No. When you got to windward of this pump, on the outer line, westward of the—around the middle of the westward end of the shed, you couldn't smell gasoline.

Q. After the body was removed did you observe the conditions in the hull of the Seminole then?

A. In what respect?

Q. Did you look around to see what was there?

A. Yes, I naturally tried to ascertain the cause, because I felt that somebody some day, at a later date, would ask why.

Q. Did anyone ask you to do that?

A. No, except at that time I was working under Mr. Miller, who asked me to represent him, and try and ascertain the cause of the explosion and fire.

Q. Did you take any photographs there?

A. Yes, sir; I always take photographs of any wreck or fire.

Q. I show this Libelants' Exhibit No. 12; is that a photograph that you took?

A. Yes, sir; that's my marking on there.

Q. And I show you Libelant's Exhibit No. 15; is that a photograph that you took?

A. Well, I took one from that view, because I had Mr. Anderson, who was a witness here, to put the white lead on the end of that pipe, and it was the end of a pipe there, so it would show up, but there was so many photographs taken,—I have got my signature on it; can I look at the back?

Q. Sure.

A. That's one of mine. I don't know about this one. Yes, this is another one; but that isn't my writing, I don't think.

Q. No, that was put on in connection with testimony of another witness. This photograph, Exhibit 12, has an elliptical shaped mark in ink; what is that?

A. This?

Q. Yes.

A. That was a man's head; that is the body of Abel, his head pointing this way; he didn't have much arms or legs left.

Q. That represents the position in which the body was found?

A. Yes, as near as I could mark it. There is a generator here, and he laid head to port between the forward end of the engine and the generator, about in that position, but when we first found him they had a concrete base

that was in the stack, over his body, that more or less protected him.

Q. That had fallen on him?

A. Yes, sir. I know it was quite a big slab of concrete; otherwise I don't think they would have found anything but a few bones.

Q. I show you these exhibits.

A. That's my handkerchief there.

Q. This Exhibit No. 16, is that what you took?

A. Yes, sir; and here is the end of that pipe with the white lead on it and the handkerchief represents where the body laid.

Q. And then Exhibit 22 is one of yours?

A. Yes, sir; my name is on it; that's before they got all this hatch and stuff out of the way.

Q. You say this picture shows the hatches and the funnels, I mean the ventilators on the deck, over the engine room?

A. That was cleared off there while I was away; I didn't stay up there all the time; I had to go home and take a bath and get something to eat, as we were filthy dirty.

Q. When was that done?

A. That, I couldn't say; but this part of the engineroom was cleared at the time, you see, at the time.

Q. At the time the picture was taken?

A. Yes, at the time the picture was taken; the date will give you on there; photograph August 4th, you see it was pretty well cleared out by that time.

Q. This Exhibit 22, showing the deck, that was over the engineroom, was that taken off before the body was removed or not; can you tell us?

A. I believe it was, because the Coroner, three or four of us stayed right around there, and were certainly not standing under that stuff.

The Court:

Is this the top of the engineroom?

A. This is the hatch and the skylight, Judge, after the fire burned all the supports, that is, the ventilator, the whole thing dropped down over the engine; and I believe,—that is off the record, it is suicide for a diver to go down in that stuff; I wouldn't want to do it.

Q. Now, did you observe anything of the equipment that was in engineroom at that time?

A. Yes, sir; I did; yes, I looked at it.

Q. Just tell us what you observed there in particular.

A. Well, I was looking for the cause, possible cause of the explosion, I naturally, in my business had,—I do the same thing on any other boat, looking around and see if she was properly equipped, any drain valves or any leaky valves, that might allow possible seepage of gasoline to enter the hull.

Q. What did you see?

A. I found two valves, which, from the way they fitted, they were laying amidships, up close to the bulkhead, on a drain line.

Q. I show you Exhibit No. 11; is that the pair of valves that you are speaking of?

A. Yes, sir; I signed that tag when we got them out; and—

Q. And where do you say you found those?

A. Oh, I would say about a foot from the forward engine bulkhead, around midships.

Q. Did you observe anything—

A. They were laying,—that photograph you were showing me, had the white lead on, they were laying right under that position.

Q. You are referring to these photographs, 12 and 15?

A. There is your drain line.

Q. You have pointed to what you say is the drain line.

A. They were laying right down in here.

A. Right underneath—

A. Or, I will tell you, somewheres down in there; I couldn't say.

Q. On Exhibit 12, just indicate with a mark, with this pen.

A. This is only approximate.

Q. Just do the best you can.

A. There was a can and funnel in there; somewheres in about there, I should say.

Q. You have drawn a cross with a circle around it on Libelants' Exhibit 12, and you say that is approximately where,—

A. That is as close as I can place it, yes, sir.

Q. Approximately where the two valves were found?

A. Yes, those two connected valves.

Q. Did you observe anything to indicate that those valves had been connected with?

A. What called it to my attention first was being a five-gallon can close alongside of it; put two and two together.

Mr. Underwood:

I object to what he concluded.

Q. Just tell us what you observed, Captain.

A. Well, there was a five-gallon can with a funnel.

Q. Is this the can and funnel I show you, Exhibits—

A. That's the one, yes, sir.

Q. —13 and 14?

A. Yes, sir.

Q. Where did you observe them?

A. They were right alongside of it there, possibly a little bit to port, somewheres in about here.

Q. Now, suppose you make another mark on Exhibit 12, show us about where the can and funnel were.

A. I will just put a circle in there; there was, as I recall it, that funnel was stuck on the top of it, upside down.

Q. You have made on Exhibit 12, a small circle, just to the left of the mark that you last put on consisting of a cross and a circle?

A. Yes.

Q. And that indicates where,—about where the can and funnel were located?

A. Approximately, yes, sir.

Q. I was asking you about the valves; did you indicate anything,—did you notice anything to indicate anything, where they had come from or to what they had been attached?

A. Well, the broken part of the thread fitted the broken thread on the piping that was up there.

Q. What pipe are you speaking of? Does that show in Exhibits 12 and 15?

A. Here is the pipe there, with the white lead on it.

Q. You show me on Exhibit 15 a pipe in a horizontal position, at which an arrow has been drawn, and the words, "drain line", above; is that right?

A. Yes, sir; that is, the thread on this, as near as we could see, fits the thread that is remaining on the valve.

Q. The thread on the open end of this pipe line that is indicated as the drain line? Is that right?

A. No, a broken thread never breaks square off; it has always a zigzag in it somewhere.

Q. And is that the same line that is indicated by an arrow?

A. Yes, sir.

Q. In Libelant's Exhibit 12?

A. There is the white lead on the end of it.

Q. What was that drain line, can you tell us?

A. Well, it is the same size pipe as that; iron.

Q. Well, this line that you have referred to as the drain line, just tell us what it was; what it is connected with. Can you tell us that?

Mr. Underwood:

May I interrupt to ask whether the witness said it was iron?

A. I believe it was iron.

Q. Can you tell us what it was, Captain?

A. I never scraped it, but if I can have that valve and my knife, I can tell you what it is.

The Court:

Not the material, what did you,—what did it connect with?—

A. Well, these valves connected with the drain line.

Q. What did the drain line connect with?

A. I should say the manifold.

Q. Did you see anything else of the equipment in the engine-room?

A. Well, I saw those two pipes; I signed the tag.

Q. I show you this Exhibit No. 2; is that one of the pieces of equipment you found in the engineroom?

A. Yes sir.

Q. Where was that found?

A. As near as I can recall it, without looking at this tag, that was something I saw in the No. 2 tank.

Q. The threads are left projecting out of the valves on this Exhibit No. 2?

A. The brass nipple there, if you will let me read that tag I will be positive; but I am pretty sure that come from No. 2 tank.

Q. Did you make the writing on the tag?

A. No; that is my signature; I think that is Carl Holm's writing; he writes backhanded.

Q. But you signed the tag?

A. Yes, sir.

Q. Was that at the time the tag was made?

A. Yes, sir; that is the time when Holm brought the fittings out of the engineroom of the Seminole. That was right after the Coroner left.

Q. Did you see this in its original position?

A. No, that was later, laying on the floor of the engineroom. That is what I mean.

A. Yes, I seen it.

Q. You saw it lying on the floor of the engineroom?

A. Not its original position, but it was hooked on the No. 2 tank.

Q. How do you determine that? How do you know if it was hooked on the No. 2 tank?

A. Because No. 2 tank has a shutoff valve sheared off; it became distorted; and this section was laying right underneath No. 2 tank.

Q. Is this valve similar to the valves in the other tanks?

A. Yes, sir.

Q. And did you or did you not try this on the No. 2 tank to see whether it came from there?

A. No, I did not.

The Court:

What is the connection between that exhibit and what you call the manifold, which you said the drain pipe came from?

A. Well, that,—these all go down to a manifold pipe, as I recall it, each one of the tanks had one of these valves; so if your valves were tight and the nipple was tight, you could shut off any pipe you wish. For instance, run on any particular tank. This goes into your tank.

The Court:

All right, where does this go?

A. I believe that goes into one line, as the manifold.

The Court:

Does that connect directly with the manifold?

A. Well, I don't know, to be honest, this was laying on the floor when I picked it up.

Mr. Underwood:

If your Honor would like me to, I would like to draw your Honor a very simple little sketch and show how this was rigged out.

Mr. Matteson:

I think this was part of the manifold, wasn't it?

Mr. Underwood:

I don't know whether it was or not.

A. That engineroom was a terrible wreck when I was in it.

The Court:

I think that would be a good idea; be glad to have that.

A. May I test this with my mouth?

Q. All right.

A. That is open; that was just for my own curiosity.

(Conference between Court and Counsel.)

(By Mr. Matteson):

Q. Captain, you were saying that this valve in your opinion was the valve that came off the No. 2 tank.

A. Yes, I believe so.

Q. And if that is the case, Captain, where would these fittings lead to from that valve?

A. As near as I can figure they were twisted around that way (indicating); come out here, and then went across and in and around that angle-iron, and this being straight it might have hooked onto to the valve on No. 1; I believe that is right.

Q. Then this series of piping and connections would be a part of the manifold connecting the tanks, would it?

A. Yes, I would say that it is. You see, sir, things were in such a mess there—

Q. This longest piece of pipe here appears to have been considerably bent, doesn't it?

A. That is the way it was picked up.

Q. Did you tell about this exhibit, Exhibit 17, where you found it?

A. I think that hooked into the manifold; that has a strainer from there; it went to the main engines and possibly to the auxilary, on one or the other.

Q. Where was it found in the wreck?

A. I don't recall. Wouldn't it show on the tag?

Q. Can you refresh your recollection by anything on the tag?

A. "Feedline of port engine" it reads on here.

Q. Does that refresh your recollection as to anything?

A. Isn't there another tag on there; I signed all of these tags; I believe that went onto the manifold, or in close proximity, or over close to that small generator. I think one of these lines was the feed line to the port engine and the other one to the little generator.

Q. When you say "feedlines" to the port engine and the port generator, you mean the branching lines came out of the lower part of the strainer?

A. Yes, it has to come through that side of the feed—

Q. Did you observe the tanks of the Seminole while you were there?

A. Yes.

Q. What did you observe with respect to the tanks?

A. Tanks 1, 3 and 4 were practically in position, but the No. 2 tank was out of position. The photographs show that.

Q. I show you this picture, Libelant's Exhibit No. 6, which was taken sometime later; can you tell me whether that represents the position of the tanks at that time or not?

A. Yes, and also at the present time.

Q. No. 2 tank is displaced?

A. Yes, out of place a little bit; and this one (indicating) is slightly out of place.

Q. No. 1 tank?

A. You can see that they don't quite line up with the eyes; the fire or explosion threw them out of plumb.

Q. Were they in that position the first time you saw them?

Mr. Underwood:

I move to strike out what the witness said the explosion did.

The Court:

I think you are technically right. I will grant your motion.

(By Mr. Matteson):

Q. That is the position in which they were when you first saw them, is that right?

A. Yes.

Q. And that is the position they are still in?

A. The last time I looked at them.

Q. Will you describe these tanks to us as you saw them?

A. I measured them; they were approximately 72 inches in height and 42 inches in diameter; they were galvanized steel riveted tanks and they had convex bottoms and crown tops.

Q. Were they riveted tanks?

A. Riveted, yes.

Q. Were either the tanks or the rivets welded?

A. No; I couldn't see any welding on them.

Q. Did you observe the compartment in which the tanks were?

A. Yes, sir.

Q. Will you tell us what you observed about that, as to the dimensions of this compartment and how these tanks were placed in there.

A. The tanks set in there pretty snug; the No. 4 tank was practically contacting the angle-iron alongside the—

Q That would be the starboard side?

A. Yes.

Q. What angle-iron are you referring to?

A. That side of the angle-iron (indicating.

Q. Would that be on the starboard side aft of the compartment?

A. Yes, on the inside of the bunker.

Q. What else did you observe about its dimensions?

A. The space between the tanks was possibly five or five and a half inches, except on No. 1 tank; between the No. 1 tank and the port bulkhead there was about 12 inches or possibly 14 inches space there, and the floor of that space I imagine about 3 or 4 inches there, forward and aft of them—

Q. Did you take any measurements of the width and so forth of the tank compartment?

A. Yes, but I do not have it in my mind clear.

Q. Does this memorandum refresh your recollection (handling document to witness)?

A. Yes. That compartment, I think, was 43 inches.

Q. From forward to aft?

A. Yes.

Q. How did you get that measurement?

A. With a steel tape.

Q. How did you go about getting accurate measurements of that compartment; is the Seminole destroyed now?

A. Yes, but I took it from the ends which are not destroyed. There may be a slight error in it, but this will give you a pretty close measurement.

Q. You measured the distance from forward to aft and it was 43 inches?

A. Yes.

Q. What was the diameter of the tanks?

A. 42 inches; they were pretty snug.

Q. Then how much room would that leave forward and aft?

A. It is pretty close. I was wrong on the other. They were pretty snug in there.

Q. What do you mean by "pretty snug"; how much space would there be?

A. There wouldn't be more than an inch at either end.

Q. Will you tell us what you observed with respect to this tank compartment and the tanks and the situation in which they were placed, as to whether or not those tanks could be inspected in position?

A. You mean to inspect all parts of the tanks?

Q. Yes.

A. You couldn't do that without taking them all out of there.

Q. Why not?

A. There wasn't room.

Q. No room to get in there, you mean?

A. No, sir. You might possibly squeeze in the corner of No. 1 tank, but as far as the other three tanks is concerned, sir, it would take a pretty thin man to get down between that fore and aft bulkhead on the No. 1 tank.

Q. Could the tanks be inspected from underneath?

A. I looked in there and it appeared to me to be metal on top of angle-iron, but you could see pretty clearly all the bottom of No. 1 tank. I just looked in there out of curiosity at the time.

Q. When was that; right after the fire?

A. No; that was a couple of months ago.

Q. Captain, in view of your experience as a practical man and as a surveyor of vessels, what can you tell us about the propriety of installing gasoline tanks in an

compartment such as that in a position where they could not be properly inspected.

Mr. Underwood:

I object to that; that is a hypothetical question. No foundation has been laid and all the facts have not been stated.

The Court:

The objection is overruled.

A. I don't think they were properly installed; in the first place, they are not gasoline tanks; they are water tanks.

Q. I will get to that in a minute, Captain. I was dealing now with the question of inspection. Do you consider it proper practice to install these tanks in such a position that they cannot be readily inspected?

A. No, I don't think so.

Q. Did these tanks have any facilities for interior inspection?

A. There was no manhole plates that I could find.

Q. In your opinion were they proper tanks for the storage of gasoline?

A. Well, sir, they looked like water tanks to me.

Q. For what reason were they not suitable for the storage of gasoline?

A. Well, I think the only proper tank for gasoline boats is a steel tank; a welded job.

Q. Is there anything else?

A. These tanks were riveted; the seams were not caulked, and they had a crown in the bottom which certainly would collect condensation.

Q. How would this crown collect condensation?

A. It had that "V" all around the bottom edge of it.

Q. When you say "crown" in the bottom, Captain, you mean concave surface?

A. Yes.

Q. And that crown would leave a "V" around the interior on the inside?

A. Yes.

Q. What is the objection to that?

A. Well, that is where all of your condensation would accumulate and in time rust through.

Q. In your opinion, Captain, if such tanks were used for storage of gasoline over a period of approximately fourteen years without being taken out for inspection, do you think that these tanks would remain tight during that period?

A. I would say after fourteen years they are on the verge of being useless as tanks. I have had these iron tanks for drinking water and they would go bad in six or seven years.

Q. I want to ask you about this Exhibit 2. First of all I think I will ask you about this Exhibit 11. I think you said this was attached to a drain line which attached to the gasoline manifold of the Seminole?

A. At one time.

Q. But this had evidently been attached to that line?

A. Yes.

Q. I would like to ask you, Captain Patten, in the light of your experience, as a surveyor and a practical man, whether it is proper to have draw-off lines and valves for the purpose of drawing off gasoline in the engine-room of a gasoline vessel?

A. No, sir; it should not be in there.

Q. What do you base that on?

A. Well, in the first place, on common sense; I know the danger of it; in the second place, it is a rule of the National Board of Fire Underwriters and the National Board of—

Mr. Underwood:

I object to the reference to rules of the National Board of Fire Underwriters, or any Board. In the first place, these rules are the best evidence, and I think that they ought not to be gotten into this record in this backhanded way, if at all.

Mr. Matteson:

I am asking him about the authorities on which he relies, and I will produce copies and have him identify them.

Mr. Underwood:

If your Honor please, this man was asked, as I understand it, to express his opinion. Perhaps that is all right, however, I do not think that any rules ought to be incorporated in his answer to such questions which calls for his opinion alone.

Mr. Matteson:

If your Honor please, he has not had an opportunity to state what the rules are. I want him to describe them and then—

The Court:

I think you can go into that. I will overrule the objection. In other words, he is basing his opinion partially on the rules accepted by him. I think we will inquire into that. I will overrule the objection.

Mr. Matteson:

Read the last question.

(Preceding question read by the Reporter as above recorded.)

A. Shall I state that?

Q. Yes.

A. National Board for the Prevention of Explosion and Fire on Motor Boats; the New York Board of Underwriters; New York Police Department—

Q. Before we go any further, Captain, you have referred us to certain rules—

The Court:

You can strike out all of that with reference to the rules of the Police Department of New York.

(By Mr. Matteson):

Q. You referred to certain rules, Captain Patten, of the Board of Fire Underwriters, and another organization—

A. National Board For Prevention of Fire and Explosion on Motor Boats?

Q. Yes.

A. All right.

Q. What are those rules; just generally tell us where they come from and what they are.

Mr. Underwood:

If your Honor please, I object to that. The rules are the best evidence themselves, and, such as they are, they come in books, and I think that the organization which purports to make the rules ought to be known to your Honor first.

Mr. Matteson:

That is exactly what my question is addressed to.

Mr. Underwood:

Perhaps I didn't understand it. I thought you were asking him to tell what the rules were.

Mr. Matteson:

No; I am just asking him to tell where they came from and what organization or authority—

The Court:

He may answer that.

A. These rules are drawn up by committees of experts and are recognized—

Mr. Underwood:

Let him say where they came from. I don't mind that, but as to how they are recognized—

The Court:

Don't tell the fact of how they are recognized; just tell who issued them.

A. All of these rules are for the prevention of explosion, and also governing the proper installation of all pipe lines, tanks and exhaust lines.

The Court:

Are they printed rules?

The Witness:

Yes.

The Court:

Do you have a copy of them?

The Witness:

Yes.

(By Mr. Matteson):

Q. Are these rules that you have speaking of (handing document to witness)?

A. Yes; this is one set of rules, and then we have others—

Q. These regulations govern Marine Fire Hazards and were issued by the National Fire Protection Association in 1930, is that correct. I am now working on a later book. Of course I try to keep up to date on them.

Q. There is a later edition that you have?

A. Yes.

Q. What is the date of that edition?

A. 1933.

Q. And this is the edition of 1930 I have here?

A. Yes.

Q. Of course the one you have in your hand now was issued after the fire?

A. Yes.

Q. And these 1930 rules are the ones that were in effect at the time of the fire?

A. Yes, and possibly some more, because that is five years previous to the fire.

Mr. Matteson:

I offer these rules in evidence.

Mr. Underwood:

If your Honor please, I object to them on the ground that they are not rules promulgated by any official or authoritative body. They merely include the opinion of certain people who are not here and not subject to cross-examination, and I object to them on the ground that they are not binding on the Respondent I represent.

(Extended legal discussion.)

The Court:

Well, this is largely a practical matter and I shall follow this rule: that the rules themselves are to be regarded as

a criterion, the observance of which and conformity to which is governed; then the strict rules of evidence must be applied with reference to the adoption of the rules and as to whether they govern and as to whether they are binding upon the Respondents, but I think the witness, as regards this examination, can refer to certain printed rules and tell what he knows about the adoption or the conformance of these rules, and explain wherein he thinks a rule is right or wrong as applies to this particular field. Now, if the printed rules are offered in evidence, they are not offered as binding because they are adopted by that association, but they are only offered as a set of printed rules to which the witness gives credence.

Mr. Matteson:

That is exactly the purpose for which they are offered.

The Court:

If there is any exception to that line of reasoning, you may take an exception. I want you to have the benefit of your objection, and you may have your exception.

Mr. Underwood:

May I make now my objection to all of this, so I won't have to interrupt the Court from time to time?

The Court:

All right.

(Thereupon printed pamphlet entitled "Regulations Governing Marine Hazards" was marked Libelants' Exhibit No. 97.)

The Court:

Mr. Matteson, in ruling with you I do not want you to get the record confused now. If your offer is not in ac-

cordance with the views I expressed, I prefer you to state it now, because I do not want to mislead you.

Mr. Matteson:

It seems to me that your Honor's statement of it is excellent and it coincides with our theory of the matter.

(By Mr. Matteson):

Q. We were speaking of the matter of outlets on gas feedlines in an engineroom. Can you refer us to the Section of these rules of the National Fire Protection Association that relates to that?

A. Do you wish me to read it?

Q. Yes; read it to us.

A. I will read it all; I want to read it all. It is page 47; paragraph (g).

Q. And that reads, "Outlets on Gas feedlines for drawing loose gasoline for any purpose whatever are prohibited in the engineroom compartment." Is that right?

A. Yes, sir.

Mr. Underwood:

Do you want to read the rest of the paragraph?

Mr. Matteson:

I have no objection. It reads, "Drains in the bottom of fuel tanks are not recommended, but where fitted shall be closed by plugs or plugged pipes threaded into spot faces, riveted and soldered, welded or brazed to the tank".

(By Mr. Matteson):

Q. Now, Captain, I would like to ask you whether or not this rule is in accordance with your experience and your opinion of what is required.

A. Yes, sir.

Q. Of what is proper. ..

A. Yes. That is the first thing I look for going aboard a boat.

Q. Are you familiar with this document which I show you now?

A. Yes, sir.

Q. And what is that?

A. Well, since Pilkington's fire—I will have to explain the whole thing in there. That is a safety regulation.

Q. I don't want to go into anything since the Pilkington fire.

A. All right.

Q. Just tell me what that document is.

A. It is a lot of safety regulations recommended by the National Board of Fire Underwriters for the Prevention of Explosion on Motor Boats, and they requested me to have two copies of this posted in all boatyards in South Florida, which has been done.

Q. Is that an authority that you respect in your work?

A. I certainly do.

Q. By whom are these rules issued or signed?

A. National Board of Fire Underwriters, signed by A. C. Hutson.

The Court:

I shall follow the same ruling that I announced in regard to the other. What the witness said with regard to his instructions about posting these rules and, whether or not they were posted, is stricken on the Court's own motion, without suggestion of the objection made by the proctor for the Respondent. You may examine the witness as an expert with regard to the particular matter of the presence of the drain pipe in the engineroom, and he may give his opinion, and if it is his opinion which he fortified with the adoption of these rules, as well as the other rules, he may state it, but the binding effect of these rules on the Respondent is not meant to be maintained by

that rule. He may be examined in regard to the rules in that light.

Mr. Matteson:
Very well.

The Court:
It is twenty-five minutes past twelve. We will recess until two o'clock.

(Recess taken until 2:00 P. M., March 22,—same day.)

March 22, 1939, 2:00 o'clock P. M.

Convened pursuant to recess.

Appearances same as heretofore noted.

1023 Thereupon: J. N. PATTEN, a witness produced by the Libelants, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued).

By Mr. Matteson:

Q. Captain, I think about the last question I asked you was about these rules signed by the Chief Engineer of the National Board of Fire Underwriters. I would like to ask you this further about them: do you or do you not regard these rules as expressing a standard of approved practice for safety on motor boats?

A. I do.

Q. We were discussing the matter of drain valves for drawing off gasoline in the engineroom. Is there anything in these rules on that point?

A. Yes, sir.

Q. What do the rules say on that point?

A. May I read it?

Q. Yes.

A. "That all outlets for drawing gasoline for any purpose whatsoever be prohibited in enginerooms".

Q. Referring to page 2 of Libelants' Exhibit 24?

A. That is right.

Q. Captain, you expressed the opinion that it was improper to have a drain line for drawing off gasoline in the engineroom. Will you tell us why you consider that improper?

A. If the drain line is used it is impossible to draw off gasoline into any kind of receptacle in an engineroom compartment without creating more or less explosive mixture in your engineroom?

Q. Any other reason?

A. You might have bad valves; there may be carelessness in closing the valves, and vibration might crack off a line in the threads; you might have a slow seepage from the connection.

Q. Is there any danger to the vessel in connection with slow leaks such as you have described?

A. Yes. Gasoline being heavier than the atmosphere, the air naturally goes to the bottom and goes into the bilges and fumes cause pockets.

Q. What is the difficulty about that?

A. Unless you have proper ventilation the air pushes down into the bilges and stirs up these air pockets, and that gives you a bad explosive hazard.

Q. How explosive is gasoline; can you tell us?

A. I would say it is worse than dynamite, judging from some of the explosions I have seen.

Q. Is that known to be a serious hazard on boats using gasoline?

A. Yes.

Q. I want to show you these valves and connections, Exhibit No. 11, and ask you, irrespective of the matter of having such a draw-off line in the engineroom, whether you consider that a proper set of valves and connections for a gasoline line?

A. No, I wouldn't approve of that valve for gasoline.

Q. What is the matter with it?

A. Well, the surface of the valve seat is flatter than I would like; I would like a more sharp needle plug valve, so if any sediment gets in there on the valve seat it will fall right down there.

Q. If the pitch of the seat is sharper?

A. Yes, sir.

Q. Is there anything else that you note about this set of valves and connections?

A. I noticed yesterday that the valve itself was badly pitted and corroded.

Q. Will you show us what you mean by that?

A. This (indicating) is all corroded in there; there should be a ground joint to make—in other words, one pipe. There is a chip out of there. What I mean is that this seat should come down smaller than that, come down to a point. That would make it more readily closed and would make it tighter, a tighter joint for gasoline. This is a water valve, I should say.

Q. What is the requirement of a water valve or steam valve and a gasoline valve?

A. There are different kinds, a hundred different types of valves; some are used for water, and high pressures, and gasoline gate valves have—

Q. What I was asking you, Captain—I gathered from you that there is some difference in the requirements for a water valve and a gasoline valve. Why doesn't the ordinary water valve do for gasoline?

A. You can get a water valve with a fiber insert in the valve—

Q. We are not talking about that kind of a valve. Do you consider that there is some difference in the requirements between water valves and gasoline valves?

A. Yes.

Q. What is that difference?

A. I would prefer that type of valve, what they call the needle plug valve, because the seat is tighter.

Q. Now is there anything you noticed about this set of valves and connections than that which you have called our attention to?

A. I don't know much about that valve. We couldn't get the bottom out of it. There is a union and a nipple in there, and a reducer, making up these two valves that are used; they use five fittings on them and it could have been done by one three-inch nipple.

Q. What is the difficulty about them having more or less fittings?

A. The more fittings you have the more liable you are to have leaks.

Q. In the photographic exhibits you identified the drain line running amidships off to starboard.

A. Yes.

Q. Do you see any evidence of any supports for that line?

A. No.

Q. If the line had no support what would be the effect of that?

A. You would have the whole weight of these valve fittings on the length of pipe on that elbow.

Q. What difference would that make?

A. In time she would crack it off.

Q. Would it make any difference in the question of whether it would be likely to leak or not?

A. Well, without any support the weight of these valves would certainly have a tendency, if not to crack off the threads, to at least loosen them up and you might have a slow seepage.

Q. When you speak of slow seepage with respect to gasoline, what do you mean Captain?

A. It wouldn't leak in the fitting or pipe; it wouldn't drop, but it would evaporate about the same speed as the leak, so it would be necessary to put your hand underneath the fittings to get that odor.

Q. Is such a leak readily noticeable?

A. Yes, it would be if you got down in the bilge.

Q. What do you mean by that, Captain?

A. Well, the evaporation of this seepage being heavier than the atmosphere, the air would naturally sink to the lowest point in the bilge.

Q. What I mean is, Captain, if you looked at it would it be readily noticeable?

A. Not unless you wiped it with your fingers.

Q. I show you exhibit No. 2, a valve with a series of connections on it, and I would like to ask you whether you consider that setup a proper one for a line for the conveyance of gasoline in a gasoline vessel?

A. No, sir. It seems to me that they could go from the No. 1 tank to No. 2 tank valve with copper tubing and have saved all of these fittings.

Q. In your opinion, Captain, how should a gasoline line for the conveyance of gasoline in the engineroom of a gasoline boat be constructed?

A. In one section from tank to carburetor, or tank to tank; no more fittings than absolutely necessary.

Q. What material should be used?

A. Annealed tubing.

Q. Why does the use of annealed copper tubing avoid the use of too many connections?

A. Copper tubing can be bent more readily than brass or iron pipe.

Q. Will you explain to us what annealed copper tubing is?

A. Copper, when rolled into shape, is pretty hard, but when you anneal it it makes it very soft and you can bend it around pretty easy without disturbing its strength.

Q. Does that welding process bring out that condition?

A. It makes it softer.

Q. Is that what you mean by annealing?

A. Yes.

Q. Captain, is there anything in these rules of the National Fire Protection Association, Libelants' Exhibit 97, that supports your view on that point?

A. Do you wish me to read it?

Q. Just answer the question.

A. Yes.

Q. Now read it.

A. "All fuel piping shall be seamless drawn annealed copper tubing or I. P. S. copper pipe."

Q. What kind of fittings should be used on pipe of that kind, screw fittings or some other kind?

A. I like the ones where you expand the ends of the copper tubing, special fittings.

Q. Is that your opinion of what should be used?

A. Yes, that is what I like to use.

Q. Is there anything in these rules to support your opinion on that?

A. Shall I read it?

Q. Yes.

A. "Fittings and connections for tube shall be at least equal to the solderless type of the S. A. E. Standard Practice Code and for pipe, with the exception of ground unions, shall be standard pipe threaded and soldered. All valves, cocks and pipe for tube fittings shall be of non-ferrous composition."

The Court:

Let me see that a minute.

Mr. Underwood:

The section begins on page 46, and he was reading on page 48.

The Court:

I do not understand all of that. I suppose you can argue that to me later.

(By Mr. Matteson):

Q. If annealed copper tubing were used for a gasoline pipe would it be necessary to have a lot of connections such as we have on Libelants' Exhibit No. 2?

A. No, sir. From points A to B there would be just the two connections.

Q. And I think you said that could be bent around any obstruction or angle?

A. Yes.

Q. I would like to have you look at this fitting again, Exhibit 2. I will ask you what else you note about that exhibit?

A. I know this valve is not tight when it is shut.

Q. Do I understand that you shut this valve tight and blew in it?

A. No, sir; I sucked on it. Where you hold your lip it is fairly tight.

Q. You say it is not tight in its present condition?

A. It is not.

Q. What else do you notice about it?

A. This union has been used before.

Q. I am not anxious for you to drawn any conclusions, Captain, but just tell me what you know about its condition.

A. These threads on it are expanded, which shows that this pipe—the threads of this pipe have been turned up so far that the nut is ground inside of it, and has expanded—

Q. A fitting like that, Captain, can you tell me how inside of it is in its original condition; is the threaded female part of the inside in its original condition, or has it deteriorated or not?

A. This part (indicating) is inlaid. This proves that (indicating); that is the way it should be, and this (indicating) should slip over there readily. Do you see where it is expanded? You can see that very easily. You can't get that part of that union back.

Q. You are speaking now of the nut end of the union?

A. Yes. That is as far as that goes. That shows that the pipe has been screwed in there too tight, expanding this section in here (indicating).

Q. What else do you notice about that union and about its condition?

A. If I was to use that union again I would want to grind that nut before fitting it on a pipe joint.

Q. I call your attention to the end of the union where there are a number of marks which look as if they might be cracked; what is that?

A. I would want to scratch that off with a knife before I gave any answer on that. That looks like the teeth of a Stilson wrench.

Q. Captain Patten, from your observation of the Seminole what did you observe with respect to facilities for ventilating the engineroom?

A. The ventilation was all right for a steam plant but not for gasoline.

Q. Tell us what you observed with respect to the actual facilities.

A. Well, they had a window on each side, and about two 14 inch cowl ventilators leading down to the top of the engineroom ceiling; they didn't extend below that; they had a hatch and a skylight and a companionway.

Q. Is hatch and companionway the same thing?

A. I meant skylight and companionway.

Q. You said it was good ventilation for a steam plant but not for a gasoline plant. Explain to us what you mean by that.

A. Well, sir, for a steam plant, with the boiler in the engineroom, all you would need would be the intake of air, and intake of air to get to your furnaces; so long as your vessel got headway into the wind you got air. Some of these ventilators cause air pockets in your bilges, and you still have gas hazards.

Q. Do I understand that it is your view that ventilators should lead to the bilges of a gasoline vessel?

A. Yes.

Q. Why is that?

A. Gasoline vapor lays in all pockets between your frames, and it will stay there unless you get a circulation of air to stir it up and drive it out.

Q. Which is heavier, gasoline fumes or air?

A. Gasoline fumes; they always sink down—

Q. Is there anything in these rules that we have been referring to to support your opinion as to that. I show you the exhibit we have been talking about.

A. I have it here; isn't this it?

Q. No; that is a later edition. I refer you first to Libelants' Exhibit 24, and call your attention to what you see in that Exhibit which supports your opinion; what does it say?

A. "That three inch or larger ventilating pipes running down all the way to bilges be placed in all four corners of engineerooms."

Q. Do you notice anything else there that refers to it?

A. "No ventilation above, either at deck or sides will remove these vapors."

Q. Now in this exhibit, Libelants' Exhibit 97, the Rules of the National Fire Protection Association, what do you find there?

A. Shall I read all of these?

Q. Call our attention to the part which you consider pertinent.

A. "Ventilation: Any compartment or space in which a motor is located, particularly the lower portion and bilges, shall be provided with ventilation effective to remove all accumulation of flammable or explosive vapor. Tank compartments should be similarly ventilated when practicable." Shall I continue on?

Q. Yes, if it is pertinent.

A. "To meet this requirement, the following is recommended: Where motors and/or tanks are in compartments; permanently open and adequate inlet and outlet ventilating ducts extending to the bilges should be installed; two inlets leading to the wings at one end of the compartment and two outlets from the wings at the opposite end."

Q. The rest relates to motors and tanks not in compartments, does it not?

A. Yes.

Mr. Underwood:

Read the next paragraph.

The Witness:

"Where motors and/or tanks are not in compartments; at least one such duct should be installed in the fore part of the boat and one in the after part. Inlet ducts should be provided with cowls or equivalent fittings." Shall I read on?

(By Mr. Matteson):

Q. Yes, you might as well finish it.

A. "Where feasible, it is also recommended that: Outlet ducts be fitted with wind-actuated self-trimming or rotary exhauster heads; or that power or hand operated blowers be fitted in each inlet duct or exhauster in each outlet duct. If power exhausters are used, motors shall

be of approved explosion proof type installed outside of the ducts."

Q. Now does that statement coincide with your opinion?

A. Yes, sir.

Q. Was there any facility for ventilation in the tank compartment of the Seminole?

A. Not that I could see. except the bottom—what do you call that—when she was a coal burner there was a hole in the coal bunker, and possibly a hole under No. 2 tank in the bottom, and what was overhead I don't know.

Q. This hole in No. 2 tank, what was that?

A. When I looked in there I could see what appeared to be metal under the tanks; all of the tanks, excepting a portion under No. 2 tank, where you could look up and see the concave part of the tank.

Q. That made an opening between the upper part of the—

A. It made an opening from the bottom of the tank compartment; that was in the engineroom where they would shovel the coal out.

Q. That was a little square opening in the forward head of the engineroom compartment?

A. Yes.

Q. That simply led into the engineroom itself.

A. From the tank compartment, yes.

Q. Can you point out this coal door that you spoke of in this picture, Libelants' Exhibit 9?

A. Yes.

Q. That is the dark area with the line drawn from it and with the letter "A" at the top?

A. Yes, leading from the floor up—

Q. Where was this engineroom floor; was it above the skin of the ship?

A. I think the skin of the ship was about 36 inches below the bottom of the tanks, as near as I could judge, and this floor is a little lower.

The Court:

I am afraid I have got the wrong idea in mind as to what the skin of a ship is; what is the skin of a ship?

The Witness:

That is the plating on the bottom; it is the plating on the frame; that is what we call the skin of a ship.

(By Mr. Matteson):

Q. Do you call the bilge part of a ship that part which is under the lowest floor in the ship?

A. Yes.

Q. Then this opening from the engineroom into the space under the tanks, would that he above the bilges?

A. Yes, above the bilges.

Q. Do you consider that the tank compartment was properly ventilated under these circumstances?

A. I don't know what was up above there; that was all blown off; she may have had ventilators up there for all I know.

Q. Assume for the moment that there was a solid roof over the top.

A. Well, any heavy gas in there would come out and go down in your bilges, and as to the ventilation, ventilation of that tank compartment, assuming that it was solid up above, then naturally there would be no ventilation in your tank compartment except this hole underneath there, this coal hole—

Q. My question was, Captain, do you consider that proper ventilation?

A. No, sir, unless you had a couple of ventilators up on deck.

Q. If those ventilators were on deck and did not come below the deck, would that serve the purpose?

A. Well, they might have one at the bottom and one at the top, which would make proper ventilation.

Q. Did you see any evidence of that when you were there?

A. That was all gone when I looked around her.

Q. You spoke of windows in the engineroom. Have you made any measurements of the dimensions of any of those windows?

A. Just the one leading to the alleyway, as I recall it.

Q. How were you able to do that?

A. I got gross dimensions; the woodwork was already burned away; I measured the part of the steel bulkhead that was left.

Q. What were the dimensions on that?

A. 24 by 36.

Q. That is the size of the opening in the plating?

A. In the plate.

Q. In which the window was placed?

A. Yes.

Q. Which was the longer dimension; the upright or the lengthwise dimension?

A. Up and down was the longest.

Q. Where was this hole in the plating, in the side of the plating, with reference to the deck?

A. Right up to the bottom of it.

Q. So the bottom of that opening would be 36 inches from the deck above, is that right?

A. Yes.

Q. I show you this picture, Captain, and ask you if that is a picture you took; did you take that picture?

A. Yes.

Q. What does that show?

A. That is that window there (indicating).

Q. That shows a window?

A. What was a window, yes.

Q. Is this (pointing) in the background of the picture the original state of the engineroom along the way of the alleyway?

A. I believe it is.

Q. It was distorted like this by the accident?

A. That was worse than that; it was worse than that, it seems to me.

Q. Is that what was left of the bulkhead at the time you took this picture, showing the window opening in the bulkhead?

A. Yes.

Q. Is that the opening that you measured?

A. Yes; there seems to be kind of a kink in that there (pointing).

The Court:

Is that a window on the starboard or port side?

The Witness:

Starboard side alleyway.

(By Mr. Matteson):

Q. This window opening that you measured, Captain, was that in the starboard side of the engineroom?

A. Yes, leading to the alleyway.

Q. Was that the only opening in the starboard side of the engineroom leading to the alleyway?

A. Yes, sir.

Q. I show you another picture, Captain, which has been handed to me by Mr. Underwood; do you recognize that?

A. Yes.

Q. Does that show the window?

A. Yes.

Q. Are these two parts that I indicate here and here (indicating) the bulkhead separating the engineroom from the alleyway?

A. Yes, sir.

Q. Separating the engineroom from the alleyway?

A. Yes.

Q. I will mark each of these parts with a cross. Between these parts is that opening or the window that you were speaking of?

A. Yes.

Q. I will mark the corners with the letters A, B, C and D; is that right?

A. That is right.

Q. The alleyway is on the starboard side of that bulkhead?

A. That is right.

Mr. Matteson:

Now I offer this photograph in evidence, if you do not mind.

Mr. Underwood:

No objection. That is why I gave it to you.

(Photograph above referred to was marked Libelants' Exhibit 98.)

(By Mr. Matteson):

Q. Captain Patten, I want to ask you this: In your opinion would it be proper to leave the engineroom of a boat such as the Seminole as you saw it with the skylight and the hatchway closed and the two windows closed, and only the two cowl ventilators open, when laying up for a period of two months or more in the summertime in this climate?

A. Would it be safe?

Q. Yes.

A. You mean safe from explosion?

Q. I asked you whether that would be proper and safe, whether it would be the proper and safe thing to do.

A. I would recommend better ventilation than that.

Q. Do you consider that it would be properly ventilated?

A. No, sir.

Q. What, if any, danger would be involved in that?

A. Well, it would cause—there would be a possible accumulation of explosive gases in there.

Q. Why do you say "possible accumulation of gases in there"?

A. So many slow leaks or seepage and leaky valves.

Q. Assuming that when the boat was laid up no leaks were apparent. Would that make any difference in your opinion?

A. It should be ventilated anyway.

Q. Why?

A. To keep any possible fumes out of her bilges or engineroom.

Q. Assuming that the boat had been laid up in that condition for a period of two months, do you consider that it would be prudent for anyone to go into the engineroom and strike a match or throw an electric switch?

Mr. Underwood:

If your Honor please, I object to that on the ground that it is usurping the function of the Court; after all, that may be the thing the Court has to decide as to whether or not it is negligent.

The Court:

I will overrule the objection.

A. No, sir.

Q. Why not?

A. I don't think it would be prudent if it were closed up for two days to go down and throw a switch without opening the hatches, the windows, and ventilating it.

Q. Why not?

A. Because it is a gasoline boat; there is always the possibility of leaks in gasoline lines. I urge them every day in my life to ventilate your boat before you "tramp"

on a starter. It is not like an automobile, because you have a close compartment in there with possible gasoline fumes down there.

Q. Captain Patten, can you tell us whether or not a knife type electric switch will arc when it is closed, in the operation of closing it?

A. Yes; it arcs in either closing or opening; you get a much greater arc when you pull it open.

Q. As far as gas or gasoline explosions is concerned, Captain, does it make any difference whether the arc is a big one or a little one?

A. No; the smallest spark will set off the proper mixture of gasoline.

Q. Captain, would it make any difference in your answer whether or not you actually smelled gasoline in going into the engineroom or not?

A. Not necessarily; you might have a gasoline mixture that you couldn't deteet with your nose, but if you knelt down or laid down on the engineroom floor, it might be pretty strong.

Q. Why is that?

A. Because it is heavier than the air, and it sinks.

Q. Captain, did you see Mr. Riley while you were at Fort Lauderdale at the time of the fire?

A. Not at the time of the fire, but I think he was there the next day.

Q. Did you meet Mr. Riley at that time?

A. Yes, sir.

Q. Did you have any conversation with Mr. Riley at that time?

A. Just a short conversation; he told me he was Mr. Phipps'—

Q. Answer it yes or no.

A. Yes.

Q. Will you tell us what that conversation was?

Mr. Underwood:

I object to that on the grounds heretofore stated with reference to several conversations.

Mr. Matteson:

I assume it is subject to the final ruling of the Court.

Mr. Underwood:

I also object to it on the ground that it is after the event.

(By Mr. Matteson):

Q. Before you answer, Captain Patten, tell us when that conversation took place if you can.

A. It was the day after the fire or the following day.

Q. Now, Captain, will you tell us what the conversation was?

A. Am I allowed to say what he said?

Q. Yes.

A. I was standing there near the east end of the shed on the ground, and this chap was there and he struck up a conversation and said, "I am Mr. Riley; Mr. Phipps' secretary." I remarked that it was a pretty bad affair about blowing up this Captain", and he said that if he had not been busy that he would have come up with Captain Thomas and this thing would not have happened. We talked about the possible loss there, how many boats were lost; and so on; it was just a few minutes that we talked; there wasn't any great conversation.

The Court:

You make the additional objection that that occurred after the conflagration?

Mr. Underwood:

Yes, your Honor.

The Court:

I will let the ruling stand. If you want to argue that on the final hearing and raise that question, you may do so. The way it stands now I have ruled on it subject to your urging that objection at the final hearing.

(By Mr. Matteson):

Q. Captain, did you observe the condition of these valves constituting Exhibit 11 at the time when they were first found in the Seminole wreck?

A. Yes, sir.

Q. Will you tell us just what occurred when they were found and what you observed?

A. Carl Holm picked this one up and the other one too.

Q. When you say "this one" are you referring to Exhibit 11?

A. Yes.

Q. Just tell us about that.

A. These twin valves and the other two exhibits I think he handed them to me up on the steel wreckage—then we took them over to Captain Pilkington's house where we got tages; somebody suggested that we had better put tags on them for identification, that they might be used at a later date. So I asked Holm if they were tight, and he put a tongue suction on it, and I tested it the other way, and I found that you could suck through it, in fact, blow through it and you could feel it on the other side of your hand.

Q. Was there anything done to determine actually to what extent the valves were open or closed?

A. Before anything was done with them I went to get a centerpunch to mark them, and we couldn't find a centerpunch, so we took a hacksaw and put a hacksaw mark in the gland and the valve stem.

Q. Can you show us the hacksaw mark that you have in mind?

A. Here it is (indicating).

Q. Did you determine at that time in what condition the valves were when they were found?

A. No, we didn't take them apart or anything like that.

Q. I mean with respect to being open or closed.

A. After we found that we could blow through them, that is, by exerting a lot of power, because these had been under water and the packing had swelled—we could turn them about one-third of a turn, which we did, and then we put it back to the original hacksaw mark.

Q. Did you mark them with the hacksaw mark before you turned them?

A. Yes, before we did anything with them.

Q. And by turning it you determined that—

A. That they would open about one-third of a turn.

Q. In other words, from the position you marked with the hacksaw you had to turn the valve about one-third of a turn to the right in order to reach its closed position, is that right?

A. Yes.

Q. With reference to this valve, which is a part of Exhibit No. 2, did you determine whether that was open or closed at the time it was found?

A. Yes, but I don't recall whether we marked that or not. Yes, there is the hacksaw mark on it; there is the hacksaw mark there, but you have got to get a better light than this to see it. On the gland there you can see the hacksaw mark, but you can't distinguish where it is on the stem.

Q. Was it open or was it closed when it was found?

A. This one I believe was open; yes, this one was wide open; there is the mark there is your stem; I have got my fingernail in it and there (indicating) is your hacksaw mark in the gland.

Q. As I understand it, Captain, that was found and marked in a wide open position, is that right?

A. Yes. We made no attempt to change the position of the valves until after we had marked them with the hack-saw blade.

Q. Did you notice anything with respect to the carburetors in the engineroom of the Seminole?

A. No shut-off valves at the carburetors.

Q. Did you notice anything else?

A. No backfire arrestors on the carburetors and the two generators.

Q. Anything else?

A. At one time she had a round glass gauge in her, but that was destroyed by the fire.

Q. Captain Patten, you have mentioned several things here, and now I want to ask your opinion about them: is it or is it not proper to have a round glass gauge for measuring the gasoline in an engineroom of the type of a vessel like the Seminole?

A. No.

Q. Why not?

A. It is subject to breakage.

Q. Anything else?

A. I have noticed that engineers in the past few years put round glass gauges in with a rubber washer which will in two or three months disintegrate from gasoline and that will cause a leak.

Q. Referring to the rules that we have had under discussion, Captain, can you tell us whether under those rules glass gauges are permitted in the engineroom for measuring gasoline?

A. No, sir; they are forbidden.

Q. There is a provision on page 2 of Libelants' Exhibit 24 in that respect, is there?

A. Yes, sir.

Q. In Libelants' Exhibit 97 there is provision (K) on page 48, is that correct?

A. That is right.

Q. And do they support your view?

A. Yes, sir.

Q. Now, Captain, I want to go to the other thing that you mentioned, the shut-off valves at the carburetors. I understood you to say there were no shut-off valves at the carburetors.

A. That is right.

Q. Is that in your opinion proper practice?

A. No; you should have shut-off valves at the tanks and at the carburetors.

Q. Why?

A. You might have a shut-off valve at your tank which would have a slow leak, and you might have some dirt or grit under your float needle valve in your carburetor, and of course in time the carburetor will leak all of your gasoline into the bilges—small leaks, of course.

Q. Do the rules that you have been referring us to contain any regulation with respect to shut-off valves at the carburetors?

A. Yes, and the tanks too.

Q. Refer to Exhibit 24 and tell us where that is.

A. Here it is (pointing).

Q. Where?

A. On page 3.

Q. Will you just read that to us?

A. "That there be a cut-off valve at each tank and at each carburetor."

Q. Can you find a similar provision in Libelants' Exhibit 97?

A. Yes.

Q. Where is that?

A. It is "I".

Q. Will you read that provision you have in mind, on page 47?

A. "Shut-off valves or cocks of approved type, such as those having ground seats or plugs, shall be placed in the supply line from tank. One valve shall be placed as close

to the tank as practicable; another as close to the carburetor as practicable. If shut-offs are of the cock type they shall be spring seated and provided with stops to indicate the open and closed positions."

Q. And the general purpose of these provisions is what?

A. Well, it is a matter of precaution; if your shut-off valve at the tank leaks you will still hold your head of gas at the carburetor; in other words, no carburetor in my opinion is leak-proof.

Q. Did you notice anything as to whether or not there were drip pans under the carburetors?

A. No, there was no evidence of any drip pan under any of the four carburetors.

Q. In your opinion was that proper practice?

A. No.

Q. Why not?

A. As I stated a moment ago, it has been proven by tests that there is no carburetor that is actually drip-proof; any carburetor, if it gets dirt in the needle valve or the float, will leak; therefore these screen drip pans are set under the carburetors to catch any possible small leak.

Q. What is the importance of that?

A. So that if you have a bowl of gasoline in your carburetor and the float is hung up, the contents of that bowl will seep through into your drip pan and remain there until such time as you start your motor, and then the motor will suck up that gas and clean out your drip pans.

Q. In other words, it prevents the dissemination of gasoline in the engineroom?

A. Yes; that is a temporary safety pocket for the gasoline until you wish to start your motor.

Q. Is there any provision in these rules, Exhibit 24, on that point?

A. Yes.

Q. Where is it?

A. Here (indicating).

Q. Read it.

A. "That drip collectors be well fastened under all carburetors. Openings should be properly screened with 40 mesh brass. A venturi pipe should lead from the bottom of this pan to the manifold, so as to keep this pan, as nearly as possible, free from gasoline at all times."

Q. What is this pipe leading back here (indicating)?

A. That is what we call the drain line; as soon as you start your motor it starts to sucking in the gasoline and—if there is any accumulation of gas in this drip pan and you start your motor, it is sucked up.

Q. Is there a provision in these rules, Exhibit 24, on that point?

A. I just read that.

Q. Is there a provision in these rules, Exhibit 97, on that point?

A. Yes.

Q. What page?

A. Page 49.

Q. Read it.

A. "All carburetors shall have integral therewith or properly secured thereto an approved drip collector. This shall be drained by a device for effectively returning drip to engine intake or discharging it overboard."

Q. Captain, one more thing. I call your attention to Exhibit 17, this device that has been referred to as a strainer, and ask you to look at the bottom of that device and tell me what you observe.

A. This (indicating) threaded end of the pet cock has evidently been broken off.

Q. Is that in your opinion a proper way to close a gasoline strainer?

A. No; there should be a solid plug in there.

Q. What is the difficulty when you put a pet cock or other threaded connection there?

A. It is well known that pet cocks work loose, and on a gravity feedline that would allow all of your gas to run into your bilges.

Q. How do you know that this is a threaded connection and not a solid plug?

A. Because a solid plug is not made that way; this is just a little pet cock that has been broken off there (indicating).

Q. And how can you tell that this was a pet cock?

A. If that was a plug it would be solid metal.

The Court:

How does the solid plug operate?

The Witness:

This stands right up here; this would be all right if you were out on a farm, and if your engine started to sputter—

The Court:

This (indicating) is the pet cock?

The Witness:

Yes. In my business, when I go on a boat, I recommend that the manifold pet cocks be solid brass plugs, that they have solid brass plugs in there, and if you have a solid plug in there all you would have to do would be to—

Q. You regard the use of a plug such as you have described as a safety precaution, do I understand?

A. Yes. If somebody went in there they would have to take that plug and it would cause a lot of manual labor, because the plug won't open itself.

Mr. Matteson:

That is all.

By Mr. Botts:

Q. Captain, referring to this exhibit No. 2, as I understand it this stem here is the shut-off valve between the tank and the manifold?

A. Yes, sir.

Q. The types running at right angles were a portion of the manifold?

A. Yes.

Q. So that if this valve, exhibit 2, was open then the gasoline supply from that particular tank would go into the gasoline manifold, is that correct?

A. Yes, sir.

Q. Now, Captain, it takes about two and one-quarter turns to open it and it takes about two turns to open it until it is in the position shown by the hacksaw marks?

A. Yes.

Q. And it was open practically to its capacity when you found it?

A. Yes, very close to it.

Q. Suppose the valve from that particular tank was open practically to its capacity, as you have described, and these two shut-off valves from the drain-line were open, as you have indicated, about one-third of a turn, what would be the result with respect to the gasoline, if any, in the tank controlled by that shut-off valve?

A. Well, you would have a slow leak through your drain-line.

Q. Until eventually all of the gasoline in that tank would leak out into the bilges?

A. Yes, sir.

Q. The gasoline would run down to the level of the outlet pipe, I mean?

A. Yes, as far as it could run out; as far as it would and could run out.

Mr. Underwood:

May I ask if Mr. Botts is changing his testimony. The Witness said the gas would run into the bilges, and now Mr. Botts—

The Court:

You can cover that on cross examination. The question has already been answered.

Mr. Botts:

That is all.

Cross Examination.

By Mr. Underwood:

Q. Captain, have you calculated how fast gasoline could come out through the drain valves, such as these, open a third of a turn, as you say these were?

A. Yes.

Q. How fast?

A. That could only be done by actual test.

Q. It depends on the head, of course?

A. Yes, and on the gasoline, of course.

Q. Whether it would be slow would depend on what you would call slow?

A. Yes.

Q. And depends on what you would call fast?

A. Yes; you would have to do that by an actual test.

Q. You couldn't figure that otherwise without an actual test?

A. No.

Q. You don't know how to do it?

A. No, I don't. There is no possible to figure how far your valve is above the seat.

Q. You say it was open one-third of a turn, is that right?

A. Yes.

Q. Are you sure there is a pet cock in this strainer on Exhibit 17?

A. All strainers I have ever seen had pet cocks.

Q. Do you say that the use of a pet cock is bad?

A. Yes, on gasoline lines.

Q. Do you find anything in your rules about that?

A. Yes.

Q. Look at the rules and see if you can find anything about a pet cock on a strainer being bad practice. Look on page 47 of the N. F. P. A. 1930 rules, Paragraph (i).

A. Will you turn to page 48k; that forbids the use of try-cocks which is the same size and type of cocks which is on the bottom here.

Q. That is talking about glass gauges and try-cocks for determining the level of gasoline in tanks, isn't it; isn't that right?

A. Right, yes.

Q. It isn't talking about a petcock in a line, is it?

A. I am talking about petcocks.

Q. But paragraph K on page 48 is not talking about petcocks in the line, is it?

A. No.

Q. Isn't it a fact, Captain Patten, on page 47, paragraph (1) says, "shut-off valves or cocks of approved type, such as those having ground seats or plugs, shall be placed in the supply line from tanks". Isn't that what that says?

A. Yes, sir.

Q. Doesn't it approve the use of cocks of an approved type?

A. A petcock is not a plug cock.

Q. Look at that again; it says, "shut-off valves or cocks of approved type". Doesn't that approve the use of cocks in the gasoline line?

A. Of approved type.

Q. Yes. Do you know what kind of a cock was in that thing?

A. I know what these standard strainer cocks are on strainers.

Q. Do you know what kind of a cock was there before the fire?

A. I believe I could describe it.

Q. Do you know; did you ever see it?

A. No, sir.

Q. What would be the effect of vibration on such a petcock as you have in mind?

A. Might wiggle it loose.

Q. What would be the effect of vibration on a plug?

A. A spring plug, it wouldn't.

Q. How about an ordinary plug?

A. It is possible it will wiggle it loose.

Q. How about the petcock of approved type?

A. On a gasoline line?

Q. In that strainer.

A. A spring cock that has a spring at the base of it, I would approve of that.

Q. Would vibration affect such a plug,—such a petcock?

A. Not with a spring.

Mr. Matteson:

If your Honor please, I object to Mr. Underwood continually referring to a petcock, as if he got it out of Rule (i). I don't understand that refers to petcocks, at all.

Mr. Underwood:

The witness can take care of himself.

Mr. Matteson:

Well, I don't think you ought to try to mislead him.

Mr. Underwood:

I am not.

Q. Now, Captain Patten, if you have all four of these tank valves open, and these two drain valves open a third of a turn, what is going to happen to the gasoline back in the tanks?

A. What do you mean, these drain lines?

Q. These two drain valves, Exhibit 11?

A. What is going to keep it back? Nothing that I know of.

Q. Run right out, won't it?

A. Yes.

Q. If those valves had been left open, if those four tank valves had been left open on the 16th of April, 1935, and the two drain valves had been left open a third of a turn at the same time, there wouldn't have been any gasoline left in those tanks on the 24th of June, would there?

A. That is depending on the amount of leakage.

Q. Do you know the capacity of those tanks?

A. 2200.

Q. Gallons?

A. Yes, sir.

Q. And do you have any doubt in your mind; do you have any thought that there would still be any gasoline in those tanks, above the level of the draw-off valves, if all four tank valves were open and the two drain valves were open a third of a turn, after that period of time?

A. It is quite possible.

Q. You think it is?

A. Yes, sir.

Q. That is your opinion as an engineer, is it?

A. It is. A third of a turn is really,—your valve is cracked, it isn't wide open by any means.

Q. You haven't conducted any experiment to ascertain that?

A. No, I could have if I could have got hold of these drain lines.

The Court:

Was your answer "quite possible that it would not have drained"?

A. No, it wouldn't have drained,—depending; that is all depending on how much of an opening was in that drain valve.

Q. In your visits to the Seminole did you see any drip pans under the gasoline tanks?

A. No, sir; I didn't.

Q. Do you say there were none?

A. I didn't see any.

Q. Well, you stuck your head through this little bunker hatch, didn't you?

A. No.

Q. I thought you said you did.

A. No, I went around forward, through the passageway, up forward and stuck my head underneath the tanks.

Q. From the forward end?

A. Yes; I never had my head in that bunker.

Q. Well, you stuck your head under the tank from the forward end and had your head in the old bunker space, or below it, didn't you?

A. I don't know what her bunker was; it was a coal bunker, but I imagine it was level with the fireroom floor.

Q. Did you stick your head in the space under the tank?

A. From forward, yes.

Q. And did you see any pans?

A. No, I didn't.

Q. You saw the four tank bottoms, didn't you?

A. A minute ago you were speaking of drip pans under the carburetor as I understood it.

Q. I am talking about gasoline tanks. Did you stick your head in the space under the gasoline tanks?

A. Yes.

Q. Did you see any drip pans or pans of any kind under there?

A. No, sir.

Q. Did you say there were none?

A. I did not say it; I said I didn't see any.

Q. Well, now, Captain, you say you are an experience man. Would you recognize a drain pan if you saw one?

A. I would if I saw one.

Q. Could you be mistaken about that?

A. No. I say I didn't see any drip pans, or any pans under that tank; not the tank I could see; I could only see the bottom of one tank.

Q. What kept you from seeing the bottom of the other tanks?

A. There appeared to be sheet metal under those.

Q. Not a pan, but some metal, is that it?

A. Sheet metal, yes. I never put my knife into it to see what it was, but I imagine it was steel sheeting.

Q. You don't know about that?

A. No, it had every appearance of being steel.

Q. Now you have talked about drip pans under the carburetor. The kind of a device, I understand you mean, is something that gathers the drips from the carburetors and holds it there, until you start the motor, and that sucks the drips back in?

A. Providing it has a drain from the bottom of the tank into your manifold; not otherwise.

Q. That Venturi pipe?

A. Yes.

Q. And you say the advantage of that is that it has a gauze screen over the intake?

A. No, over the top of the pan.

Q. Over the top of the pan?

A. Yes. Through which fire cannot get, is that,—not through 40-wire gauze.

Q. Similar to a miner's lamp?

A. Yes.

Q. Now, what happens if the leak continues until capacity of the drip-pan is reached and exhausted?

A. Runs into the bilge or on the engineroom floor and finally into the bilge.

Q. What is the capacity of the ordinary drippan of that type under a carburetor?

A. Of a generating engine, or a big motor?

Q. Of a motor such as this vessel had?

A. Under the main motor usually about from three inches deep, by six, by ten; perhaps holds a quart.

Q. So that after the carburetor leaks a quart, you have a leak right down in the bilge anyhow, is that right?

A. That's right.

Q. So if these carburetors were dripping for sixty days it wouldn't have made any difference whether there was a drain pan under the carburetors or not, would it, Captain?

A. It would, up to the time that drippan was filled to capacity.

Q. Then it would go right down to the bilge anyhow?

A. Yes. A drippan is only for a small leak.

Q. Of short duration?

A. Yes.

Q. You don't know whether the carburetors on the Seminole leaked or not prior to the time of this fire and explosion?

A. No, sir; I do not.

Q. You don't know whether there was any leak in the Seminole do you?

A. In the gasoline lines?

Q. Yes.

A. Results prove it.

Q. You don't know from your observation that there wsa any leak, do you?

A. Yes, that drain line leaks; it shows that big ground joint, that wouldn't hold gasoline.

Q. Well, you said that the drain valves were open?

A. Yes.

Q. Well, let's leave that out for the moment. Apart from the gasoline that got out through the drain line valves, if any, you don't know of any leak in that vessel, do you?

A. I wasn't there until afterwards.

Q. No; and gasoline that came out of that drain valve, if any did, was ample to account for this explosion, wasn't it?

A. Take very little to blow her up.

Q. What is the proper kind of a washer for a glass gauge on a gasoline tank?

A. On a gasoline tank? I don't approve of any kind of a glass gauge on a gasoline boat. For steam—

Q. Suppose you have a glass gauge, what is the best kind of a washer you can use on it?

A. Rubber, they should not be on a gasoline boat.

Q. Suppose you have one on there, what is the best kind of a washer to use? The best kind of fitting to fit it with?

A. If I had one on a gasoline boat, I would remove it and plug it.

Q. We understand that, let's go on from there. What is the best kind of a fitting you can use?

A. On a glass gauge?

Q. On a glass gauge on a gasoline tank?

A. I won't admit that any kind of a fitting is good on a glass gauge on a gasoline boat.

Q. None whatever?

A. None whatever.

Q. Now, what is the best, or the least bad if you would rather put it that way.

A. Gauge?

Q. Fitting?

A. I won't admit that any fitting connected with a round glass gauge is safe on a gasoline boat.

Q. I haven't asked you that, Captain Patten; can't you understand my question?

A. I understand it.

Q. What fitting is the least vicious on a gasoline—on a glass gauge on a gasoline tank?

Mr. Matteson:

What do you mean by the fitting?

A. It is all vicious, any part of a glass gauge on a gasoline boat.

Q. You said something about a rubber washer; what kind of a washer is better than a rubber washer, or, is a rubber washer as good as you can get on a glass gasoline gauge?

A. Not on gasoline.

Q. What is the better kind?

A. Well, pack it with cotton.

Q. Is that the best?

A. Leather.

Q. Is that still better than cotton?

A. I should think so, yes.

Q. And is there anything better than cotton?

A. Fibre.

Q. And is there anything better than fibre?

A. No, not that I know of.

Q. That's the best?

A. Yes.

The Court:

That is packing for what?

Mr. Underwood:

The glass gauge on a gasoline tank.

The Court:

I understand that; packing it where?

Mr. Underwood:

At the top and at the bottom of wherever it is connected.

A. That is the gland which holds the water or gas tight.

Q. Are you an electrician?

A. Oh, I run some wires, yes, sir; I am not practical electrician.

Q. Ever wire a boat?

A. Yes, I have done some wiring on boats, that is straight wiring, not around the switchboards though.

Q. Sort of a domestic electrician, like I am?

A. Yes, I can put a plug in.

Q. Does it make any difference as to the arc you get when opening or closing the knife switch, whether the current be direct or alternating?

A. Well, on all boats—

Q. Do you know whether it makes any difference whether the current is direct or alternating?

A. That, I couldn't say; I am not electrician enough for that; but most boats—

Q. You have answered my question, Captain Patten, thank you. Did you observe how far down the bulkhead went, that is between the tank compartment and the forward end of the vessel?

A. I don't just understand that; what do you mean?

Q. You remember you put your head under the tanks from the forward end?

A. Yes, sir.

Q. Did you put your head under the bottom of that forward tank compartment bulkhead?

A. I did not; I believe it was about 36 inches; I took a yardstick, I got down in that debris; might be a few inches more than that.

Q. You mean it is approximately 36 inches or a little bit more from the bottom of that forward bulkhead, down to the skin of the ship?

A. Yes; it might be 40 inches; a lot of dirt and debris in there.

Q. Did you notice how far down the after window of the tank compartment went?

A. No, I didn't.

Q. Did it go the same distance, or further, or not so far?

A. It would be some job to get in there.

Q. Do you know?

A. No, I don't.

Q. Do you know whether the bilges were open from the forward end of the ship to the after end of the engine room?

A. I believe they were.

Q. How about all the way aft, through the after part of the vessel, too; you know about that?

A. I don't believe it is a water tight bulkhead; it had limbers in there.

Q. You said something about it being your opinion, Captain Patten, that you ought to use copper tubing, is that right?

A. That's right.

Q. The NFPA rules don't require copper tubing, do they?

A. All rules I have read of for years, require copper tubing on gasoline line on boats.

Q. You say that the NFPA rules for 1930 require tubing,—copper tubing?

A. I think you will find it is all copper tubing.

Q. Do you say that?

Mr. Matteson:
Do you have the Exhibit, or the witness?

Mr. Underwood:
I have it.

Mr. Matteson:
This is what he is referring to Captain.

A. Oh, what page?—yes, sir.

Q. What do you mean by "yes, sir"?

A. All fuel piping to be seamless drawn annealed copper tubing.

Q. Do you want to stop there?

A. Or IPS copper pipe.

Q. Isn't it a fact that the rules do not require copper tubing?

A. Well, copper pipe is copper tubing of heavier grade.

Q. Isn't it a fact that the rules do not require copper tubing?

A. That is quite right. I would pass copper pipe.

Q. And isn't it a matter of fact that the pipe referred to is standard pipe?

A. Yes.

Q. With threaded fittings?

A. Yes, you can't thread tubing

Q. So that the copper pipe that the 1930 rules permits, is threaded pipe?

A. Yes.

Q. Is that right?

A. Right.

Q. And the 1937 rules make the same provision, don't they?

A. I will have to look it up.

Q. Look at paragraph 22.

A. That is right.

Q. That is right, isn't it?

A. Yes.

Q. Captain, you said something about the valve on Exhibit 2, which is a tank valve, according to the tag, which bears your name, and attached?

A. Yes.

Q. Do you know whether that valve was open or shut?

A. Open.

Q. At the time the fire occurred?

A. Open, there is a hacksaw mark on it.

Q. Is it your testimony that all the valves were open?

A. No; I testified that this valve was open.

Q. Do you know about the others?

A. No, only from hearsay.

Q. Of course, you don't know whether there was any support for this drain line, or not, on the Seminole before the fire, do you?

A. No, not before; but not after.

Q. Well, if there was a wooden support, that was gone when you saw the Seminole?

A. No doubt about it.

Q. Now Captain you have said that too many fittings were employed in making up the connections between the two valves marked Exhibit 11. You don't know whether they leaked prior to this fire, or not, do you?

A. It is possible,

Q. You don't know whether they did, do you?

A. If those, the seats,—I don't know what the other one is. I didn't have that part, but if the seat was in the same condition at the time of the fire as it is now, it is bound to leak.

Q. You don't know whether these valves leaked or not, do you?

A. No.

Q. If the four tank valves were open and the two drain valves were a third open, and the tanks had gasolines in them, those openings alone could account for enough gasoline and vapor to cause an explosion, could they not?

Mr. Botts:

I object, because there is no,—I think counsel inadvertently said, the valves a third open,—instead of being a third of a turn open. Did you intend that?

Mr. Underwood:

No, I did not; a third of a turn open; thank you, Mr. Botts.

A. Let's get it straight; how much gas was in the tanks?

Q. None; but assuming that there was gasoline in the tanks.

A. Let's assume how much.

Q. Any amount you like.

A. All right.

Q. And assuming that the two tank valves were open.

A. Yes.

Q. And assuming the draw-off valves were open a third of a turn; leakage from that could account for enough vapor to cause an explosion, isn't that right?

A. Right.

Q. Do you know what the figures 125 and 150 mean on the two valves marked Exhibit 11?

A. That is the water pressure which they will stand,—built to stand.

Q. You confine it to water pressure?

A. Water or steam.

Q. That includes steam pressure, doesn't it?

A. Yes.

Q. Do you know what the pressure on such a valve would be, located, as you understand it, in the Seminole, with her tanks full?

A. A little less than half a pound per foot elevation.

Q. And if the tanks were eight feet high, that would be about four foot pressure?

A. A shade under that that.

Q. As compared with 125 pounds and 150 pounds, for which the valves were made: Right?

A. Yes.

Q. Speak up, Captain. The answer was, "Right"; did you get that?

A. I say, yes.

The Court:

What was that question?

(The preceding testimony was read by the reporter.)

Q. Do you say, Captain Patten, that it is improper to draw off gasoline in any engine room at any time?

A. Yes, sir.

Q. What is that little device for?

A. Which?

Q. The strainer on Exhibit 17?

A. That is to separate the water from the gasoline, in condensation.

Q. What is the hole in the bottom for?

A. There wasn't any hole when the petcock was on there.

Q. What is the petcock for?

A. To drain it off.

Q. Drain what off?

A. The water.

Q. Can you always stop at the water? You always get some gasoline when you do that, don't you? Captain? —Don't you?

A. Yes.

Q. That is not for bidden, is it?

A. I don't know any rule against draining off your—draining that off.

Q. It is a necessity, isn't it?

A. Yes; your engine, if she is getting water, will sputter and you have to drain the water out of the strainer.

Q. In other words, that is something that, in the reasonable operation of the motors, you have to be able to do; is that right?

A. Yes, an engineer would naturally drain that off when there is ventilation in the engine room.

Q. Wouldn't he naturally drain it off when his motor was sputtering?

A. Not if he is a careful engineer.

Q. You think he would open the windows to do that?

A. Yes, if he knew his business he would.

Q. But he would do it when his engine was sputtering, and get the best ventilation that he could?

A. That is possible, but there isn't ventilation when she is running.

Q. You said as I understand it, that the angle between the plug and the seat, on the valve marked Crane 125, on Exhibit 11, is not to your liking?

A. Yes, sir.

Q. Right?

A. Right.

Q. Too flat?

A. Too flat.

Q. Is there anything in your rule book anywhere that says what that angle has to be?

A. Not that I know of, so long as the one who makes the installation, puts the proper valve to handle the gasoline.

Q. Now, I would like to ask you a question and ask you to answer it either yes or no: is there anything in either of these rule books that have offered here in evidence today, that says anything about what the angle shall be?

A. I don't believe there is; that is left to the experience of the builder and the installation man.

Q. And that is a matter of judgment?

A. Right; and a man with good judgment wouldn't put those valves in.

Q. So you say?

A. Well, that's my opinion.

Q. How closely did you examine the gasoline tanks of the Seminole?

A. Pretty close.

Q. Can you tell me the detail of the construction of the bottom of those tanks?

A. A concave bottom,—crown, as we call them.

Q. And how were they put together?

A. Riveted.

Q. Can you draw me a little diagram showing the sides of the tanks and the metal that went into the bottom and how the two were put together?

A. Yes. (Witness drawing.) These aren't to scale, you know.

Q. We will agree that it is not to scale.

A. That drain line was four and a half to there.

Q. Witness draws diagram and indicates that the drain valve was four and a half inches,—the center of the drain valve was four and a half inches above the bottom of the edge of the tank.

A. Yes, that is right; and there was a lap seam with rolled rims.

Q. At the side?

A. At the side, yes.

Q. Now Captain, down here where the bottoms and the sides were riveted together, what was the distance during which those two pieces of metal were adjacent to each other, and riveted together, before the bottom left the side?

A. You mean the distance of the rivets from that edge?

Q. No; I mean the distance between the bottom edge of the metal and the pan where the tank separated from the side and began to make the V.

A. I will say about an inch and a half.

Q. Did you measure it?

A. Only with my eye.

Mr. Underwood:

May we have that marked?

(Said paper was marked Respondents' Exhibit M for identification.)

Q. Do you understand me, Captain Patten, what I was asking you is over how long an area were the bottoms and the side contiguous?

A. Touching?

Q. Yes, before they separated.

A. It wouldn't be more than two inches.

Q. That is your measurement by eye?

A. By eye, yes, sir; and by the curve of the convex bottom.

The Court:

Hasn't the bottom of the tanks been described at various times as concave, and not convex?

A. I never can keep the meaning of the two words straight; I know they went up like that.

Mr. Botts:

All the witnesses have said the bottoms went up, and the tops were a little bit crowned on the top, but the bottoms have all been described as being convex,—that is, swinging up from the bottom.

Mr. Underwood:

That is concave. * * *

Mr. Botts:

Anyway it curves up so that it is higher in the center than anywhere else.

Q. I think you said, Captain Patten. That after 14 years of use those tanks would be on the verge of the end of their usefulness; is that right?

A. I believe so, yes, sir.

Q. You think they would just about be beginning to go to pieces?

A. They would be pretty badly pitted down in that V section there, that you just drew.

Q. And they might or might not begin to leak?

A. It is quite possible they will leak before long; should have leaked by this time, according to my estimation of that type of can, or tank.

Q. Did you measure the thickness of the metal?

A. No, I didn't measure it, but I judge it to be about eight pound plate.

Q. How thick?

A. About six pound plate, I guess; ten pound is quarter inch; it is less than quarter inch plate.

Q. You think this was less than quarter inch, do you?

A. Yes, I knew it was less than quarter inch.

Q. Have you got any note on that?

A. No, sir.

Q. When did you make the observation?

A. Right after the fire, and at the time we were all up there.

Q. Without any note, you now remember that this was less than a quarter of an inch thick, is that right?

A. Yes; that's right.

Q. Do you say that those tanks could not be tested, in slatted as they were?

A. No, I didn't say that; they can be tested, but not examined.

Q. What you said was, they couldn't be examined.

A. That is right.

Q. You make the distinction between examining and testing?

A. Yes.

Q. It wouldn't be difficult for an engineer to test those tanks, would it?

A. No, I wasn't asked anything about testing a tank.

Q. And it is a fact that it would not be difficult to test those tanks?

A. No, certainly not.

Q. You have in mind a pressure test, I take it?

A. Yes, hydrostatic test.

Q. You were shown a photograph which showed No. 2 tank out of position. Do you know when that tank got out of position?

A. At the time of the explosion.

Q. Of course you weren't there; that is your opinion?

A. Pretty close to it.

Q. And is it your opinion that the effect of that movement of the tank was to shear off the valve?

A. I believe so; it shows every evidence; the opening in the tank is above the opening in the bulkhead hole.

Q. And that would open wide the opening where the valve joined the drain line, the manifold, would it not?

A. That is right.

Q. And if the other three tanks were still attached to the manifold, with their valves wideopen, the gasoline could freely run from that hole?

A. That's right.

Q. Could it not?

A. That is right.

Q. And that hole precedes the drain line valves on the manifold, does it not?

A. Now, I want to be right in my answer; just explain that—

Q. Gasoline from No. 1 tank—

A. No. 2.

Q. Gasoline from No. 1 tank would reach the hole made by the breaking off of No. 2 tank, before it would reach the drain line valve?

A. Yes, it would reach the—not the hole in the tank, but the broken off nipple in the valve.

Q. Which had been connected with No. 2 tank?

A. Yes.

Q. Have you been aboard vessels that have had fires?

A. Yes.

Q. You said something about Abel's body would have been consumed except for the concrete; what did you mean by that?

A. Well, when they got all the water pumped out and they scraped all the burned wood and debris away, when the fellow was scraping, scraped some of his intestines out with his fingers; it is not very nice to describe.

Q. I don't mean for you to go into details; I just mean, your general thought on the subject.

A. Well, they scraped all down along until they come to his body, and then on top of his body was this big slab of concrete, which more or less protected his body from the intense heat.

Q. That is what I am getting at. Did that lead you to some conclusion as to the intensity of the heat?

A. Why yes, it did.

Q. What did you think about that?

A. Why, I figured if that concrete hadn't been over his body, his whole body would have been consumed.

Q. Did you think it was a particularly intense heat?

A. Well, gasoline is a pretty hot fire.

Q. Do you think this was a hot fire.

A. I know it was a hot fire.

Q. All over the boat, all over it?

A. No, I think the worst of the fire was in the engine room and the forward bilges.

Q. Including the tank compartment, I suppose?

A. Well, I am including that, that's between them.

Q. Now let's talk about this spring, of doubtful substance; just where was it?

A. Let me have your blueprint, I will put a spot on it; it is hard to describe; looking down—

Q. You better make the letter "s" when you write.

A. That appeared to be somewheres in about there; that's as near as I can judge it.

Q. It looks more like a dot than a letter s, to me, Captain. Wait a minute, I will draw a line and mark it "Spring".—we will be here until Summer with this thing. —Now how long did you observe that—I might say this is on Exhibit A.

A. Three or four minutes before one of the other boys plugged it.

Q. You saw it—

A. Might have been five or six minutes.

Q. You saw it welling up during that period?

A. It welled up I would say, maybe an inch, inch and a half, it appeared. Let me describe it this way:

Q. A good substantial flow, was it?

A. No, it wasn't flow enough to squirt a stream up. It was the same as if you had an open hose under level water, and would take just force enough to push it up like a mushroom; that's the nearest I can describe it.

Q. How big an area did that crown cover?

A. From where I was standing it looked to be about six inches the size of a saucer.

Q. And how far above the level of the surface of the liquid in the boat?

A. Say an inch to be safe; inch and a half.

Q. Did you go down—

The Court:

Let me get that; that inch and a half was what?

Mr. Underwood:

The vertixal distance above the level of the surface of the liquid in the boat.

The Court:

I understand.

A. Same as if you put a saucer upsidedown on the table.

Q. Where were you standing when you saw it?

A. Right by the rail of the Seminole.

Q. What were you standing on?

A. On the rail.

Q. You were on the Seminole?

A. Yes, what used to be the rail.

Q. On the edge of one of her side plates?

A. That is right.

Q. What did you use for lights?

A. Had a flashlight; we all had flashlights there.

Q. Played it on the spot?

A. Yes. Really how we come to find it, we was looking to see how deep or how low the water was getting, and see this, what we call a spring bubbling up; that's how it was found.

Q. You didn't go down in to trace the spring and its source?

A. No; I would have to have hip boots to go down there.

Q. What was the level of the water at that time?

A. Above the engine room deck beams, I should say there was maybe three foot of water above that.

Q. Just what do you mean by the engine room deck beams? Do you mean the beams on which the floor boards sat—rested?

A. Yes, perhaps two and a half to three feet above that. You must realize at that time we were looking for a body, we didn't take all these measurements.

Q. How did the level of the water at that time compare with the top of the opening into the tank compartment? I think it might be easier for us to visualize, than to—

A. You could see part of that opening, the upper half, I would say.

The Court:

Has anyone asked either Mr. McCoy or Captain Patten, or any other witness, where was this so-called spring, with reference to the holes that were used in pumping out?

A. Oh, that was quite a distance;—you want me to answer?

The Court:

Yes, sir.

A. First they put the suction end of the hose, with the strainer, down on the engine room floor, but they couldn't get it, there was some obstruction there. So then I believe they pulled it out and put it down the passageway where they could slide it down under a lot of this debris. I know they tried in two or three places, to get a better suction.

The Court:

And where was the exhaust,—where did they pump out?

A. That was on the float, about 15 feet away from the suction; perhaps 10 feet away from it; that wouldn't affect the water inside of the hull.

Q. The suction, Captain Patten, you have said, was under a passage; is this the passage that you referred to?

A. This is the passage; of course all of your floors were burned off.

Q. You indicated a passage that ran along the starboard side of the engine room?

A. Yes; only one passage in there; that is abreast of the engine room.

Q. And the suction was under there?

A. They tried it in here, but they got in that pile of old Edison batteries and they couldn't get it down deep enough.

Q. So they put it down here?

A. No, they put it down this way, in there.

Q. Indicating from the outboard, inboard?

A. Yes, sir, slid it underneath there,—that bulkhead. They tried it in possibly four different spots, to get the deepest spot.

The Court:

Just a moment ago back there, Mr. Bryant, before I asked that question, or these questions, read the answer just before that. (Preceding testimony was read.) That question, opening into the tank compartment,—what opening did you refer to?

Mr. Underwood:

We were talking about the square, the rectangular opening through which they used to shovel coal. That may not have been as close as it should have been, but I think the witness and I understood each other.

A. Yes.

Q. Did you see the plug that was put into something that was—in order to stop this leak,—this spring? Did you see the plug?

A. I seen them put it in.

Q. How big was the plug?

A. Well, a sliver of wood with a piece of rag around it: I should say possibly, might have been from a quarter of an inch to half an inch.

Q. Of the wood, in diameter?

A. It looks that way; how much it compressed getting into that pipe, I don't know; but it stopped the leak to a great extent.

Q. Now you have told us about a pump, and some gasoline coming out of the discharge. What is the size of the pump?

A. I didn't measure it, but I should say it is a three inch pump, possibly four, but I don't think so.

Q. You mean a three inch discharge?

A. Yes.

Q. Or four inch discharge?

A. Either a three to four inch.

Q. And what was the size of the intake?

A. About four inch.

Q. And did you know anything about the bore or stroke of the pump, or the speed,—oh, this was a centrifugal pump?

A. Centrifugal pump.

Q. Pardon me. Do you know what its capacity was?

A. No.

Q. How long did you see that pump pumping a mixture of gasoline and water?

A. All of an hour and a half; I didn't time it; but I was there until they finished.

Q. And it was a pumping a mixture of gasoline and water all this time?

A. Not at first, but as soon as we got into the gasoline, it was very strong.

Q. How long was it pumping a mixture of gasoline and water?

A. I will be safe to say a full hour, possibly longer.

Q. And do you want to tell me what percentages of density represented gasoline and water? Was it 50-50 or 90-10—or what?

A. Strong enough to give you a headache.

Q. Well, how much does it take to give you a headache?

A. I really did have a headache; I went to windward of it to get some fresh air.

Q. Well, you were there, Captain Patten, and you say you saw a stream of water which was in substantial part, gasoline?

A. Yes.

Q. And I appreciate that you can't calculate it to a nicety, but I do want your best judgment on it.

A. I would only have to guess, and that would be an awfully poor guess. It was a very strong mixture.

Q. Going on for an hour?

A. Yes, we smelled that gasoline for an hour.

Q. Well, now, let me make sure about this; did you just smell gasoline for an hour, or do you say that the

pump was pumping a mixture of gasoline and water for an hour?

A. I was right there and smelled that strong mixture for over an hour.

Q. Out of the pump, now?

A. Out of the pump.

Q. No mistake about that?

A. Positively. If you went to the windward side of that barge, you couldn't smell the gasoline.

Q. Was this before or after you saw the spring?

A. About the same time; we were pumping a mixture of gasoline at the same time we found this spring.

Q. Well, now you saw the spring after the water receded somewhat inside of the boat?

A. That is right.

Q. How long before you saw the spring, had the pump been pumping gasoline and water?

A. I couldn't answer that question intelligently.

Q. Well, you were there.

A. I know, but I wasn't timing any of these things; we were looking for a dead man.

Q. You weren't looking for the body while you were pumping, Captain Patten?

A No, but that was our objective.

Q. Your objective in pumping was to get down to the body, but you weren't looking for the body at this time?

A. No, that is quite right.

Q. Now, how long was it?

A. I couldn't answer that question.

Q. Was it half an hour, or an hour, five minutes?

A. Sometime before we found this spring, every few minutes, we would take a searchlight, one of us, and look down into the dark hull and see how far the water had receded, by a mark on the bulkhead, and in casting the searchlight around, the spring was discovered.

Q. You said, I think that the other vessels were all submerged and burned to the water line, except the three?

A. There was a schooner—

Q. Well, is that right?

A. Yes, that's right; a sloop, a schooner, and a cabin cruiser.

Q. Were you aboard any of the other vessels in Pilkington's yard, prior to the fire?

A. No, except the steel barge.

Q. Then of course, you don't know whether any of the other vessels had gasoline in their tanks, or not?

A. No, I don't.

Q. Well, assuming that one of them did, you don't know what became of it, do you?

A. No.

Q. Whether it blew up, or sank, or leaked out on the surface of the water, during the time the pumping was going on from the Seminole? You don't know about that, do you?

A. Things were—the time we were pumping in the Seminole, things got kind of quiet, except that some of the tops of these piling were still on fire.

Q. Well, now, you—the occasion of your going to the basin that evening, was the telephone call that you got?

A. Yes, sir.

Q. And that was from an insurance agent?

A. No; he called up first, I believe, or he had—wait a minute, I think Mr. Miller called up Hunter Lyons first, to recommend him a man, and then Mr. Miller called me up.

Q. You got a call from an insurance agent?

A. Possibly.

Q. On the evening of the fire?

A. —told me about it.

Q. Is that right?

A. I think that's right.

Q. You testified so this afternoon, didn't you—or this morning?

A. That is right.

Q. And that evening you went to Pilkington's?

A. Yes.

Q. Had a conversation with Mrs. Pilkington that evening?

A. Yes.

Q. In which you inquired of her the names of all the other boats?

A. That is right.

Q. And your purpose in making that inquiry was so that you could notify the insurance companies interested in those boats?

A. I always do that.

Q. Well, that is what you did that night, isn't it?

A. Yes, after the meeting.

Q. And the day the body was found, you participated in the removal of some property that didn't belong to you, in order to save it for evidence in future litigation, didn't you? These exhibits here?

A. I signed these tags, yes, sir.

Q. And you participated in the removal of that property, didn't you?

A. I did not remove them.

Q. You participated in the removal of that property, didn't you?

A. I signed the tags and attested them after they got through.

Q. Who was it turned those pieces of property over to Mr. Miller?

A. I believe I did.

Q. You knew they didn't belong to you, didn't you?

A. No, I was representing Mr. Miller.

Q. You knew though, that those pieces of property didn't belong to you, didn't you?

A. Didn't belong to me, no.

Q. And this transpired on the day the body was removed, didn't it?

A. They were taken off the boat that day, yes.

Q. You delivered to Miller that day, didn't you?

A. No, I think—I wouldn't be sure, but I think they were left at Pilkington's for a while. I didn't want them.

Q. You are an underwriter's representative, aren't you, Captain Patten?

A. Not totally.

Q. You are, aren't you?

A. Yes.

Q. You investigated the fire for them,—for the underwriters, didn't you?

A. First I investigated it for Mr. Miller; I made a report to the underwriters also.

Q. You called on Thomas more than once, to inquire about this fire, haven't you?

A. No, I don't think so; once is all.

Q. You have called on Brown, the former engineer of the Seminole?

A. Brown? No.

Q. You have called on other people at additional times?

A. I never saw Mr. Brown until he sat in this chair.

Q. You have called on other people?

A. Name them, please.

Q. Haven't you?

A. I talked to McCoys about it.

Q. And others haven't you?

A. If you name them, I will admit them if it is true.

Q. Do I have to name them in order to get you to admit that you have called on other people seeking witnesses in this case?

A. That Lauderdale fire was the talk of this district for months.

Q. Perhaps you didn't understand my question? Captain Patten. Do I have to name them in order to get you to admit that you called on other people to get them as witnesses in this case?

A. Witnesses. Let's see. I don't recall that I went around soliciting any witnesses for this case.

Q. You represent about 28 underwriters, down here, don't you?

A. About that.

Q. Is that right?

A. Yes.

Q. You have so testified before, haven't you?

A. Yes, sir; that's right.

Q. Its a very substantial part of your livelihood, is it not?

A. Yes; not all of it, though.

Q. And you know—

A. Furthermore—

Q. You know that insurance companies have a very substantial interest in the outcome of this case, don't you?

A. No doubt about that; but I am not connected with any one insurance company; I am an independent surveyor.

Q. You do represent some 28 insurance companies, don't you?

A. On a fee basis.

Q. What?

A. On a fee basis. I am not on a salary with any of them. They want my services, they send a telegram.

Q. But you are regularly employed by them from time to time?

A. Whenever I get a call to do a job, I do the job for them, yes.

Q. And you hold yourself out as an underwriters' representative, don't you?

A. Yes, you've got to have something on your card.

Q. Well, isn't that true?

A. Yes, whenever I am called on, I represent the underwriters.

Q. Is it true that you hold yourself out as an underwriters' representative?

A. That is right.

Q. And are you one?

A. Yes, but not on the payroll.

Q. You get paid by them?

A. After the job is done, yes.

Q. And a very substantial part of your income, comes from marine underwriters, doesn't it?

A. About two-thirds of it.

Mr. Underwood:

That is all.

Re-Direct Examination

By Mr. Botts:

Q. Perhaps, Captain, you would be too modest to answer this question, but usually underwriters hire competent men, do they not?

A. I should think so.

Mr. Botts:

That is all.

By Mr. Matteson:

Q. Captain, your attention was called, by Libelants' Exhibit 97, to the provision on page 48 for the use of copper pipe. Now, will you tell me what sort of fittings are required when copper pipe is used?

A. Do you mean, unions and elbows?

Q. Yes.

A. Brass.

Q. And is there anything further than the material? What type?

A. Extra heavy.

Q. What type of fittings? What are the requirements of proper fittings on copper pipe? I call your attention to the rule here.

Mr. Underwood:

If the witness is to be asked to read the rule, the rule speaks for itself, your Honor. * * * I want it to be clear what Mr. Matteson is getting,—the witness' opinion, or the rule book. Apparently he wants the rule book from the mouth of the witness.

A. Right here is your page, non-ferrous composition throughout, standard type thread.

Q. I call your attention to the provision of the rule here, Captain; you understand what I mean.

Mr. Underwood:

May it appear just what Mr. Matteson is suggesting to the witness?

Mr. Matteson:

I am calling his attention to the provision 2 (b), the second half of it on page 48.

A. All valves, cocks and pipes or tube fittings shall be of Non-ferrous composition.

Q. Is this the provision that Mr. Underwood called your attention to?

A. This was it; annealed copper pipe.

Q. Is this part of the same provision?

A. It doesn't mention anything about that; fittings and connections,—

Q. The point I make, Mr. Underwood called your attention to the provision here for the use of copper pipe.

A. Copper pipe instead of copper tubing.

Q. (Cont'd) Now I want to ask you in the same provision, what is the provision with respect to the fittings to be used with copper pipe?

A. Shall I read it out?

Q. Yes.

A. Fittings and connections, for tubes shall be at least equal to the solderless type of the SAE standard practice code, and for pipe, with the exception of ground unions, shall be standard pipe threaded and soldered.—The only difference you would solder them.

Q. The provision is that such fittings shall be threaded and soldered, is that right?

A. Yes, sir.

Q. I want to call your attention to the Exhibit No. 2; is that copper pipe such as is referred to in the rule?

A. No, sir; that is brass.

Q. Can you tell whether any of these fittings have been soldered or not?

A. That is impossible, unless you back them out.

Mr. Underwood:

I can't hear you.

A. I say, that is impossible unless you back one out; then it may be all melted out.

The Court:

Well now, under my ruling with respect to the use of the rules, I think that the witness ought to tell in his own language the criterion by which you are trying to—the present question is directed as to whether it measures up to that criterion.

Q. I will ask you that directly. Mr. Underwood read part of the rule, but didn't read the entire rule.

The Court:

First let the witness tell, since he had the benefit of reading the rule, let him tell in his own language just what he thinks the standard ought to be, and then answer your question presently put to him.

A. Well, to comply with the standard rules—

The Court:

Not to comply; what is the standard?

A. It is either copper tubing—

The Court:

Let Mr. Matteson ask you a question.

Q. Captain, the point we want to clear up is: If copper pipe is to be used, what in your opinion is the proper requirement for the fittings?

A. All fittings—all pipe shall be threaded and all fittings non-ferrous metal, and soldered; the joints soldered.

Q. Is that your opinion as to what is required?

A. Yes, sir; that is if proper pipe is used instead of tubing.

Q. Could you determine whether or not the fittings have been soldered?

A. I can't tell unless you take them apart, and then it might be they have been under such intense heat that all the solder is melted out;—

Q. Captain, we have been talking about the petcock, that you said in your opinion must have been affixed to this Exhibit No. 17; and you were asked some questions about the draining off of the water from the bottom of such a strainer, by the drawing out of a plug. What provision should be made in a devide of this kind, to prevent the discharge of gasoline from the pipe, when the plug is oper?

A. Well, you could have a union or a valve on the tank side of that, and two unions; take the whole strainer out and dump it.

Q. In other words, this—

A. That could be done.

Q. This strainer could be provided with valves on each side—

Mr. Underwood:

If your Honor please, let's let the witness do the testifying.

The Court:

I think that is proper.

Q. Now Captain, let me put it to you this way: You were asked by Mr. Underwood whether there was any provision in these rules that prohibited the use of the pet cock on the bottom of this strainer. I call your attention to subdivision (d) of Section 2 on page 48, and ask you to look that over and tell us what the effect of that provision is.

A. The strainer of approved type, with bolted or dogged bonnet, shall be fitted in the feed line within the engine compartment and supported to take its weight off the line. A shutoff shall be fitted on each side of strainer to permit opening and cleaning. But that's the big strainers, no' this little type.

(Thereupon recess was taken until 9:30 a. m. of the following day.)

March 23, 1939, 9:30 A. M.

Convened pursuant to adjournment.

Appearances same as heretofore noted.

1098 Thereupon: J. N. PATTEN a witness produced in behalf of the Libelants, resumed the stand and was examined and testified further as follows:

Re-Direct Examination (Cont'd.)

By Mr. Matteson:

Q. Captain, in your direct examination yesterday you stated that a pet-cock on the bottom of a strainer, such

as this Exhibit No. 11, would in your opinion be improper, and on cross examination you were asked whether there was any specific prohibition against strainers in the rules, Libelants' Exhibit No. 97. Does it make any difference in your opinion which you expressed, that a pet cock on the bottom of such a device would be improper, whether or not there is any specific prohibition in the rules?

A. No, sir. I request that they be removed, the same as on the bottom of a gas tank.

Q. Yesterday in cross-examination Mr. Underwood asked you whether or not a solid plug fitted in the bottom of a device such as this appearing on Exhibit 17 would be likely to wiggle loose as a result of vibration, and I think that your answer was "yes". Is there anything that you wish to say about that?

A. I did say "yes", but I was mistaken. I thought he had reference to a pet cock plug properly inserted and set up with a wrench which wouldn't wiggle loose.

Q. Yesterday on cross examination Mr. Underwood examined you with respect to the text of rule 1 (i) on page 47 of Libelants' Exhibit 97, which reads as follows:

"Shut-off valves or cocks of approved type, such as those having ground seats or plugs, shall be placed in the supply line from tanks. One valve shall be placed as close to the tank as practicable, another as close to the carburetor as practicable. If shut-offs are of the cock type they shall be spring seated and provided with stops to indicate the open and closed positions."

Is that in reference to pet cocks?

A. No.

Q. What is the shut-off valve of pet cock type?

A. It is a plug with a spring on the bottom so as to keep the tension on the plug to keep it tight.

Q. If it is a shut-off I take it that it would have a valve in the line?

A. In the main feed gas line.

Q. There were a couple of measurements that I did not get from you yesterday. Captain, did you measure the size of the hatch opening in the deck above the engineroom of the Seminole as it appeared in the wreckage on board the Seminole?

A. I did; the hatch opening—

Q. What is the size of that, Captain?

A. The hatch opening was 24 inches by 24 inches; that is the gross hole in the metal.

Q. That is the hole in the metal there? (Indicating.)

A. Yes.

Q. Did you measure the size of the sky-light opening?

A. Yes; that was 29 inches by 43 inches.

Q. You were shown these exhibits, Libelants' Exhibits 2 and 17, and you were asked whether you could say positively that any of these connections shows in these exhibits did leak, and I think you answered that you could not say positively. Can you tell us whether in your opinion it would be probable that they would leak.

Mr. Underwood:

I object to that on the ground that it is speculative. He asked him whether it was probable that something might have happened before the fire, his testimony being based upon the condition of physical things that had been through a very hot fire. It is highly speculative and improper. The issue in the case is not whether they might have leaked but whether they did leak.

Mr. Botts:

To us, if your Honor please, it seems that the witness having qualified as an expert could not perhaps testify that these particular pipes would or would not leak, but he could certainly testify as to whether or not a pipe assembly of that character would or would not probably

leak, and I take the position, if your Honor please, that that is clearly admissible.

The Court:

I will overrule the objection.

A. In the first place, I don't think this is a good job of pipe fitting—

Q. Just answer the question.

A. Yes, I think it is probable that they might have leaked, with all of those fittings.

Mr. Matteson:

That is all.

By Mr. Botts:

Q. Captain, I would just like to ask you two questions: from your observation did you make any measurements to determine the distance above the engineroom floor that the bottoms of the gasoline tanks occupied; did you make such measurements?

A. I don't think so, but I could guess pretty close.

Q. I was going to ask if from your examination you could give us the approximate distance above the engineroom floor.

A. I would say about twenty-four inches, somewheres in there.

Q. I believe you said,—or someone said—perhaps not you—that when the Seminole was sunk by the flow of water into it by the fire department that the tops of her gasoline tanks remained above high tide. I wonder if you could tell me the approximate distance above high tide that these tanks occupied?

A. When the stern of the vessel was submerged, I should say the tops of those tanks were above the water level perhaps two and a half feet or possibly three feet. I did not measure it.

Mr. Boots:
That is all.

By Mr. Matteson:
Q. Captain, I notice I overlooked some other measurements. Do you know the dimensions of the engineroom of the Seminole as it appears in the wreckage?
A. It was 16 feet and 6 inches by 18 feet.
Q. Which is the 18 feet; is that fore and aft?
A. Yes.
Q. And the 16 feet six inches is the other?
A. Yes.
Q. Does that include the width of the alleyway?
A. No.
Q. What is that?
A. That is 35 inches in the clear; they had a web frame there.

Mr. Matteson:
That is all.

Re-Cross Examination.

By Mr. Underwood:
Q. Captain Patten, what gasoline-driven boats have you been employed on as an engineer?
A. I will have to get that list. Very few gasoline boats?
Q. How many?
A. You mean launches and everything propelled by gasoline?
Q. If you tell me how many, Captain, then I am going to ask you what they were like and how they compared with the Seminole. Tell me whether you have ever been on one of the house-boat type similar to the Seminole.

A. I was on one; I ran a commuter over to Hell's Gate, but that was only a relief job; I relieved the captain on that commuter for about eight days.

Q. My question was, captain, on what gasoline boats have you ever been employed as engineer?

A. None.

Q. Which is stronger, copper pipe or brass pipe?

A. You mean tensile strength?

Q. Yes.

A. I would say the brass pipe was stronger in tensile strength.

Q. Which is harder?

A. Brass.

Q. You have to use brass fittings on copper pipe, don't you?

A. Right.

Q. That is because you can't set up tight to copper as you can with brass?

A. That is right.

Q. And that is because copper is softer than brass?

A. That is right.

Q. And that's one reason you have to solder copper, isn't it?

A. Yes; it is an added safety.

Q. Of course, Captain, if you use copper pipe in an installation such as that on the Seminole you would have to use fittings in getting around the corners, wouldn't you?

A. No. You can bend copper pipe.

Q. How much?

A. Not as readily as you can tubing, but you can put a pretty nice bend in copper pipe.

Q. Could you make a right angle bend with copper pipe?

A. Not with any pipe.

Q. Could you make a 45-degree bend with copper pipe?

A. With proper bending tools.

Q. Just how do you do that, Captain?

A. I would have to draw a picture.

Q. Tell me what tools you would use to put a 45-degree bend in a piece of copper pipe.

A. Copper bending tools.

Q. Tell us what they look like.

A. It has a handle on it, and it is curved out so that you won't crush the pipe, and you insert the pipe in this hook and then you bend your pipe. You cannot make a sharp 45-degree bend, but you can put a 45-degree bend in copper pipe, but not a sharp 45-degree bend.

Q. You mean you can put a gentle curve on a piece of copper pipe of long radius?

A. I didn't say long radius. You can put a 45-degree bend in the pipe, but not a shart 45-degree bend.

Q. Do you regard that as good practice?

A. What do you mean by good practice?

Q. You have told the Court many things about good practice. Do you know what good practice means?

A. Yes.

Q. Would you regard it as good practice to put a 45-degree bend in copper pipe of a short radius?

A. It is not necessary to do it.

Mr. Underwood:

Will you read him the question, please?

(Preceding question read by the Reporter as above recorded.)

A. I don't think a good mechanic would attempt such a thing on either copper pipe or tubing.

Q. As a matter of fact, Captain, if you are going to use pipe instead of tubing you would have to have just as many fittings as you would for copper pipe for any particular job, wouldn't you?

A. No, sir.

Q. Why not?

A. You can make bends on copper pipe that you wouldn't attempt to make on brass pipe or iron pipe.

Q. I show you exhibit No. 2, Captain, and call your attention to the two 90-degree bends in that pipe. If you used copper pipe you would have to have two 90-degree elbows to make such a bend, wouldn't you?

A. No; I would come up here (indicating) and make a nice angle bend.

Q. Assuming, Captain, that this pipe at this point runs up to a bulkhead or a frame on an angle and has to go around it, is it not a fact that you would have to use two 90-degree elbows to get around that frame?

A. No, sir.

Q. You would not?

A. No, sir.

Q. Why not?

A. Because I would come across here to make it meet.

Q. Making two 90-degree bends in the copper pipe?

A. It would be two 45's.

Q. Captain, I have drawn three lines on a piece of paper here, and I will ask you to assume that this is a plane view of a bulkhead. In order to get from the gas lines to the motor you would have to run a pipe along that bulkhead, in that bulkhead and along that bulkhead from "X" to "Y". How do you get around the bend with copper pipe?

A. This would be the proper way to put it in (indicating).

Q. I will make that line heavier, following substantially your marks.

A. That's right.

Q. You would make two 45-degree bends in the copper pipe and use no fittings?

A. Except on the ends.

Q. You would use no fittings to go around this mark (indicating)?

A. There is no necessity to go around that corner.

Q. You don't think so?

A. No, sir.

Mr. Underwood:

Mark this for identification.

(Diagram above referred to was marked Respondents' Exhibit "N" for identification.)

Q. Would you do that with brass pipe?

A. Yes, you could anneal brass pipe and make that bend.

Q. Captain, just what make of valve would you use for gasoline?

A. Jenkins or Lunkenheimer or any approved gasoline valve.

Q. You say "gasoline valve". I want you to tell me what model number of Jenkins or Lunkenheimer or other manufacture—

A. If I had a catalog I could perhaps do that, but I do not carry numbers in my head.

Q. When you say "gasoline valve" just what do you mean, Captain?

A. Valves are made for different purposes, some for steam and some for water.

Q. Can you identify any particular valve that is made for gasoline?

A. Possibly; do you have a catalog?

Q. Can you remember the manufacturer or the model number or describe for me any particular valve that is made for gasoline?

A. No, but I could pick one out for you.

Q. Can you draw one?

A. I am not very much of a draftsman.

Q. What, Captain, according to your idea is the characteristic of a gasoline valve?

A. Well, I wouldn't approve—

Q. I didn't ask you what you would approve. I asked you, Captain, what is the characteristic of the gasoline valve that makes it any different from any other valves?

A. Well, it must be of the needle valve type, which is a sharp angle, with no fibre seat, and no flat seat where any grit would keep your valve open.

Q. Those are the two characteristics?

A. That is two of them.

Q. Any more?

A. I would want a good packing gland on a gasoline valve.

Q. Anything else?

A. I don't approve of a loose gasoline valve on a stem.

Q. That is not the particular characteristic of a gasoline valve which you want in a valve stem pipe?

A. It must be made absolutely tight.

Q. So we get down to the needle type and the ground seat?

A. Yes.

Q. Those are the two principal characteristics, is that right?

A. Yes, sir.

Q. Now, if you get a piece of grit or something of that sort in a needle valve do you say there will be no leak?

A. No. In the needle type that grit will pass on, whereas it won't on a flat surface valve.

Q. You don't think the flow will carry a piece of grit from a valve with a flat seat?

A. Not if it gets embedded at all.

Q. If it gets embedded in the needle valve it won't go through, will it?

A. It would be more apt to.

Q. If you get a piece of grit in a needle valve a needle valve will leak the same as the flat seat valve until you get the grit out, won't it?

A. That is right.

Q. Do you condemn anything but a ground seat valve for gasoline?

A. I do.

Q. You think that no composition seat is proper for gasoline, is that right?

A. Are you mentioning plug valves too? Plug valves with a spring on the bottom is all right.

Q. With composition seats?

A. Not with composition seats.

Q. Do you condemn all composition seat valves for gasoline?

A. Yes.

Q. There is no such thing as a proper gasoline valve if it has a composition seat?

A. No, sir, not in my opinion.

Q. Do you know of any valve with a composition seat that is proper for gasoline?

A. Approved?

Q. Yes.

A. Not that I know of.

Q. Do you deny that such a thing exists?

A. No, I don't, but I haven't come across any in my experience.

Q. I am not clear, Captain Patten, just where we stand on this strainer. Look at this again, Libelants' Exhibit 17; look at it carefully; look at that hole in the bottom there, in the bottom of the strainer, and tell me what you see; do you see the fitting on there?

A. That was the threaded end of a petcock.

Q. And you will stake your reputation on that, will you?

A. I will. If there is any doubt about it I can have it taken apart and prove it to you.

Mr. Underwood:

That is all.

Mr. Botts:
I have no further questions.

Mr. Matteson:
That is all, Captain.

(Witness excused.)

1111 Thereupon: JOHN THOMAS a witness previously called by the Libelants, was recalled and was examined and testified as follows:

Direct Examination.

By Mr. Matteson:
Q. Mr. Thomas, I want to ask you this: did you on the night of June 24, 1935, at the Memorial Hospital, Fort Lauderdale, Florida, in the presence of Mr. Fred Botts, Captain J. N. Patten and Mr. Garry Miller, who are all here, about 8:30 in the evening, make in words or in substance the following statements which I will read to you sentence by sentence—

The Court:
Is Mr. Miller here?

Mr. Botts:
Yes.

The Court:
He is in the Courtroom?

Mr. Botts:
He is an attorney, and it has not been the usual practice, if your Honor please, to invoke the rule relative to attorneys.

Mr. Jones:

If there is any doubt about it, you might ask him to retire.

Mr. Underwood:

I have no objection.

The Court:

You do not object to him remaining?

Mr. Underwood:

I have no doubt that his testimony will be as it will be, quite apart from his appearance.

The Court:

You may proceed.

(By Mr. Matteson):

Q. Did you at about 8:30 in the evening, on the night of June 24, 1935, at the Memorial Hospital, Fort Lauderdale, Florida, in the presence of Mr. Fred Botts, Captain J. N. Patten and Mr. Garry Miller, who are all here, make in words or substance the following statements which I will read to you sentence by sentence:

"My name is Johnnie Thomas."

Did you make that statement?

A. I don't remember what I said that night. I have no recollection.

Q. Did you make the following statement in words or in substance, "On Monday, June 24, 1935, I went on board the Yacht Seminole at Pilkington's Boatyard, Fort Lauderdale".

Did you make that statement?

A. I don't remember.

Q. "I accompanied one Captain Abel in order to inspect a netting on the rear end of the boat so that I could install a similar one on another boat for Mr. Phipps".

Did you make that statement?

A. I don't remember making any statement like that.

Q. "Captain Abel went down toward the engineroom to inspect the boat while he was aboard".

Did you make that statement?

A. I don't remember making it.

Q. "I could smell a feint odor of gasoline and warned him to be careful as one always has to be very careful on a boat which is laid up."

Did you make that statement?

A. I don't remember making that statement.

Q. "I was looking at Captain Abel through the engineroom window when he threw a knife switch to get light to inspect the boat."

Did you make that statement?

A. I don't remember making it.

Q. "The switch arced and there was immediately an explosion".

Did you make that statement?

A. I don't remember making that statement in the hospital at all.

Q. Did you make that statement at any time?

A. I think I did here in the Court.

Q. "The switch arched and there was an immediate explosion"; is that the statement?

A. We are now at the hospital?

Q. I am asking you if at any time you made that statement?

A. I don't remember making a statement like that in the hospital?

Q. Do you remember making that statement at any time?

The Court:

If this is for the purpose of impeachment you must give the time and place, Mr. Matteson.

Mr. Matteson:

All right, sir.

The Court:

This is only for the purpose of impeachment, as I understand it.

Q. "I came at the request of Captain Abel who was employed by Mr. Phipps to see how to do the work on Mr. Phipps' boat".

Did you make that statement?

A. I don't remember making that statement, no, sir.

Q. "Captain Pilkington had warned us not to smoke and neither or Captain Abel or I were smoking or struck a match".

Did you make that statement?

A. I don't remember making that statement, no, sir.

Q. You understand, Mr. Thomas, that in all of these questions I have referring to this particular occasion at the Memorial Hospital at Fort Lauderdale, at 8:30 P. M., on the evening of June 24, 1935; you understand that is what I have been referring to?

A. Yes, sir.

Q. And you understand that I have asked you whether you made these statements in the exact words that I have read, or in words of similar import?

A. I don't remember making these statements.

Q. Do you deny making these statements?

A. I don't remember making these statements; no, sir.

Q. What I want to know is; Mr. Thomas, do you deny making these statements?

A. I was unconscious there at the hospital; I don't know what I said or what I did or anything; I had no recollection of time.

Q. Then I understand you do not deny them?

A. I don't remember making these statements.

Q. I want you to answer me as specifically as you can, Mr. Thomas: do you now deny that you made any of these statements at the hospital?

Mr. Underwood:

If your Honor please, I think the witness has been asked that question many times, and he has had every opportunity to say yes or no, and he said he could not remember. I think he ought not to be subjected to any further ordeal in that particular connection.

The Court:

I think you have asked him, Mr. Matteson, three or four times and he has answered that he has no recollection of making these statements. I will sustain the objection.

The Court:

Mr. Thomas, do you remember being visited by these three men that evening?

The Witness:

No, I don't; I know there was some people in the room, but I couldn't say who it was or anything.

The Court:

Was Dr. Blount in the room at that time?

The Witness:

I don't remember, your Honor.

(By Mr. Matteson):

Q. I want to call your attention to this statement that I read to you: "The switch arced and there was immediately an explosion". Is that a true statement?

A. When Captain Abel pushed the switch there was some sparks on one side of it and the explosion immediately followed.

Q. Do you say this is a true statement or not: "The switch arced and there was immediately an explosion".

The Court:

Did he answer that?

The Witness:

Yes, I did.

The Court:

You asked him was that the fact, and he answered it, as I understand it?

Mr. Matteson:

He answered it in a round-about way, your Honor.

Mr. Botts:

I think he should answer that yes or no and then make his explanation, if your Honor please.

Mr. Underwood:

We have been over this many times.

Mr. Matteson:

It is a question of interpretation perhaps of his language, and I want to get his idea of what this means.

The Court:

That question is not a matter of impeachment now?

Mr. Matteson:
No.

The Court:
You are asking him if that was the fact.

Mr. Botts:
It is not impeachment directly, if your Honor please.

The Court:
Well, what did you ask him?

Mr. Matteson:
I asked him whether this was a true statement: "The switch arced and there was immediately an explosion".

The Court:
I just want to keep the record straight.

Mr. Matteson:
That is all.

By Mr. Botts:

Q. Now, Mr. Thomas, I would just like to ask you not with reference to what is supposed to have been said at the hospital. I am asking you now as to what you now state the facts to be. It is true that on June 24, 1935, you went on board the Yacht Seminole at Pilkington's Yacht Basin; that is true, isn't it?

A. Yes, sir.

Q. It is also true that you went on board the Yacht accompanied by Captain Abel; is that true?

A. Yes, sir.

Q. And it is also true that you went on board the yacht to inspect or to look at a rope netting on the rear of the boat, the rear of the Seminole?

A. Yes, sir.

Q. And the purpose was to enable you to install a similar rope contrivance on another boat of Mr. Phipps; that is true, is it?

A. On another boat.

Q. On the boat of Mr. Phipps, the Iolanthe; isn't that true?

A. I don't know whether Mr. Phipps owned the boat or not; I couldn't swear to it.

Q. But he did own the Iolanthe?

A. That is right.

Q. It is true that Captain Abel went down to the engineroom; that is true, isn't it?

A. Yes, Captain Abel went in the engineroom.

Q. As I understand it, Mr. Thomas, you now deny that you went down in the engineroom below and smelled a feint odor of gasoline?

A. I smelled a bilgy odor.

Q. Do you deny that you smelled gasoline?

A. Yes.

Q. Do you deny that you warned Captain Abel to be careful?

A. Yes; I told Captain Abel to be careful.

Q. It is true, is it not, that you were looking at Captain Abel when he was in the engineroom; that you were looking at him through the engineroom window?

A. That is right.

Q. That is true, is it not?

A. Yes.

Q. And it is true that you saw him throw or push a knife switch; that is true, isn't it?

A. Yes, I saw him push the switch.

Q. Is it true that neither you nor Mr. Abel were smoking?

A. Yes; as near as I can remember we were not smoking.

Q. And as I understand you now say Captain Abel in fact struck a match?

A. Yes, sir.

Q. Now, Captain Thomas, I may be mistaken in my recollection is that on your testimony the other day you stated that you recollected the three men who have been mentioned came into the room, but you did not recollect what was said. I could be mistaken about that. Now, Captain Thomas, I want to get you to make that plain; do you recollect the circumstances of the three men that have been mentioned coming in to see you at all, or do you recollect that circumstance?

A. In the Fort Lauderdale Hospital?

Q. Yes.

A. No, I don't.

Q. You don't recollect—

A. I have a recollection of seeing people in the room, more than once.

Q. But you don't recollect the three persons, myself and the two other gentlemen coming in?

A. No, sir, I don't,

Q. I will ask you this: do you recall Dr. Blount coming in and talking to you about the hour of 8:00 to 8:30 on that night?

A. No, sir.

Q. You don't recall talking to Dr. Blount at all?

A. No, sir.

Q. You know Dr. Blount, of course?

A. I don't believe I could recognize the man if I saw him right now.

Q. Do you recall the circumstances of being administered ether while they gave you some attention; do you remember that circumstance?

A. Yes, I do.

Q. Do you recall that sometime after the ether was administered that you had a vomiting spell; do you recall that?

A. No, sir.

Q. And do you recall them giving you some orange juice?

A. No, I don't.

Q. You don't recall that?

A. No, sir.

Mr. Botts:

That is all.

Mr. Underwood:

I have no questions, if your Honor please.

The Court:

All right; call your next witness. Can Captain Thomas be excused?

Mr. Botts:

I think he had better stay here, if your Honor please.

The Court:

Captain, you had better remain in attendance.

Mr. Matteson:

Call Mr. Miller.

1120 Thereupon: GARRY MILLER was called as a witness by the Libelants, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Your full name is?

A. M. Garry Miller.

Q. Where do you live, Mr. Miller?

A. Fort Lauderdale.

Q. What is your occupation?

A. I am an attorney-at-law.

Q. You are a member of the Bar of this State?

A. I am.

Q. Where is your office?

A. My office is in the County Courthouse Building at Fort Lauderdale.

Q. You hold an official position, do you?

A. I do.

Q. And what is that position?

A. I am the County Prosecuting Attorney of Broward County.

Q. Do you also conduct private practice?

A. I do.

Q. Did you hold the office of County Attorney in 1935?

A. I did.

Q. Do you recollect the fire at Pilkington's shipyard on June 24, 1935?

A. I do.

Q. Will you tell us what you heard of that fire and what you did?

A. I was at my home at the lunch hour when I heard the explosion; I judge it was between 1:00 and 1:30; probably between 1:00 and 2:00 o'clock.

Q. Where is your house located with respect to the Pilkington Shipyard?

A. My house is about three miles from the shipyard, I would judge.

Q. What did you do after that?

A. I heard the explosions and I also saw a column of smoke arise almost due west from my home, so I got in my car and drove immediately to the scene of the explosion.

Q. What did you observe when you got there?

A. The entire shipyard and boats were in flames when I got there; I might say from one end to the other.

Q. What did you do?

A. I first saw Mrs. Pilkington up there—I have known the Pilkingtons for years and have represented them in some legal matters—she was very much upset—

Mr. Underwood:

If your Honor please, may the witness be instructed not to describe the physical condition unless expressly asked, and not to tell any of the conversation—

The Court:

Yes. If a point is going to be made on that, I think you should not volunteer, in answering questions, a description of the condition of any person with whom you conversed.

Mr. Matteson:

If your Honor please, it seems pretty strict to exclude the conduct and the appearance of the people that he saw and communicated with and dealt with there at that time.

The Court:

It is not stricken. What he said is in the record; it is not stricken.

Mr. Matteson:

Of course the request was with respect to instructing the witness to avoid describing the appearance and conduct—

The Court:

Except in answer to some direct question from you, at which time the point will be presented.

(By Mr. Matteson):

Q. You said you talked with Mrs. Pilkington.

A. Yes.

Q. Did you talk with anyone else or see anyone else there?

A. I saw the Sheriff there and I conferred with him; I asked the Sheriff to notify the Coroner down here, because I believed there was probably a death.

Q. Did you do anything else?

A. I talked to Captain Pilkington, I think, and probably to the fire chief and different officials and men around there from time to time; it was quite an exciting time, you know.

Q. Now will you tell us what you observed with respect to Mrs. Pilkington and Captain Pilkington on, that occasion?

A. Well, Mrs. Pilkington was crying and was very nervous, and Captain Pilkington was very nervous and upset about their shipyard being burned up and the boats—

Q. Did you communicate with Captain Patten at any time?

A. Yes. I inquired through Hunter Lyon of Miami as to employing someone who could ascertain the cause of the explosion or the fire, and Captain Patten was brought to the fire in that manner.

Q. Did you yourself communicate with Captain Patten?

A. I don't recall whether I talked to him over the telephone or not; but I did communicate with him.

Q. Did Captain Patten come there to the shipyard?

A. Yes, he came to the shipyard.

Q. Now will you tell us what else occurred during that afternoon and evening?

A. On account of my position as prosecuting attorney I suggested that probably the Pilkingtons should have other counsel in addition to me. I never like to handle the civil side of a suit if there is any criminal responsibility. At that suggestion Mr. Botts was employed and he came over the day of the fire, and likewise Captain Patten. I don't recall who came first, but they came in the course

of the evening, and in order to attempt to ascertain the cause of the explosion we decided to interview the only witness, the only eye-witness, who was Mr. Thomas. So at about 8:30 or 9:00 o'clock that night, Mr. Botts, Captain Patten and myself drove to the Memorial Hospital in Fort Lauderdale and interviewed and had a conversation with Mr. Thomas, who was the boy with Captain Abel at the time of the explosion.

Q. Did you see or have any communication with Dr. Blount about that time?

A. Yes. When we came to the hospital we were advised of the name of the physician attending Mr. Thomas; we ascertained that the physician's name was Dr. Blount. We attempted to get in touch with him on the telephone, but just about that time Dr. Blount appeared where we were, and we gained permission of Dr. Blount to see Mr. Thomas.

Q. Where did you see Mr. Thomas?

A. Mr. Thomas was in a room in the hospital at Fort Lauderdale.

Q. Did you go to that room?

A. Yes.

Q. When you say "we" who do you mean?

A. Mr. Botts, Captain Patten and myself.

Q. When you went to that room, Mr. Miller, will you tell us what you saw and what took place?

A. I believe, as I recollect, there was present a nurse when Captain Patten, Mr. Botts and I went in there. We first expressed our regret for Mr. Thomas' injury—

Mr. Underwood:

If your Honor please, I do not understand that this question calls for the conversation. Am I right about that?

Mr. Botts:

Not yet.

Mr. Underwood:

If he is going to tell what words passed, I think it ought to be in response to questions.

Mr. Botts:

You are absolutely right.

Mr. Underwood:

If that is clear to everybody, including the witness—

The Court:

Of course the witness understands the instructions already given, and he will of course observe them.

(By Mr. Matteson):

Q. I want to ask you if at that time in your presence John Thomas made the following statements: "My name is Johnnie Thomas".?

A. He did.

Q. "On Monday, June 24, 1935, I went on board the Yacht Seminole at Pilkington's Boatyard, Fort Lauderdale,"—

Mr. Underwood:

Just a minute. If your Honor please, I object to that on the grounds that I have heretofore mentioned with respect to similar questions, attempting to impeach Thomas, without the necessity of restating the objections.

The Court:

The objection is overruled.

Mr. Underwood:

May the objections apply to this whole evidence?

The Court:

Yes. Let it be understood that to each of these questions the same objection is made and the same ruling of the Court.

A. That is substantially his statement.

Q. "I accompanied one Captain Abel in order to inspect a netting on the rear end of the boat so that I could install a similar one on another boat for Mr. Phipps." Did Mr. Thomas in words or substance make that statement in your presence?

A. In substance he did.

Q. "Captain Abel went down toward the engineroom to inspect the boat while he was aboard."

Did Mr. Thomas in words or substance make that statement?

A. In substance he did.

Q. "I could smell a feint odor of gasoline and warned him to be careful as one always has to be very careful on a boat which is laid up."

Did he make that statement in words or substance?

A. In substance he did.

Q. "I was looking at Captain Abel through the engineroom window when he threw a knife switch to get light to inspect the boat."

Did he make that statement in words or substance?

A. Yes.

Q. "The switch arced and there was immediately an explosion".

Did Mr. Thomas in words and substance make that statement?

A. He did.

Q. "I came at the request of Captain Abel who was employed by Mr. Phipps to see how to do the work on Mr. Phipps' boat."

Did Mr. Thomas in words and substance make that statement?

A. Yes, he did.

Q. "Captain Pilkington had warned us not to smoke and neither Captain Abel or I were smoking or struck a match."

Did Mr. Thomas make that statement in words or substance?

A. He did.

Q. Was anything done to reduce these statements to writing?

A. Yes. We went to the hospital office on the first floor and Mr. Botts, Mr. Patten and I in conference agreed upon the statement as we all recollected to the best of our recollection to what he said, and Mr. Botts reduced the statements to writing.

Q. How soon after the interview did they do that or did you do that?

A. Immediately.

Q. Whose language was used in the written statement?

A. That is in substance the language of Mr. Thomas.

Q. I mean in putting it down on paper who chose the words?

A. Captain Patten, Mr. Botts and I formulated the words to the best of our recollection from what Mr. Thomas stated.

Q. Do you recognize this paper which I show you?

A. I do.

Q. Libelants' Exhibit 96 for identification?

A. Yes.

Q. What is that?

A. This is a statement written by Mr. Botts of the text of Mr. Thomas' statement made there in the hospital.

Q. Have you read this statement?

A. I read the statement there that night; I referred to it again this morning. Probably I have seen it since then, but I don't recall definitely where or when.

Q. Is this a correct transcript of the substance of that interview?

A. It is correct.

Q. I wish you would tell us, Mr. Miller, what you observed while you were in the room with Mr. Thomas as to Mr. Thomas' condition?

Mr. Underwood:

May the witness be instructed not to indulge in conclusions; in other words as "fits" or "good shape" ought not to come from the mouth of this witness.

The Court:

The Court does not see any occasion to make any additional instruction at this time. You may proceed.

Mr. Matteson:

Repeat the last question.

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. Mr. Thomas was lying in the bed; he was awake and able to talk and did talk and made the statements substantially as they were written in that paper.

Q. So far as you could observe was there any doubt about his lucidity at that time?

A. I entertained no doubt at all.

Q. Mr. Miller, did you again visit the shipyard of Captain Pilkington after this interview?

A. Yes.

Q. When did you go there again?

A. I don't recall whether I returned to the shipyard that night, but I returned the following night; probably about eleven or twelve o'clock.

Q. What did you observe at that time?

A. They were pumping out the Seminole and had quite a bit of water out of her at that time. I observed the prevalence in the atmosphere of gasoline fumes and odors; it seemed to be a mixture of gasoline and oil.

Q. Where were you when you made that observation?

A. I was at the boatyard.

Q. Were you in the vicinity of the house or on the shore?

A. I was right on the shore of the Basin.

Q. And where with respect to Captain Pilkington's house?

A. I would say I was twenty-five to fifty feet from the house.

Q. What was the condition of the vessels in the yard other than the Seminole at that time?

A. They had burned down to the water-line, as I recall, had been submerged.

Q. Do you recall the direction of the wind at that time?

A. I cannot state that.

Q. Could you observe the direction from which this odor came?

A. The odor was coming from a northerly direction; I was standing due south of the boat.

Q. You are referring to the Seminole?

A. Yes, to the boat Seminole.

The Court:

Was that before or after the body had been recovered?

The Witness:

That was before the body had been recovered.

(By Mr. Matteson):

Q. Did you remain there that night?

A. I remained there probably two hours.

Q. Were you there when the body was recovered?

A. No; the Coroner had agreed to be out there the next morning about the time they would find the body, and he was there, so I understand.

Q. You did not return?

A. No, I did not return.

Mr. Matteson:

That is all.

Cross Examination.

By Mr. Underwood:

Q. When you smelled the odor of gasoline you were to the southward of the entire Yacht Basin, or what remained of it?

A. I was on the southerly bank; the Basin is quite a long Basin; part of the Basin would be northeast and part of it would be northwest and part would be almost due west.

Q. The Seminole was across the Basin from where you were standing?

A. Almost opposite from where I was standing; yes.

Q. What gasoline may have been coming from the tanks of other vessels that were submerged you don't know, do you?

A. No, I don't know that.

Q. Were you at first interested in this fire in your official capacity or in your private capacity as Mr. Pilkington's lawyer?

A. I would say that I went there as a spectator.

Q. Did you at any time have any thought of the possibility of prosecuting anyone in connection with the death of Captain Abel?

A. No; I didn't think of prosecuting anybody at the time. I just made observations that came to one naturally in my position. If there is any criminal responsibility

one tries to ascertain whether there is such responsibility and who is responsible.

Q. Were you endeavoring to do that at any stage?

A. Oh, yes.

Q. When did you begin that?

A. I would say about two or three hours after the conflagration.

Q. And when did you conclude that?

A. I would say it would have been merely a mental conclusion. I made no record and had no documents drafted to sign my name to. It would have been purely a mental conclusion.

Q. At some point you did come to the conclusion that there was nothing that you had to do in your official capacity in this case?

A. Yes; after the Coroner had decided there would be no Coroner's inquest.

Q. And that was on the 26th day of June?

A. I don't recall when the Coroner decided not to have an inquest, but it was shortly after the finding of the body.

Q. Was it the same day or the following day?

A. Either the same day or a day or two thereafter.

Q. Can you fix it closer than that?

A. No, because I would have to refer to the Coroner's report.

Q. Did you instruct anybody to deliver over to you any equipment or pieces of material that were removed from the Seminole?

A. I don't believe I gave any specific instruction.

Q. What general instructions of that nature did you give?

A. I expect that I conferred with the Sheriff and the Coroner to give me any information that they might obtain with respect to criminal responsibility.

Q. Did you instruct Captain Patten to remove and deliver over into your possession any pieces of materials that were removed from the Seminole?

A. I don't recall any such specific instructions.

Q. Did you give him any general instructions of that nature?

A. I don't recall at this time that I did.

Q. Was Captain Patten working for you?

A. Not in my official capacity; no, sir.

Q. Did you ask him to ascertain the cause of this conflagration?

A. I did.

Q. You did.

A. He was called in specifically for that purpose.

Q. By whom?

A. By me.

Q. Did the county pay him anything?

A. He wasn't called in in my official capacity; he was called in my representation of Captain Pilkington. The county didn't pay him anything.

Q. Do you know that Captain Patten removed certain pieces of material, Exhibits 11, 17 and 2, this can and this funnel, from the Seminole.

A. I don't know who removed those things from the Seminole.

Q. Were they delivered into your possession?

A. Some valves and fittings were brought to my office shortly after the fire and explosion.

Q. Were those these that you see here?

A. They seem to be the things that were brought into my office, yes.

Q. When did you surrender possession of those?

A. I don't recall; I know they were in my office a day or two or probably a week.

Q. Isn't it a fact, Mr. Miller, that you surrendered those pieces of machinery before you concluded that you would not have any official function to perform in connection with this fire?

A. Oh, no; I think they were surrendered—did you say before?

Q. Yes; I said before.

A. I was willing to surrender these things so far as the criminal investigation was concerned.

Q. Isn't it a fact that you surrendered those on the 21st day of June to Captain Patten?

A. I couldn't fix the date; sir.

Q. Do you deny that?

A. I can't remember the date; I can neither deny nor admit it. I have no record of the things being brought to my office or receipting for them.

Q. Do you remember a Mr. Riley and a Mr. Reynolds calling to see you in July, on the 31st day of July, 1935?

A. I believe I recall Mr. Riley coming there sometime; I don't know the date.

Q. Do you recall another man with him—a Mr. Reynolds?

A. No, I don't recall that.

Q. Do you recall refusing to deliver the material which had been removed from the Seminole to Mr. Riley at that time?

A. I don't believe that I had the articles at that time, though I am not sure about that.

Q. Do you recall refusing to deliver them at that time?

A. Yes; I didn't deliver anything to Mr. Riley.

Q. Did you not refuse to deliver them?

A. I don't recall a demand being made upon me for them.

Q. I show you a paper which bears at the top the date July 31, 1935, and ask you to read the typewritten portion of it, and not the handwriting on it. Did you receive that letter?

A. I don't recall receiving that letter. I think it is directed to Captain Pilkington.

Mr. Underwood:

May this be marked, please?

(The document above referred to was marked Respondents' Exhibit "O" for identification.)

Q. Do you say that you never saw that letter?
A. I don't recall seeing that letter, no, sir.

Mr. Botts:
May I see what it is. I may have some information about that myself.

Mr. Underwood:
Certainly. (Handing document to counsel.)

(By Mr. Underwood):
Q. Do you say that you told Mr. Riley or Mr. Reynolds that you no longer had the material that had been removed from the Seminole?
A. I don't recall such a statement.
Q. You don't remember what you told him?
A. No, I don't.
Q. Isn't it a fact that you didn't tell them that you no longer had it?
A. I am not sure whether I told them that or not; I don't recall whether I had them there at that time or not. They were not in my office very long; just a very short period.
Q. When you surrendered possession of that material to whom did you surrender it?
A. That I don't recall. I don't seem to have a receipt for it and I don't recall who got it. It was probably the man who brought it there.
Q. Captain Patten?
A. I am not sure whether Captain Patten brought it there or Carl Holm.
Q. One or the other?
A. Yes.

Q. And you surrendered these articles back to either Holm or Patten?

A. Probably to the person who brought it there.

Q. Did you know whose property it was?

A. I can only state it by hearsay.

Q. You understood that they came from the Seminole?

A. From what I was told.

Q. You knew that neither Captain Patten or Carl Holm represented the owner of the Seminole?

A. I generally understood that Carl Holm and Captain Patten—I am not sure who Carl Holm was investigating for, but Captain Patten was investigating for Pilkington.

Q. Nevertheless, Mr. Miller, you redelivered this property to someone who did not represent the owner of it?

A. I think Carl Holm was employed by Mr. Phipps to pump the boat out; I am rather of the impression that he was employed by Mr. Phipps to pump the boat out.

Q. Do you really think that?

A. Yes, that is my recollection of it, that Carl Holm was pumping the boat out for the Phipps people, the owners of the boat, though I am not quite distinct about it; this has been quite awhile ago.

Mr. Underwood:
That is all.

Mr. Matteson:
That is all.

(Witness excused.)

1138 Thereupon: J. N. PATTEN a witness produced by the Libelants, was recalled and testified further as follows:

Direct Examination.

By Mr. Matteson:

Q. Captain Patten, I believe you have already testified that you were present in the Memorial Hospital at Fort Lauderdale, Florida, on the evening of June 24, 1935 when you, Mr. Botts and Mr. Miller visited the room of Johnnie Thomas. I want to ask you if on the occasion of that interview, at about 8:30 P. M. on that date, Mr. Johnnie Thomas in your presence made the following statements in words or in substance:

"My name is Johnnie Thomas. On Monday, June 24, 1935, I went on board the Yacht Seminole at Pilkington's Boatyard, Fort Lauderdale."

Did Mr. Thomas at that time in words or substance make that statement?

A. Yes; that is practically word for word, as I recollect.

Q. "I accompanied one Captain Abel in order to inspect a netting on the rear end of the boat so that I could install a similar one on another boat for Mr. Phipps."

Did Mr Thomas at that time in words or substance make that statement?

A. He did.

Q. "Captain Abel went down toward the enginerpom to inspect the boat while he was aboard."

Did Mr. Thomas at that time in words or substance make that statement?

A. He did.

Q. "I could smell a feint odor of gasoline and warned him to be careful as one always has to be very careful on a boat which is laid up."

Did Mr. Thomas at that time in words or substance make that statement?

A. He did.

Q. "I was looking at Captain Abel through the engine-room window when he threw the knife switch to get light to inspect the boat".

Did Mr. Thomas at that time in words or substance make that statement?

A. He did.

Q. "The switch arced and there was immediately an explosion."

Did Mr. Thomas at that time in words or substance make that statement?

A. He did.

Q. "I came at the request of Captain Abel who was employed by Mr. Phipps to see how to do the work on Mr. Phipps' boat."

Did Mr. Thomas at that time in words or substance make that statement?

A. He did.

Q. "Captain Pilkington had warned us not to smoke and neither Captain Abel nor I were smoking or struck a match".

Did Mr. Thomas at that time in words or substance make that statement?

A. Yes, sir.

Q. I am not sure whether you testified before as to what you observed with respect to Thomas' condition at that time or not, but I will ask you at this time to tell us.

A. Thomas was laying in a hospital cot or bed; the room was darkened; there was no bright light on. I noticed a bandage around his head and around his neck; there was some minor bruises on his face, and possibly one of his legs was damaged but he had the covers up on that side and I could not see what was the matter with his leg.

Q. What did you observe as to whether or not Mr. Thomas at that time had full possession of his faculties?

A. He answered every question very lucid and clear, and after the first question was asked he went right on and told that story.

Mr. Matteson:

That is all.

Cross Examination.

By Mr. Underwood:

Q. Did he seem to be in any pain, Captain Patten?

A. Yes, I would say that the boy was in some pain.

Q. Not a great deal?

A. Yes, he was in some pain.

Q. Did his face show it?

A. From the evidence and cuts on his face he must have been in some pain.

Q. Did he grimace?

A. Well, the room was not lit up; I couldn't see his face very plain, and although I did not see any agonizing look on his face, I knew he was under some pain.

Q. Did he appear to be sleepy or tired?

A. No.

Q. He did not appear to be desirous of going to sleep?

A. No.

Q. What was the occasion for your departure from the room; had you gotten all that you wanted at that moment to get from Thomas?

A. I believe so, yes; I didn't question Thomas myself.

Q. Did the nurse tell you to go, tell you it was time to go, or did you go because you were finished?

A. That is correct.

Q. Nobody told you to go?

A. No, sir.

Mr. Underwood:

That is all.

Mr. Matteson:

If your Honor please, I am in somewhat of a difficult position, that is, Mr. Botts, the attorney for Mr. Pilkington, is the third man who was in the room, and I would like to call him as a witness to testify—

Mr. Botts:

I have no objection to telling you what I know, but there is a rule that is sometimes invoked that when an attorney appears as a witness he should thereafter retire as attorney. Now, when there has only been some minor testimony I have seen that rule waived. I am willing to testify, however, I do not care to have the rule invoked against me, that is, that I should not thereafter appear as counsel, and with that understanding I have no objection--

Mr. Underwood:

I would miss Mr. Botts' presence too much in this case to take advantage of that rule.

1143 Thereupon: FRED BOTTS was produced as a witness by the Libelants, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Your full name is?

A. Fred Botts.

Q. Your home address?

A. 518 Northeast 56th Street, Miami, Florida.

Q. You are a member of the Bar of the State of Florida, are you?

A. Yes.

Q. And an attorney for Captain Pilkington in this case?

A. Yes.

Q. Do you recall the occasion of an interview with Mr. Johnnie Thomas at the Memorial Hospital in Fort Lauderdale on June 24, 1935?

A. I do.

Q. Will you state to us the circumstances leading up to that interview?

A. As a result of a telephone call I went to the Boatyard, arriving there sometime in the early evening, I would say somewhere between seven and seven-thirty o'clock. I saw a number of people there, and of course the subject of the fire was generally discussed. Among others that I saw there was Mr. Garry Miller and Captain Patten; of course Mr. and Mrs. Pilkington were there, and I think others. Eventually Mr. Miller, Captain Patten and I went down to the hospital for the purpose of trying to interview Mr. John Thomas in an attempt to ascertain if we could because of the explosion which started the conflagration.

Q. Who did you see at the hospital?

A. We first saw the head nurse. We attempted to get in touch with the physician—whose name I didn't recall

until I saw him yesterday—to ascertain whether or not the patient was in a condition to be interviewed, and to get his permission, which, of course, the hospital required. My recollection is that we failed to reach the physician over the telephone, and eventually we came in contact with this physician in the hall just off the main entrance, and ascertained that he had been in the building while we were attempting to locate him. We secured his permission to visit the patient for a short time.

While we were there, either in the patient's room or in the hall, we also saw Mrs. Thomas, the wife of Captain Thomas. My best recollection is that she was in the room while the interview took place, but I would not be sure about that. I know that Captain Patten, Mr. Garry Miller and the nurse were in the room at the time the interview took place. The room, as Captain Patten has said, was darkened in order to make it more comfortable for the patient; there was a light in there, but it was darkened.

Q. About what time did this interview take place?

A. I would have to state that my recollection is that it was somewhat later than Dr. Blount placed it; I think it was about nine o'clock, but it may have been anywhere from 8:30 to 9:30, according to my best recollection.

Q. On this occasion in the room of Johnnie Thomas in the Memorial Hospital at Fort Lauderdale, between approximately 8:30 and 9:00 o'clock did Johnnie Thomas in your presence make, in words or substance, the following statement: "My name is Johnnie Thomas. On Monday, June 24, 1935, I went on board the Yacht Seminole at Pilkington's Boatyard, Fort Lauderdale."

Did Johnnie Thomas at that time in words or in substance make that statement?

Mr. Underwood:

If your Honor please, I make the same objection to this entire line of questioning.

The Court:

Same ruling.

A. In substance. That does not reflect his exact words which were elicited by questions, but in substance he stated that.

Q. "I accompanied one Captain Abel in order to inspect a netting on the rear end of the boat so that I could install a similar one on another boat for Mr. Phipps".

Did Mr. Thomas on that occasion in substance make that statement?

A. In substance he did.

Q. "Captain Abel went down toward the engine-room to inspect the boat while he was aboard. I could smell a feint odor of gasoline and warned him to be careful as one always has to be very careful on a boat which is laid up".

Did Mr. Thomas at that time, in substance or words, make that statement?

A. He did.

Q. "I was looking at Captain Abel through the engine-room window when he threw a knife switch to get light to inspect the boat".

Did Mr. Thomas at that time in words or substance make that statement?

A. I remember particularly that he used the word "knife", and the word "arc" was his language.

Q. "The switch arced and there was immediately an explosion".

Did he in substance at that time make that statement?

A. He did.

Q. "I came at the request of Captain Abel who was employed by Mr. Phipps to see how to do the work on Mr. Phipps' boat."

Did Mr. Thomas at that time in substance make that statement?

A. He did.

Q. "Captain Pilkington had warned us not to smoke and neither Captain Abel or I were smoking or struck a match."

Did Mr. Thomas at that time make that statement?

A. He did, in substance.

Q. Will you tell us, Mr. Botts, how long the interview lasted and what you observed with respect to the condition of Thomas at that time?

A. I would say that the interview lasted a minimum of five minutes and a maximum of ten minutes.

Q. What did you observe with respect to Thomas' condition during that period?

A. He was in bed; he appeared to be in some pain, and his voice was not as husky as it might have been; he was in a good frame of mind and was cheerful, because he was at that time elated that he wasn't in the same condition that Abel was, that is, dead. He was in a perfect condition of mind, a lucid condition of mind, regretting, of course, his injuries, but glad they were not worse.

Q. I show you Libelants' Exhibit 96, and ask you if you recognize that?

A. Yes.

Q. What is that?

A. This is a statement that was written by me in the room at the hospital; I think it was the office; it was written immediately after Mr. Miller, Captain Patten and I came downstairs. While my hand wrote the words, each sentence, before it was written down, was discussed between Mr. Miller, Captain Patten and I so as to be sure that we all agreed that everything was said in there had actually taken place; so, while the words are written by me, the language is not mine; it is the combination of the language furnished by all of us, and every word in there was agreed to by each and every one.

Q. Does this exhibit represent a true statement of the substance of Thomas' statements to you at that time?

A. It does, and it represents the entire statement that he made with reference to the cause of the accident. We had other conversation with him in which we inquired as to how he felt and that kind of thing, but as to the circumstances of him going down there and the cause of the explosion, that is the entire statement which he made.

Mr. Matteson:

That is all.

Cross Examination.

By Mr. Underwood:

Q. Did you go back upstairs after you had this paper prepared?

A. No, we didn't.

Q. You left Thomas because you had concluded your needs at the moment?

A. Right.

Q. You were not sent away from him?

A. Oh, no.

Q. How long have you been practicing law, Mr. Botts?

A. Twenty-eight years.

Q. How long have you been taking statements from witnesses?

A. Approximately the same length of time.

Q. Has it been your practice to take unsigned statements when you can get them signed?

A. We always, of course, prefer to get signed statements. I recollect—

Q. Did you take this statement back upstairs to Thomas that night and ask him to sign it?

A. No.

Q. Did you ever after that day present this statement to him and ask him to sign it?

A. No.

Q. Did you give it to anybody else for that purpose?

A. No.

Q. When did you first disclose the existence of this statement to counsel who represent the owners of the boats?

A. Well, I have never made any secret of it.

Q. When did you first disclose it?

A. The first time anybody asked me about it I told them about it.

Q. Was that in 1935?

A. Yes; wait a minute—

Q. Go ahead.

A. I gave a copy of that statement to Captain Patten; I think it was the next day, and my understanding from him was that he was representing some Underwriters of boat owners, so I would say that I delivered that to Captain Patten, and my understanding is that he communicated with the Underwriters immediately.

Q. This statement is written in the first person as far as Thomas is concerned?

A. Yes.

Q. Yet you have never, in almost the four years that passed, presented this to him since he left the hospital, and asked him to sign it?

A. That is right.

Q. So far as you know nobody else has, is that right?

A. I am certain no one else has because it stayed in my possession.

Q. Why didn't you take it back upstairs that night and ask him to sign it?

A. I am glad you asked that question. Mr. Miller, Captain Patten and I discussed that very thing. It was written with the idea of presenting it to him; then we discussed the question that he was in pain and decided that we would not go back and bother and wrack him again, and that is exactly the reason. It was written up

with the idea, with the thought in mind, of presenting it to him, and then we decided not to go back.

Q. You had not been asked to leave the room?

A. No.

Q. The doctor did not tell you to go?

A. No.

Q. And the nurse didn't run you out of there?

A. No.

Q. It was just the magnanimity of your heart that caused you not to bother him any more, is that right; is that true?

A. Yes.

Q. I am asking you if that is the fact?

A. You would probably not understand that when a man is in a suffering condition that you shouldn't worry him any more than possible.

Q. You worried him once, is that right?

A. No, we didn't worry him; we didn't worry him at all.

Q. Then why didn't you go back and present this paper to him for his signature?

A. I have told you why.

Q. You did not worry him and you didn't want to go back and worry him again; is that the way you want to leave it?

A. I will leave it the way I have testified, and if it doesn't suit you, Mr. Underwood, that is all right.

Q. You didn't even give him the opportunity to look at it and see whether you had correctly put down on paper what you say he told you?

A. No.

Q. Did you consider this statement of importance?

A. I consider the facts which he stated of substantial importance.

Q. Did you know that Thomas lived in Palm Beach or vicinity during all of this time?

A. Yes.

Q. And did you know that various people who were interested in this case went to see him from time to time?

A. I didn't know that; no, sir.

Q. You didn't know that Mr. Matteson went to see him?

A. I ~~think I heard~~ that later, yes.

Q. You didn't know that Mr. Dyer went to see him?

A. I probably heard it during the course of the litigation, but just when, I don't know.

Q. It never occurred to you, after the boy recovered and left the hospital, to take this to him and give him a chance to see whether it was right or wrong?

A. No; I can give you an explanation of that, if you want me to. Do you want me to tell you why?

Q. No; I am afraid of your explanations, Mr. Botts.

A. I thought you would be.

Q. Do you remember what date you received these various instruments that are in evidence here?

A. I couldn't recollect the date, but in my judgment it was not much later, if as late, as July 1st; it was just a few days after the fire.

Q. Is that your signature? (Handing witness document.)

A. Yes, that is my signature.

Q. Does that refresh your recollection as to the date?

A. Well, that statement is probably correct; it says "June 26th"; I knew it was soon after the fire, but I didn't remember the date; I expect that is right.

Q. You signed it and swore to it on that day; does that refresh your recollection?

A. I am reasonably sure this is correct, but I would not swear to it, and that is substantially in accordance with my present recollection.

Mr. Underwood:

The statement shown to the witness is in the Clerk's file and is an affidavit under oath by Mr. Botts, sworn to on

February 17, 1937, and I take it that it need not be marked.

Mr. Matteson:
That is quite all right.

Mr. Underwood:
That is all.

The Witness:
I want to ask you this, Mr. Underwood: that statement says these pieces were delivered to me on June 26, does it not?

Mr. Underwood:
I think that is right.

The Witness:
Yes; that is about in conformity with my recollection; I knew it was early after the fire.

Re-Direct Examination.

By Mr. Matteson:

Q. I show you this statement that Mr. Underwood was just referring to, signed by you on February 17, 1937. Does that accord with your present recollection of the facts?

A. Yes, sir; that is as I recall them.

Q. Mr. Botts, Mr. Underwood raised the question of why you didn't take this statement, Libelants' Exhibit 96, back to Johnnie Thomas for signature at a subsequent date, and he refused to ask you why not. Will you explain to us why not?

A. I don't know whether I had this statement with me or not, but I went to Palm Beach for the purpose of speaking to Thomas again. That was after I had filed one

lawsuit in this case. I went to Mr. Thomas' uncle with whom I was acquainted due to some contacts we had when I was Assistant United States Attorney, and I discussed this matter with Thomas' uncle. He asked me—

Mr. Underwood:
If your Honor please, I object to that conversation.

Mr. Matteson:
He is making an explanation of why he didn't do something that Mr. Underwood asked him about, your Honor.

Mr: Underwood:
I am not at all sure that his motive in failing to do something is a proper question at all, and I do not object to that, if your Honor please, but I do object to the witness relating the conversation—

A. All right, I won't say what was said.

Q. Go ahead.

A. I didn't go to the hospital at that time because I didn't want to do anything that would disturb Thomas—to disturb the payment of Mr. Thomas' hospital bills by some persons, and I feared that if I went there and accepted employment as Mr. Thomas' attorney that that would be disturbed. That is why.

Mr. Matteson:
That is all.

Mr. Underwood:
No further questions.

1159 Thereupon: JOHN A. THOMPSON was produced as a witness by the Libelants, and having

been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Your full name is—

A. John A. Thompson.

Q. And your address?

A. Present address, Coconut Grove, Miami, Florida.

Q. Do you have any other address?

A. 90 John Street, New York City.

Q. What is your occupation?

A. Consulting Naval Architect, Marine Engineer and Surveyor.

Q. Mr. Thompson, will you tell us what your training and experience has been?

A. All through my life?

Q. Yes.

A. I was educated in Clytha College, Newport, England, with an extra technical tutelage at the Newport Technical School and the Stroud Technical School in Gloucestershire, England.

I served seven years' apprenticeship, unpaid, in the design and construction of ships, engines and boilers, and their repairs.

Q. Where was that?

A. About four and one-half years at Newport, and about one year at Stroud's at Gloucestershire and about one year at Thorny Cliff, Woolston Yard, South Hamilton, England.

Q. Those are Naval Shipyards that you refer to?

A. Yes.

Q. After your apprenticeship, Mr. Thompson, tell us about your experience.

A. Thereafter I went with the Fairfield Shipbuilding Company, and from there to the London office of Armstrong-Whitworth Company.

Q. What sort of company is that?

A. They are shipbuilders, prominent shipbuilders.

Q. Continue from there.

A. Oh, during the next thirty years I was with various people, finally becoming a partner in one or more shipyards, acting as manager and naval architect, and I was also a partner in a firm of consulting engineers in Liverpool and London.

Q. Will you continue from there?

A. I personally designed and built over seven hundred vessels of practically all types, except fighting tonnage, and about 95 per cent. of these would be steel vessels.

Q. Yacht types included in those?

A. Yes.

Q. Does that include yachts propelled by gasoline?

A. Yes.

Q. Continue from there.

A. Propelled by all classes of internal combustion engines, and also by steam.

Q. During the war what was your experience?

A. During the war I was chief designer of the British Admiralty on gasoline vessels. After the Titanic disaster, when the Home Office opened a panel of Naval Architects, I was appointed naval architect assessor to the British Board of Trade.

Q. Did you remain in England?

A. In 1923, due to the depression in shipbuilding in England, I went to Australia; I was in Sydney, Australia, as a consultant naval architect and engineer for about six years, I think. In 1932 I came to this country and commenced on my own account as an independent surveyor, and I have continued more or less since acting in that capacity.

Q. What has been the nature of your work as independent surveyor?

A. In this country?

Q. Yes.

A. Mostly engaged in the survey of yachts.

Q. In the period in which you have been engaged in this country, how many yachts have you examined?

A. In this country?

Q. Yes.

A. On an average of 200 to 250 a year.

Q. What types of yachts are included in that?

A. I would say yachts of almost all types, from the smallest to the largest.

Q. Have you had any opportunity to observe the Yacht Seminole since the fire of June 4, 1935?

A. I went to a yard about a year ago; I think it was called Nuta's Yard; it was under another name previously. The Yard lies up the Miami River, and I was pointed out—there was pointed out to me a wreck which was said to be the wreck of the Yacht Seminole.

Q. Did you look at the wreck at that time?

A. I got a boat from the yard there and rode over to her and climbed on board and got around on her as well as I could. At that time she was partly submerged. Water in the engineroom was coming out of her, as far as I can recall now, probably two or three feet or more above the engineroom floor.

Q. Since that time have you examined the wreck on any other occasion?

A. On a day in December last I examined the same wreck at the same place, and at that time she had been more or less pumped out.

Q. On the occasions of these examinations did you observe the gasoline tanks of the Yacht Seminole, and I mean by that the tanks which are shown in this picture?

The Court:

We will recess until 1:30.

(Thereupon a recess was taken until 1:30 P. M., March 23, 1939—same day.)

March 23, 1939, 1:30 P. M.

Convened pursuant to recess.

Appearances same as heretofore noted.

4163 Thereupon JOHN A. THOMPSON, a witness produced by the Libelants, resumed the stand and testified further as follows:

Direct Examination (Cont'd.)

By Mr. Matteson:

Q. Mr. Thompson, I neglected to ask you this morning if you are a member of any professional societies?

A. I am a member of the Society of Marine Engineers of New York; a member of the Institute of Mechanical Engineers of New York. Prior to coming here I was also a member of the Institute of Naval Architects and the Institute of Marine Engineers, but I resigned them when I came to America.

Q. I was asking you, Mr. Thompson, when we recessed this morning as to your observation with respect to the gasoline tanks of the Yacht Seminole, and I refer to the large cylindrical tanks which are shown in Libelants' Exhibit 6.

A. Yes.

Q. Did you observe those tanks with reference to their construction?

A. As far as I was able to.

Q. Will you please tell us the extent of your investigation and what your observations were with respect to them?

A. Are you referring to my first observations or the second ones?

Q. Tell us all about it, and when you saw them.

A. When I first saw the tanks it was about a year ago, when I went up to Nuta's Yard at that time; at that time the water was up and I could not see the bottom of the tanks. I observed that the tanks were not in line; one of them, I think it was the second one from the port side, was badly displaced and leaning forward.

Q. Will you continue and tell us what other observations you made?

A. At that time I had difficulty in getting on the boat. It was at that time that I measured the distance, the diameter of the tanks, with a lath, and with the same lath I measured the distance from the corners, that is the longitudinal sections and the sides. I did not note the diameter of the tanks. I consider them to be four feet in diameter, I would say. I measured the difference in the length and the sides and the diameter of the tanks, and the difference was approximately one and one-half inches, which would indicate that there would be approximately a maximum of three-quarters of an inch from the forward side of the tank to the forward bulkhead, and from the off-setting side of the tanks to the after bulkhead.

Q. Now, Mr. Thompson, with respect to the tanks, tell us first what did you observe on that occasion or the subsequent occasion with respect to the construction of the tanks.

A. On the first occasion I didn't take particular attention to the construction of the tanks, but on the second occasion, I believe in last December, I had the opportunity to examine the tanks more closely, and I consider they had not been built as gasoline tanks.

Q. Will you just describe the tanks and tell us why you reached that conclusion?

A. They were cylindrical steel or iron tanks, with an inverted bottom, single riveted.

From my experience in the construction of such tanks I should say that the lower seam, that is, the row of rivets connecting the bottom of the tank to the sides of the tank,—the holes had been punched in and had not been drilled. The seam was a single riveted seam, which I do not think is suitable for the lower seam of a gasoline tank.

Q. Was the seam welded?

A. The seams had not been welded, neither had the rivet points been welded.

Q. What openings did you note in the tanks?

A. I noted an opening towards the bottom of the tank, and one just about the top, both on the after side; and on the top of the tank a small hole in the center at the top.

Q. Was there anything in the nature of a manhole or manhole covering plate laying on any of the tanks?

A. I looked for such a thing, as far as my examination would allow me, but I could not find a manhole covering either tank, or in any of the tanks.

Q. You expressed the opinion that this sort of tank was not made for a gasoline tank. Will you tell us your reasons why you think it is not suitable for us as a gasoline tank?

A. Would you mind splitting up your question?

Mr. Matteson:

Read the question.

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. May I answer that part?

Q. Yes.

A. A gasoline tank anything of the like and size of those tanks must have means of internal examination. On that one point alone I would not consider these tanks gasoline tanks. From my observation I do not consider them gasoline tanks, insofar as they were riveted tanks without welding of the seams or the rivet points.

Q. Why do you say that?

A. Because from my knowledge and experience of good standard practice all gasoline tanks should have those two essentials; furthermore, I do not consider a tank of that size suitable for gasoline with a single riveted lower joint, or a joint that has not been drilled and fitted rivets used.

Q. Why is that?

A. As far as the riveting of the tank is concerned, sir, it is practically impossible to fit an inverted end or any end to a punched place.

Q. Why is that objectionable, Mr. Thompson?

A. The effect of that poor construction would in my opinion—it would have a certain effect on the inability of getting that joint absolutely gas-tight. You would likely have damaged rivets, rivets that would be forced in by the riveter with heat; they would be forced in through elongated and not thoroughly cleared holes, and you would then not get a perfectly fitted head of the rivet and you would likely damage the bottom of the rivet in so inserting it.

Q. Why is that important in connection with a gas line?

A. Because seepage from a gasoline tank is more likely to happen than from water or similar liquids.

Q. Why is that?

A. We find it always much more difficult to retain gasoline in a riveted tank, and the practice has been as

far as I can remember, as an additionl precaution, that gasoline tanks be lightly welded at its collar and all rivet points.

I would like to say a little something on that further, if you like, on the rivets.

Q. All right.

A. The difficulty set up by riveting a tank in that way is that you have two positions that will leak, the back and the head of the rivet, as well as the point.

Q. I do not know that I understand you exactly. Will you explain that?

A. Well, in the dome end of the tank the head of the rivet is inside of the tank. With the inverted tank the head of the rivet is outside of the tank.

Q. Giving you two exterior surfaces, is that right?

A. Exterior?

Q. Yes.

A. Yes. I do not object to it on the inverted end. It is at the top of the tank and not the bottom—

Q. What is the objection to having it at the bottom of the tank?

A. There is more than one objection.

Q. Will you explain those to us?

A. One serious objection is that whatever condensation happens in your tanks, it will attack the bottom end, whereas the condensation will not attack the top end if inverted at the top.

Q. Why is the condensation more apt to attack it when you have inverted crown than otherwise?

A. Because, sir, the condensation runs down the inside of the tank, and it eventually reaches what I would call the shell side of the inverted end; it would get in between the shell plating and the inverted end of that small space, and it is impossible to push it up unless you have means of getting inside, after the tank is riveted.

Q. Can you draw us a little illustration on that page and show us the point at which you say the condensation will collect?

A. Yes, certainly. I will exaggerate the thickness just for the purpose of illustration, your Honor. I do not mean that the tanks are of this thickness. This (indicating) is the side plating of the tank, the cylindrical portion of the tank. I will mark that "side", shall I?

Q. All right.

A. (Witness so indicates.) This is the bottom of the cylindrical shell. Shall I mark that "bottom"?

Q. Yes.

A. The rivet holes that I was referring to, which I considered were punched and not drilled, I will mark across here (indicating) in black. These holes were afterwards counter-sunk, which is not good practice,—they were countersunk the full length of the plate, therefore, the holes had a larger diameter, your Honor, outside than inside. I will just etch in here (indicating) the section of the material which is adjacent to the drilled and countersunk hole. This (indicating) represents the bottom or, as I described it, the inverted end, but of course that is much heavier than these tanks were. I do that purely and simply to make you understand, your Honor. I don't know whether these rivets were small neck rivets or not, or if they were plain necks. I see nothing on here now to show that, but I will assume that they were plain necks. I will etch that on a different angle to show the section of the material left in the bottom adjacent to the drilled hole or possibly punched hole. Now, Mr. Matteson, what was your question?

Q. I asked you to illustrate the point at which you said the condensation would collect.

A. It would collect here (indicating).

Q. Will you draw an arrow pointing to that point?

A. It would collect and seep all down here until it met the inside edge of the caulking.

Q. Will you show us what the inside edge of the caulking will be like?

A. May I stop and say what caulking means in an iron tank. It doesn't mean putting in any material like wooden caulking. Here is the lower end of the tank shell; here is the lcwer end of the inverted end. Shall I mark these "X" and "Y"?

Q. Yes.

A. (Witness so indicates.) Is that clear, your Honor? An iron tool is taken, a suitably shaped tool—different yards use different types—but it is a plain hand chisel; the easier description is plain hand chisel. They run that along the inside edge of the outer plate and force a certain amount of that steel material or iron up to fill that space until it is definitely tight. When the caulking is off you can observe that edge on the plate, because it is slightly higher up than this (indicating); this (indicating) is the caulkng. The seepage or condensaton would eventually attack not only the inside edge of the caulking but also the top of the rivet as it passes the rivet.

Q. You have drawn a line here indicating where the seepage comes?

A. The condensation, sir. I refer to it as "condensation".

Q. Will you place the letter "A" at the top of that line?

A. I will mark an arrow showing its direction. I will mark that "A".

Q. Now, Mr. Thompson, on the second figure to the right of the first one, will you also show a similar arrow, also mark that "A"?

A. Yes; showing the inside of the caulking.

Q. That is right.

A. Where the seepage or condensation would strike?

Q. Yes.

A. I will mark this in black.

Q. These two diagrams that you have on this sheet (indicating), Mr. Thompson, do they illustrate the manner of construction of the tanks on the Seminole as you observed them?

A. Approximately. I don't know whether a small neck rivet was used or a plain head rivet.

Q. Does that make any difference in the answers that you are giving to us?

A. No, not materially; nothing that would help the Court.

Q. Would it make any difference at all in the facts which you have been describing to us?

A. No, sir.

Mr. Matteson:

I offer this diagram in evidence.

Mr. Underwood:

No objection.

The Court:

Let it be admitted.

(Thereupon the diagram above referred to was marked Libelants' Exhibit 99.)

(By Mr. Matteson):

Q. You were speaking of the use of a reamer or drift in riveting such a tank. Will you tell us what that is?

A. May I make another sketch, your Honor, because it is difficult to describe it in language?

The Court:

Direct your questions to counsel.

(By Mr. Matteson):

Q. I do not want to go into great detail on that, Mr. Thompson. Can you tell us just generally what a reamer is or what a drift is?

A. A reamer or drift is something that is used when the holes are not absolutely opposite one another.

Q. That is, Mr. Thompson, at the time the tank is being riveted?

A. Yes. If they are badly out of place of course the plate should be condemned, but if the hole overlaps slightly, then you can pass or fit a bolt right through, and you put the reamer in the hole to get out the overlapping material; by using it you make an unelongated hole, to the extent that one plate is overlapping—

Q. A reamer is a little power tool to make a hole as round as it is possible to make it round?

A. Yes.

Q. Do I understand that if a reamer is used the holes then become not so well-fitting?

A. Not so good a job as a properly fitted drilled hole.

Q. I believe you said that in the construction of a tank of this kind the rivet holes should be drilled in place?

A. Yes.

Q. How could you tell from an examination of this tank which method had been used in its construction?

A. When I saw the tank on the second occasion when I visited the wreck, I looked at the seams and the rivets were not all in the same line; they were slightly out of line, referring to the punching and not the riveting. I think I could show you that on the photograph, if you wish.

Q. I want to ask you this: taking tanks constructed as these were, according to your observations and as you have described them here, used for the purpose of storage of gasoline on a vessel driven by gasoline power for

fourteen years, without being moved from the place of their original installation, in your opinion would such tanks in use for such a period remain tight for that period of time?

A. They certainly couldn't remain tight.

Q. Is that for the reasons that you have described and illustrated to us?

A. Those that I described and illustrated.

Q. Now I think you have told us that you observed the compartment in which these tanks were installed, and that you found that fore and aft there was only a space extending the width of the tanks by about an inch and a half, did you say?

A. I judge, sir, from the measurements that I took, that there was a space of three-quarters of an inch on the forward end.

Q. Did you observe how much space there was in that compartment for the tanks athwartships?

A. I consider it was three or four inches or thereabouts.

Q. How were these tanks installed in the compartment with respect to height; what were they supported by?

A. At the time I saw the tanks?

Q. Yes, and how were they supported?

A. They were supported on what I thought had been the bottom of a cross bunker, or coal bunker, and the supports, I believe, consisted of longitudinal angles and some foundation plates, as far as I remember now.

Q. As they were installed how were the tops of the tanks with respect to the top of the compartment?

A. I am afraid I didn't quite follow your question. I am sorry.

Q. Well, you observed the compartment in which the tanks were, did you?

A. Yes.

Q. Did you observe the height of the sides of the compartment?

A. Yes.

Q. Did you observe how the tops of the tanks were as they were installed with respect to the top of the compartment?

A. From my observation, sir, the tanks came to practically the top of the compartment.

Q. As those tanks were installed in that compartment would it be possible to inspect them in place?

A. It is impossible, in my opinion, to examine them there externally or internally in any way.

Q. As they were installed in the Seminole?

A. As they had been installed.

Q. Will you tell us, Mr. Thompson, in your opinion, in the light of your experience, whether that is a proper method for installation of gasoline tanks in a vessel?

A. I consider it most proper?

Q. Why?

A. You are referring now to the installation of the tanks?

Q. Yes, sir.

A. I think it is absolutely imperative to have them so—for the whole of my career it has to my knowledge been considered good practice all of the time that with riveted tanks or any construction there should be sufficient space all around; I mean at the sides on top and the bottom, to enable a complete external examination and for dealing with the tanks should repairs be found necessary.

Q. Why is that important?

A. In respect to gasoline tanks?

Q. Yes.

A. In the absence of those facilities I would consider those tanks—I would consider the installation of those tanks a dangerous hazard from the moment they were installed and increasingly dangerous as the years went by.

Q. Is that the reason that you say it is important that they should be so installed that they could be inspected in place?

A. Not only important but imperative.

Q. You were speaking of facilities for interior inspection of tanks of this type. Will you tell us what in your opinion is required in that respect and why?

A. It is absolutely essential that means should be provided for easy access of a man to get inside the tank to examine the rivets, the rivet heads, and test them, and examine the seams and the condition of the plating.

Q. Why is that important in a tank of this description?

A. Well, in a test it is important to find out whether the head of a rivet has cracked or broken off and to see if the rivet is a sound rivet. That is an important and vital consideration.

Q. How could such access be provided?

A. By the use of an accessible manhole with proper cover.

Q. You say that is usual in a tank of this size?

A. I have never come across a gasoline tank of that capacity or anything like that capacity without that provision.

Q. Did you observe whether or not there were any means provided on the Seminole for securing these tanks in place?

A. I saw none, and from my observation of the bulkhead I do not consider that these tanks ever were secured by straps.

Q. What are straps?

A. Straps?

Q. Yes.

A. They are made of iron or steel and go around the tank and secured at some firm part of the vessel structure, the purpose being to hold those tanks in position in relation to the bulkheads or any other part they are attached to.

Q. How would these straps be secured to any bulkhead or other object?

A. Preferably by straps, if the bulkhead was a riveted bulkhead, or by bolts otherwise.

Q. Was there any indication on the bulkhead that any such contrivance had ever been affixed to these tanks?

A. I found none.

Q. If there had been any there you would have observed them?

A. Yes, I would have observed them, because I looked for such things.

Q. What would be the effect of the failure to have such straps or other supports to be on the installation?

A. Any boat or the Seminole particularly?

Q. The Seminole particularly.

A. Well, the Seminole was of a type where one would experience vibration. She has a greater depth to length proportion; I think it is approximately sixteen to one; I believe that is correct. In addition to that, sir, she has very few cross-beams; she has a much flatter bottom, from what I could observe of the wreck, and I think a vessel of that type, under those conditions, would be subject to regular and permanent vibration. I am afraid that is not a complete answer to your question.

Q. Before we go further, Mr. Thompson, let me clear up two things; you spoke of a depth to length proportion.

A. Yes.

Q. And you said it was sixteen to one?

A. Approximately 16 to 1.

Q. Do you mean radius 1 and a depth—

A. Sixteen depth to one length.

Q. Do you mean sixteen lengths to one depth?

A. No, no, no; that would be an extraordinary vessel, Mr. Matteson. I mean sixteen depths to one length.

Q. By "depth" what do you mean?

A. Depth of the vessel. I understood that it was seven feet. I took that from some paper I saw which gave the

depth as seven feet and the length merely sixteen times that. I don't remember the exact length. I know the depth was seven feet and I remember it was calculated at sixteen to one.

Q. In other words, she was sixteen times as long as she was deep.

A. That's it.

Q. When you say she would be subject to vibration, just what do you mean?

A. Well, the longer or greater the proportion of depth to length, as we call it in naval architecture, the more likely a boat is to vibrate.

Q. What does vibration mean?

A. It would be a combination of longitudinal stressing and racking.

Q. You mean working in the hull?

A. Yes, slightly working in the hull.

Q. If the tanks were not screwed and placed properly what would be the effect of that vibration on the installation?

A. I think it would set up stress on joints and pipes. That would be one factor. I do not mean to say that there was anything wrong, but I am just telling you the effect on that type of boat on joints and pipes. You would more likely get vibration on a boat of that character than you would with a boat with less depth to length.

Q. I take it that your view is that securing the tanks is highly important in that type of vessel?

A. Very much.

Q. I show you this exhibit No. 2. It has been testified that the valve attached to this exhibit was the shut-off valve that was affixed to the No. 2 tank, and that the remaining parts are pipe connections connecting that valve and tank for the conveyance of gasoline to the place where it was needed for use in the engineroom. I

would like to ask you whether in your opinion that sort of an arrangement of piping for that purpose would be proper in a gasoline vessel?

A. Is my answer to be directed to the whole thing?

Q. To the whole thing.

A. I think I can answer it briefly, Mr. Matteson, that if I saw such an arrangement I would immediately condemn it.

Q. Why?

A. Far too many joints in such a short length.

Q. Why is that of any importance?

A. The pipe is much more likely to leak; anyone looking at the pipe can see a leak but you rarely can see seepage.

Q. Will you describe to us what you mean by "seepage" in the case of gasoline?

A. I call seepage a minute leaking with the fluid spreading along the surfaces, but not falling from the surfaces.

Q. In the case of a gas line what would be the result of that kind of a leak?

A. An accumulation of gasoline vapor adjacent to where the seepage would come or possibly come.

Q. Do I understand from you that in that type of leak the gasoline evaporates before it drops, is that what you mean?

A. There would be no dropping; it would be evaporation, or rather the turning into gasoline vapor, turning gasoline into gasoline vapor, and such a leak, as I understand your testimony, would not be indicated by any dripping of—

Mr. Underwood:

May we let the witness do the testifying?

Mr. Matteson:

I will withdraw it, if there is the slightest objection to it.

Mr. Underwood:

I certainly do object to it.

The Court:

Proceed.

Q. When gasoline evaporates in the air space, Mr. Thompson, will you tell us what happens; tell us what happens when gasoline evaporates and fumes are created; what happens to the fumes?

A. Well, generally they are heavier than air and they mostly assume a lower position.

Q. And in a vessel where is that?

A. In a vessel of the type of the Seminole?

Q. Yes; where is the point at which such fumes are apt to collect?

A. In the bilges.

Q. I show you this Exhibit No. 17. There has also been testimony with respect to this, that is, being a part of the gasoline piping system of the Seminole. I will ask you whether, in your opinion that set-up of pipe would be a proper thing to have in the gasoline lines of a gasoline vessel. I am referring to the whole thing.

A. Speaking as a whole, I would not approve of it.

Q. Why not?

A. Too many joints. I think this pipe is brass. A short length of brass I have no objection to, provided the joints are all soldered, provided the screw joints are all soldered.

Q. I call your attention to the globular—I suppose you would call it—part of this device which has been referred to as a trap. On the bottom there is an opening. Do you see the threaded part broken off in that opening?

A. Did you say "threaded" part?

Q. Or whatever it is that is broken off in there.

A. Do you wish to assume that this is threaded—

Q. No. I don't want you to assume anything.

A. I should say it was threaded.

Q. Can you tell us what the proper method of closing the bottom of a trap of this type would be?

A. During the whole of my experience traps of that description, or anything of that nature having a drain at the bottom, should have a ground plug fitted with petcocks or plugs at the bottom.

Q. Can you tell me whether or not the fitting which has broken off in the bottom of this trap is a part of such a plug?

A. I have not examined it before, Mr. Matteson, and that is why I am taking a little longer time. I haven't picked it up and examined it, but I have seen it. I have seen it on the desk and other places. I don't think that is a part of a plug.

Q. Why do you say that?

A. Because I cannot imagine anyone making a plug with a drilled center as it must have had for this—as it must have had if this is a part of a plug.

Q. Well, Mr. Thompson, in your opinion can you determine what sort of a connection was on there, if it wasn't a plug?

A. May I go back and emphasize my views. I could not pass this for—in other words, anything of that nature should have a stop-cock, an approved stop-cock on each side, so that both ends can be shut off before the plug is taken out for the cap lifted, before it is removed from the line or the plug taken off.

Q. Why is that?

A. I think it would be extremely hazardous to have such a fitting on a pipe line without such shut-offs.

Q. Why is it important to have such shut-offs?

A. To prevent leakage in the bilges.

Q. When would such leakage occur?

A. With the removal of the plug.

Q. What would leak if removed?

A. If removed the sediment and water, I presume; sediment and/or water if present.

Q. Why do you say that these should have a plug and not a threaded connection of some kind on the bottom, on the bottom of these traps?

A. For more reasons than one. One reason is that a plug will make a much tighter joint for any type of valve; secondly, that plug could not be removed by accident or by a careless person fooling with it, and it could not be opened by vibration. In other words, I think that plug would remain tight until it was deliberately opened by the means of a wrench.

Q. Why are these reasons that you have just given us important with respect to a gasoline line?

A. To prevent leakage of gas into places where you might not be able to get the fumes out and afterwards it would make a dangerous hazard.

Q. Assuming that the gasoline piping system of the Yacht Seminole consisted of pieces of pipe of the type of these two exhibits, two and seventeen (Nos. 2 and 17), would you consider that it was proper?

A. Do you mean in part or are you asking me about the whole system?

Q. I am suggesting that these are typical of the entire system; what would you say as to that?

A. I couldn't imagine such a system ever existing in any boat.

Q. If it did exist would such a system be dangerous?

A. Extremely dangerous.

Q. Why?

A. Because of the certainty of the collection of gasoline vapor in the bilges, from seepage, even if not from definite leakage.

Q. I show you Libelants' Exhibit No. 19 in which some pipe lines appear in this part of the photograph, from which you will note a line has been drawn at the end, and at the end of the line is written the words "carburetor line". Can you observe the condition that is illustrated there?

A. In a limited way, yes.

Q. I want to ask you, Mr. Thompson, assuming that a line, the carburetor line by which gasoline is taken to the carburetor of a vessel, is a line such as illustrated in this picture,—would you consider that such a line was a proper line?

A. I would have disapproved of it myself.

Q. Why?

A. From my experience.

Q. Why?

A. Too many joints and the bends are too sharp and no expansion bends on this pipe at all. I wouldn't approve of any such system; I can only judge, however, from the photograph.

Q. I show you Libelants' Exhibit 20 in which a similar line is shown, with an arrow drawn from it marked "feed line, port engine"; do you see that line?

A. I would rather not pass an opinion on that; it is not clear enough for me to pass an opinion on that.

Q. Now would you consider a system such as shown by this Exhibit 19, which you did testify with respect to, dangerous?

A. I would.

Q. Why?

A. May I look at the photograph while I answer?

Q. Yes.

A. May I see the photograph while I answer the question?

Q. (Hands exhibit to witness.)

A. I thought I answered that before.

Q. Answer it again, please, even if you did.

A. No expansion bends.

Q. Mr. Thompson, the question I asked you was: would a system such as that shown there be dangerous?

A. Highly dangerous in my opinion.

Q. And why?

A. The danger of seepage resulting in the collection of gasoline vapor in the engine-room bilges.

Q. Seepage from where?

A. From these joints; from these sharp bends; vibration getting in on these pipes. These things would set up corrosion fatigue at the bottom of the threads; you would be apt to get cracked threads. I said "corrosion fatigue" and not "fatigue".

Q. Is the corrosion fatigue the only thing that would cause a leak?

A. No. I think the joints would apt to become loose on any gas pipe.

Q. What would cause that?

A. Vibration from the engines or any stress acting on that pipe.

Q Now, Mr. Thompson, the testimony is that in the engineroom of the Seminole there was a line and a valve for drawing off gasoline in the engineroom. Now I show you this little diagram that was drawn by Mr. Underwood. The circles represent tanks; the line in front of the circles represent the bulkhead; and this is a line (indicating) passing through the bulkhead from each of the tanks, with a valve on it, and the line connecting the valves on the four tanks?

A. That is all very clear.

Q. And at the starboard end of the line connecting the tank valves, the connection that comes around in front there at a point in front of the No. 2 tank, at the end of which was affixed a draw-off valve or valves from which gasoline might be drawn. Would that in

your opinion be a proper thing to have in the engineroom of a gasoline vessel such as the Seminole?

A. No, sir; it is improper.

Q. Will you explain to us why?

A. From my experience and from what I know of good standard practice during the last thirty years a draw-off of that description would not be permitted and should not be permitted.

Q. Why should it not be permitted?

A. It creates a very dangerous hazard.

Q. Will you tell us what that hazard is?

A. Seepage or leakage of gasoline into the spaces below; the danger of using that to draw off gas in a vessel would cause gasoline vapor in the vessel to raise and blow over into the spaces below; the danger of someone tampering with it or the negligent use of it, or any use of it; the danger of the valve spindles being bent when the valves are open, precluding the possibility of shutting off the stream of gasoline through your pipe into the bilges; any of these would create very dangerous hazards, and any expert surveyor or experienced surveyor would condemn the use of any draw-off of any description in any engineroom, whether the engineroom was open or closed.

Mr. Underwood:

I move to strike out what any experienced surveyor would do.

The Court:

The motion is granted.

(By Mr. Matteson):

Q. Without saying what any experienced surveyor would do, will you tell us what good standard practice would require on this point?

A. The omission of any drain of any description whatsoever.

Q. Are there any other ways that you think of in which one of these valves could get out of order other than the bending of the spindle that you spoke of?

A. Oh, yes; there would be several. You might get some grit which would prevent the closing of the valve, and not permit the valve to be properly seated on the seat, and have the valve remain open to that extent, or the valve might get worn by the use of such an improper thing, and the valve might be—it would be impossible to keep it gas-tight, not only that valve but any valve of any type whatsoever.

Q. I show you a valve which is a part of Exhibit No. 11, the valve containing the number 125 on it. I will ask you to examine that and tell us what you observe.

A. I haven't examined these valves before. Are you referring to the valve or the valve spindle, or the spindle itself?

Q. Tell us what you know.

A. Shall I refer to the whole valve, the spindle, or do you want me to separate it?

Q. Examine the other part of the valve.

A. Taking the whole valve, it is a nickle-plated valve built by good makers of valves, with a working pressure of 125 pounds steam.

Q. I didn't ask you particularly about its condition; I am asking you particularly—

A. You mean today?

Q. Yes, as you observe it there.

A. Today it is a valve in such a condition that I would condemn it.

Q. Why do you say that?

A. The valve itself is damaged and it is worn badly.

Q. Show us the part that you say is worn.

A. The valve itself.

Q. Do you mean the part you have in your hand?

A. No.

Q. Point out to us where the evidence of wear is on that valve.

A. All over, as far as I can see; it is badly worn all over; I would call that valve worn all over; it is more badly worn on one side than the other. In this light it is extremely difficult to state definitely just where that valve is worn; it is generally worn, but it is not worn evenly. There is a nick in it; I think I kind of see a nick; it looks as if there was a nick there, and this (pointing) is a different nick. I would call that a broken valve; as far as I am concerned that valve is finished with and I wouldn't attempt to repair it.

Q. A valve in this condition that you have described, in your opinion would that be a proper valve for confining gasoline?

A. It is not a valve any longer for any use.

Q. Would it be satisfactory for confining gasoline?

A. No. Suppose you look at the seat in it; the seat seems pitted, and I imagine it would be after so many years. I cannot see it very clearly, but that valve is no longer a valve in its present state.

Q. You speak of two conditions on this valve, first the worn condition and the other the nick.

A. Yes.

Q. Would in your opinion irrespective of the nick, the wear apparent on that valve affect its efficiency?

A. Most decidedly.

Mr. Matteson:

I would like to have marked as an exhibit this diagram that was referred to in the testimony of the witness, and I offer it in evidence.

The Court:

Let it be admitted.

(Diagram above referred to was marked Libelants' Exhibit 100.)

(By Mr. Matteson):

Q. There is testimony in this case that there was installed in the gasoline line of the Seminole a round glass gauge, running from the head of the line adjoining the valves at the lower part of the tanks to up near the height of the tanks themselves. In your opinion would it be proper to have a round glass gauge of any kind as an indicating device to determine the level of gasoline in tanks in an engineroom?

A. Most improper.

Q. Why is that?

A. During the whole of my thirty years or more of experience with gasoline tanks it has been considered good practice not to fit any device that can be broken; the only device that I have approved of in thirty years of my experience is a sounding pipe. I consider glass gauges of any description and whatever manner installed, of whatever form or shape, dangerous.

Q. You speak of breakage; is there any other reason than breakage connected with your opinion?

A. I think it would represent another definite cause of leakage and/or seepage of gasoline from the tank, which would become gasoline vapor which would sink to the lower level.

Q. Mr. Thompson, you observed what was left of the engine-room on the Seminole, I believe, did you not—the space?

A. What?

Q. You observed what was left of the engineroom of the Seminole—the space, I believe?

A. Yes.

Mr. Matteson:

May I see your blueprint, Mr. Underwood?

Mr. Underwood:
Certainly.

(Recess.)

Q. I show you this blueprint which has been marked Respondents' Exhibit "A" for Identification on which the outline of the engineroom and the tank space of the Seminole is indicated. Have you in mind the size and shape and other features of that engineroom as indicated by this blueprint?

A. Yes, I think so.

Q. Mr. Thompson, there is testimony here that this engineroom was ventilated by a skylight no larger than 29 by 43 inches, a window on each side, one on the port side leading out through the side of the vessel and one on the starboard side leading into the passageway which goes by the engineroom. The window on the starboard being approximately 24 by 36 inches, the longer diameter being vertical, and the top of the window being only a few inches from the deck above; that there is also a hatch in the deck above the engineroom at the end of the engineroom, toward the stern, 24 by 24 inches; that there are two 14 inch cowl ventilators, one on each side of the skylight extending up to the deck above, but not extending below the deck of the engineroom more than a few inches. I would like you to tell us whether in your opinion, Mr. Thompson, that is sufficient ventilation for an engineroom of that size on a vessel of the type of the Seminole propelled by gasoline power.

A. Under what conditions?

Q. I am speaking now generally, under conditions of operation.

A. I would not consider that sufficient.

Q. Why not?

A. Because you have not indicated that any air was carried down to the engineroom floor or below it.

Q. Why do you say that?

A. Because it is good standard practice and has been during the whole of my experience in boats having any type of explosive mixture in the engineroom to carry fresh air down to as near as possible the lowest part of the compartment in which that fluid is.

Q. Do I understand that in your opinion the ventilating device which I have described did not adequately do that?

A. It would not.

Q. I would like for you to assume further, Mr. Thompson, that this vessel, as I have described it, is laid up afloat in a large storage shed, the ends of which are open; that the openings in the engineroom, including the skylight, the hatch and the windows are closed, and only the ventilators remaining open; that the vessel is left in that condition for a period of two months or more. Would you consider that under such circumstances the vessel was properly ventilated?

A. I would not.

Q. What in your opinion would be the danger involved in not having greater ventilation?

A. The accumulation of an explosive mixture in the lower section of that engineroom would create a very dangerous hazard in any part of that engineroom, particularly in the lower part.

Q. Would it make any difference in your opinion, Mr. Thompson, if at the time the vessel were laid up it had no noticeable leaks in the gasoline system?

A. No.

Q. Why not?

A. Because I think it is extremely difficult for anyone, even though they are experts, to go through an engineroom and spend quite a lot of time there, and definitely say that there is no seepage in that engineroom, even if they could not smell it and examine it

most carefully,—I don't think that that would guarantee that that engineroom was free of gas at the time of the lay-up, but with an extended lay-up the danger is definitely increased because slow seepages would result in the collection of an explosive mixture, particularly in the lower part of that space because of the inert state of the air and the, I might say, entire lack of ventilation.

Q. Would it make any difference in your answer, Mr. Thompson, whether or not there was a substantial quantity of gasoline in the tanks?

A. My answer would still be "no", but it would be increasingly dangerous if any gasoline or other or similar fluid was in storage in that space during that storage period; it would increase the hazard tremendously and the likelihood, of course, of seepage.

Q. Did you note the point at which the draw-off valves were attached to the gasoline tanks of the Seminole?

A. On my second inspection I did.

Q. And where were the draw-off valves affixed to the tanks?

A. On the engineroom side approximately, I would say, the lower part of the orifice would probably be five and a half or six inches from the lower end of the tank.

Q. And with the orifices located in that position would or would not it be possible to draw of all of the gasoline in the tanks?

A. By the use of these valves?

Q. Yes.

A. Oh, no, you couldn't draw it off.

Q. Did you observe whether or not there was any other means provided to remove the gasoline from the tanks on the Seminole?

A. I did not; no, sir. Since you have mentioned that, sir, that is another objection I have to the convex in-

verted bottom. If the bottom had been concave it would have been possible to drain the tanks by fitting a proper ground. plug, as we do permit in some circumstances. It would have been impossible to fit these tanks with any drain in my opinion which would adequately empty these tanks of liquid gasoline.

Q. Now, Mr. Thompson, in connection with the lay-up of a vessel of the type of the Seminole, as I have described it here, will you tell us what in your opinion, if she were going to be laid up for a period of two months, good practice and precautions would require?

A. Do you mean with respect safety?

Q. With respect to the engineroom and safety.

A. And not the upkeep of the property on her?

Q. That is right.

A. First and foremost the complete removal of all liquid gasoline and all other dangerous liquids; the cutting off of any live wiring, that is, electric wiring in the ship.

Q. What do you mean by "cutting off"?

A. Disconnecting the batteries, and the switchboard in particular.

Q. Why do you think that is a precaution that you should take?

A. For two reasons: one is that they are live wires; secondly, it prevents the negligent operation of a switch by anyone going on board who was not thoroughly aware of the danger, or for any other reason in connection with the operation of a switch. I believe it should be made impossible to get a spark from any electric point at all during a lay-up of a ship of that character. The practice to my knowledge in England, Australia and the eastern coast of America—by "eastern coast" I mean from Miami right up to New Bedford—has been almost uniformly the removal of the batteries. They are removed for two reasons; one for safety purposes of the ship,

and the other reason is for upkeep of the batteries. I am referring now to the safety purposes, the removal of live wires and the prevention of the negligent operation of switches or other electrical connections.

Q. Mr. Thompson, I want to put this question to you: assuming that the batteries are not cut off and that electricity is available at the switchboard of a vessel of the type of the Seminole in her engineroom, and that the vessel has been laid up for sometime, with her engineroom closed up except for the ventilators which I have described, and assuming that one goes on board the Seminole and goes into the engineroom, would you or would you not say that it was prudent in those circumstances to attempt to manipulate switches on the switchboard without first airing out the engineroom compartment?

The Court:

Read that question, Mr. Colman.

Thereupon the preceding question was read by the reporter as above recorded.

The Court:

Mr. Matteson, you say "laid up for sometime" in that question.

Mr. Matteson:

I will amend the question and say "Laid up for two months".

Mr. Underwood:

I object to that; that calls for a conclusion which the Court may have to probably reach at the end of the lawsuit.

The Court:

Mr. Matteson, inadvertently I may have caused you to amend your question there. I am questioning in my own mind as to whether the facts that you assume should not be brought home to the person who had the instrument there or who operated it.

Mr. Matteson:

Of course, I take it, your Honor, that the ultimate application of the witness' opinion, whether it fits the facts in this case, will be for the Court to determine, but it seems to me that it is competent for the witness to express the opinion and have the Court make the application on the facts before him.

The Court:

I am questioning whether or not the respondent in this case could be held for the negligence of Abel without Abel being charged with the notice of these facts which you assume.

Mr. Matteson:

If your Honor please, what I have assumed are facts, as we understand them, from the facts so far developed, but the point is as to whether or not Abel was legally justified, under the circumstances, in doing what he did.

The Court:

But ultimately you ask him the question was Abel guilty of negligence in throwing the switch under these assumed facts. Now that question does not assume that any of these assumptions were known to him.

Mr. Matteson:

As far as that is concerned, if your Honor please, I don't think it will ever be possible for any one to know what was in Abel's mind at that time.

The Court:

If I am right about that, then your question is improper.

Mr. Matteson:

I think it is proper for us to base it on what we can reasonably assume, that is, that Abel did have these things in mind. Perhaps it would be better to amend the question and not make the time so specific. The point that I have in mind is that it was simply a lay-up, and certainly for a number of weeks at least that is.

The Court:

I think I shall sustain the objection to the question as framed. Suppose you reframe your question.

(By Mr. Matteson):

Q. Mr. Thompson, let's put it this way: assuming a boat of the type of the Seminole, of the characteristics and dimensions that I have described to you, assuming that the engineroom of this vessel has been closed up, the skylight closed, the hatch closed, the windows closed, only the ventilators remaining open, cowl ventilators, from the deck above; that the vessel is in storage, and that someone goes aboard, and it is not apparent how long the vessel has been laid up there, except that she has been laid up there for sometime, and that a musty odor is smelled near the carburetors, or in the vicinity of the windows of the engineroom; would you, under all of those circumstances, consider that it was prudent for such a person to enter the engineroom and, without first taking means to ventilate the engineroom, manipulate the electric switch?

Mr. Underwood:

The same objection.

The Court:

I think the question is improper. I will overrule the objection.

A. I consider it would be most improper.

Q. Why do you say that?

A. Because of the hazards that were present, and from my experience the result that was most likely to happen.

Q. Will you explain that to us a little further?

A. I have had several yachts in this country during the last five years blow up from that very act. I don't mean that act on the Seminole, but I mean very similar acts of the type you have described.

Q. Now, Mr. Thompson, without referring to particular cases, but basing it on your experience, will you tell us what hazards are to be expected under those circumstances?

A. Ignition of an explosive mixture by a spark, electric spark.

Q. And in your opinion would that danger be present whether or not gasoline odor was actually detected?

A. Yes.

Q. Why do you say that?

A. Because in my experience it has happened in cases before where gasoline fumes had not been noted.

Q. How can you account for such a condition?

A. Which condition are you referring to now?

Q. A condition where an explosion occurs but the odor of gasoline had not been noted prior to the explosion?

A. Because I think and believe from my experience, an experience of many years, that one can walk through an engineroom where a gas tank is present and do all that is humanly possible to discover the odor, to discover whether there is gas there or not, and even then I think the hazards remain of explosions.

Q. I am trying to approach this from the point of view of the man who enters the engineroom at this time.

A. All right.

Q. How can you account for the possibility of a man entering an engineroom, and walking to an electric switch and causing an explosion by a spark without up to that time noting the odor of gasoline or gasoline fumes being present?

A. The air being more or less inert in that space, it is quite possible that one could walk through what one might term a lake of gasoline vapor, and the very act of walking through this, the connection between his body and the vapor, the action between his body and the vapor, might displace that explosive mixture and bring it up to the level of his nose where he could have smelled it at a time when a spark was present at that level or below; in other words, a man might go through a chamber, might walk in there, thinking the place was gas free, and by just merely walking through that space, he might displace gas at the lower level and bring it up in the air where he could have smelled it.

Q. Do I understand you to say that gasoline fumes are heavier than air?

A. Yes, sir.

Q. Mr. Thompson, are you familiar with the rules for the construction and classification of composite and steel yachts and the same for wood yachts issued by Lloyd's Register of Shipping, London?

A. I am fairly familiar with them today; I was very familiar with them up to five or ten years ago; for the past 30 "days" I have been using them almost daily.

Q. Will you tell us the source and nature of these rules?

A. Will you split up your question?

Q. First, who issues these rules?

A. Lloyd's Register for the Construction and Registering of Ships.

Q. What is that "Register"?

A. A classification society formed to approve plans for building ships and supervising their construction and upkeep.

Q. Is that an internationally known organization?

A. Yes, sir; their rules are accepted throughout the world.

Q. What do you mean by that?

A. Lloyd's Classification is accepted to my knowledge throughout the country, several countries in Europe; I am speaking of my own knowledge—Great Britain, Canada, United States, Australia, and many others; among the ship owning people here, it is accepted as the highest standard.

Q. What standards do they represent?

A. The highest standards.

Q. Do or do not they represent a standard of prudent practice for owners of such vessels?

A. They are the result of prudent practice; these rules alter; they don't remain static. They are the result of prudent practice, and they are generally accepted as the basis of all standard good practice in ship building and in the upkeep of ships.

Mr. Matteson:

If your Honor please, I offer in evidence the rules for the construction and the classification of composite and steel yachts, and because they refer to the second volume, rules for the construction and classification of wood yachts, I offer that volume also in evidence.

Mr. Underwood:

If your Honor please, I object to these on the ground that I mentioned previously in respect of other similar

exhibits, namely, that they are not promulgated by any constituted authority and have no binding effect on this respondent. I further object to them on the ground that they are merely rules, made by self-constituted persons to apply to certain vessels that can be classified in a particular society, and it is unimportant here as to whether or not the Seminole complied with these rules, because she was not classified and there were no legal requirements requiring her to be classified. I also object to them on the ground that they purport to be promulgated by persons foreign to the United States, and the test in this case is what was the reasonable and prudent thing to do in Florida in June, 1935.

The Court:

I will admit them under the same theory that I admitted the other rules in evidence.

Mr. Botts:

I think your Honor is eminently correct in admitting them that far, but I would like to suggest that I believe authority can be produced that these rules are admitted to a further extent than has been suggested, and without attempting to present that question at this time I would like to reserve the privilege of presenting authority to the point that they are admissible to a greater extent than already indicated, and I will later urge broader scope of these rules. I want to reserve the privilege of urging at a later time the broader scope of these rules, without apparently taking issue with the Court's ruling, because I have not had an opportunity to present the authorities that it is my impression can be produced.

The Court:

You may make that reservation, but I prefer to make the ruling just as I have. If you wish to urge that on final hearing, you may have that privilege.

Mr. Matteson:
May I have the same privilege?

The Court:
Yes.

(Thereupon rules for the construction and classification of composite and steel yachts were marked Libelants' Exhibit 101; and the rules for the construction and classification of wood yachts were marked Libelants' Exhibit 101-A.)

Q. Mr. Thompson, referring to these two exhibits which have just been marked Libelants' Exhibits 101 and 101-A, will you tell us whether or not in your opinion the provisions of these rules represent a standard of safe practice for owners of vessels of the type of the Seminole?

A They undoubtedly do.

Q. Is that your opinion whether or not the vessels are classified under Lloyd's rules or are applicants for classification?

A. Yes, sir.

Q. Are you familiar with this document, Libelants' Exhibit 27, entitled "Regulations Governing Marine Fire Hazards", issued by the National Fire Protection Association, International?

A. I have read those rules.

Q. I will ask you whether or not in your opinion these rules represent a standard of safe practice for yacht owners of the type of the Seminole.

A. To my recollection, from reading the rules, I believe they are.

Q. Do you know Mr. E. D. Wright of New York?

A Yes, sir.

Q. I show you Exhibit 24, consisting of a set of rules entitled: "Regulations for the Prevention of Explosion

and Fire on Motor Boats, approved by the National Board of Fire Underwriters", signed and approved October 7, 1929, by A. C. Hutson, Assistant Chief Engineer, National Board of Fire Underwriters. Are you familiar with these rules?

A. I have read these rules.

Q. I will ask you whether or not in your opinion this set of rules represents a standard of safe practice for owners of vessels of the type of the yacht Seminole.

A. As far as I can recall from reading the rules from time to time, they do.

Q. Do you know anything of Mr. Wright's connection with these rules?

A. Yes, sir.

Q. Will you tell us what that is?

A. Will you make your question a little clearer?

Q. I asked you if you knew Mr. Wright's connection with these rules and you said that you did. Now I want to ask you what you know about that connection.

A. From my knowledge he is an authority accepted by the underwriters and his advice is accepted by many owners I have spoken to and by all captains and engineers of yachts to whom I have referred those rules, and also by the ship owners to whom I have referred the rules.

Mr. Matteson:

That is all.

Mr. Botts:

Mr. Underwood, I have a few questions, and it has just occurred to me that you could go on and examine the witness—

Mr. Underwood:

No; I suggest that you go ahead.

By Mr. Botts:

Q. Mr. Thompson, with respect to a tank such as you have described on the Seminole, with a single riveted bottom, that is, convex under the bottom, elevated in the center,—I understood you to make some statement with reference to the question of whether or not a tank as you viewed in the Seminole could or would probably leak after a period of 14 years. Just what was your statement in that connection; was it to the effect that the tank would probably leak or would inevitably leak?

A. I can't recollect just what I said, but it would inevitably leak. I am not expressing an opinion on that tank; I am expressing what I have discovered through experience over a matter of thirty or forty years, that is, a tank of that description must inevitably leak. It may not leak to the extent where you could definitely see a definite leak, but there would be a definite leakage in many parts of that tank, exterior.

Q. You mean seepage of gasoline?

A. Of liquid gasoline; liquid gasoline in the form of vapor. It is my opinion, based upon experience, that it is almost inevitable that it would leak, that is, you could see drops in certain parts.

Q. If it showed seepage leaks, not in drops, or whether it showed any drops of gasoline, would it have been possible in the positions of these tanks, to have detected such a seepage or dripping leak in all parts of the bottoms in each and every one of these tanks?

A. Please separate that for me, if you will. You have asked me many things in that question.

Mr. Botts:

Read him the question.

(Thereupon the preceding question was read by the reporter as above recorded.)

A. It would only be possible to discover that seepage or that leakage at the places where the surfaces could be readily examined.

Q. As I understand it, Mr. Thompson, many parts of the bottoms of these tanks could not readily be examined.

A. Not only the bottoms but the whole of the tanks, as I have already stated.

Q. With reference to a gas line indicated by Exhibits 2 and 17 you made some statement with reference to the certainty or probability of seepage from such a gas line. Was it your testimony with reference to the certainty or possibility of such a seepage?

A. Certainty.

Q. During the course of time?

A. Yes.

Q. With a vibrating vessel?

A. Regularly and persistently.

Q. Now, Mr. Thompson, in the course of your testimony with reference to a proper installation of gas lines, you mentioned the absence of what you called "expansion bends" in the gas line, as indicated on the Seminole. Just what do you mean by "expansion bends"?

A. Yes. They go in the engineroom line where vibration is likely to be felt. The pipes should have had copper bends, almost 340 degrees bends; anything up to 360 degrees; that is, a complete circle.

Q. In the nature of a coil spring?

A. Yes.

Q. And they are for what purpose?

A. In order to take up the stress due to vibration set up by the hull and/or machinery.

Q. If there were one or more of these expansion bends between these bends the vibration would be absent or minimized, is that correct?

A. It would be largely absorbed or eliminated.

Q. Now you stated that a drawoff valve—

A. May I correct that previous answer?

Q. Certainly.

A. I said the effect of that vibration from the hull and or machinery would be largely absorbed so that its effect would not be noticed on the piping. I hope that is clear.

Q. Now in mentioning the drawoff valve in the Seminole and in condemning drawoff valves in engineroom, in connection with that statement, Mr. Thompson, I would like to ask you whether or not it is possible, from your experience, to draw off gasoline from an open spigot or simple connection to a pan in an enclosed room without thereby creating more or less gasoline fumes in the enclosed room?

A. I say it is impossible.

Q. In the location in which the gasoline tanks on the Seminole were placed, you stated that there was no manhole.

A. That is right.

Q. Through which access could be had to the inside?

A. Yes.

Q. I will ask you if there were points of access to the exterior portion of the tanks by which they could be inspected and the state of their deterioration or otherwise determined.

A. I thought I had already answered that fully, that it was impossible to examine them—I would say it was impossible to examine the exterior of the tanks at all. The fact that I could see a little bit of a tank here and a little bit of a tank there through a small hole would not affect me at all; I would condemn the whole thing and say these things are definitely improper.

Q. If this condensation on the inside or the effects of salt air and vapor on the outside had caused the rust-

ing of these tanks it would have been impossible for you to have determined that, is that correct?

A. Impossible to determine it, sir.

Cross Examination.

By Mr. Underwood:

Q. What was your first employment after you came to this country?

A. I was from the outset and still am an independent surveyor. Do you mean by that, Mr. Underwood, my first job as an independent surveyor?

Q. Yes; your first job of any kind.

A. I am afraid I cannot recall the actual survey, but one of the first I recall was about a month after I arrived here and it was a survey of the Governor of Maryland's yacht which had become a total loss or practically a total loss by explosion and fire at Baltimore.

Q. What was the name of it?

A. It is a very short name; it was a three or four word name; I just can't recall it at the moment. My brain is not operating as it ought to, perhaps. I cannot just recall it now.

Q. On whose behalf did you survey her?

A. I surveyed her on behalf of the underwriters of that yacht.

Q. When was that survey?

A. Approximately in the month of April, 1932.

Q. When did you come to this country?

A. From memory, sir, I think it was in the early months of 1932.

Q. Are you sure of your year?

A. I am fairly sure as to the year.

Q. Wasn't it 1934?

A. That's my second trip—I had gone to England, and I came here in 1932, I think it was.

Q. How long did you stay when you first came?

A. About six months.

Q. How many more surveys have you made?

A. In that year?

Q. In that six months period.

A. That being a slack period of yacht surveys in the early months of the year, I think probably had a dozen or two surveys.

Q. Do you have your records here?

A. No.

Q. Didn't you know that your qualifications as an expert were going to be inquired into?

A. Probably I thought they would be, Mr. Underwood.

Q. Where are your records?

A. My records are in 90 John Street, New York, but I don't know that my records would go back as far as that; it would be merely—I do not have a system of bookkeeping; my income arises from fees; it is just plain fees, and I keep no system of bookkeeping. I keep a copy of the report until the fee is paid and perhaps for a few months afterwards, and then I destroy them from year to year, more or less.

Q. So it is impossible for me to check up from your records on what surveys you were appointed during the year 1932?

A. I don't think it is impossible at all. I think I could, with some little trouble, possibly get you a full list of surveys I held in the period you named.

Q. Tell me all you remember in the six months you were here in 1932.

A. Of what?

Q. Surveys that you held in the six months period in 1932.

A. I remember no more at the moment than I have already answered.

Q. And that is the Governor of Maryland's yacht?

A. No; I think I said a dozen or two other surveys.

Q. Tell me about them; I want the names of the boats and the places and the circumstances.

A. I don't recall them now.

Q. Can't you remember any of them?

A. I don't think I would try to remember them, because I surveyed several of the same boats in different years. Just to pick out a boat, any particular boat, that I held survey on,—I am afraid I couldn't do that from memory.

Q. Do I understand you correctly that your recollection is such that you cannot remember the name or the circumstances of any survey that you held in the six months period of 1932 except the yacht of the Governor of Maryland.

A. That is the only one I can recall at the moment. If I recall them later, I will be pleased to let you have the full particulars.

Q. You came back here in 1934?

A. Yes.

Q. In the month of May?

A. No, I think it was—I think I actually arrived here on March 23rd because that happens to be my birthday. I think that is the day I actually got back.

Q. When did you resume your employment?

A. Immediately. Do you mean my practice as an inpendent surveyor?

Q. Your employment, whatever it may have been.

A. Immediately.

Q. You went to the office the next morning, did you?

A. The next day, yes; no—excuse me—I am not quite certain as to that. Yes, I think I did, and I know I went to Cincinnati for a short stay shortly after my arrival to see my boy.

Q. What was your first survey after your return to this country in 1934?

A. I cannot positively remember. I survey on an average of 200 to 250 boats a year.

Q. Do you have records on the surveys that you attended between March, 1934, and June, 1935?

A. I think the only records I will have now will be for possibly the last six or nine months, because some of the fees have not been paid. Generally from year to year I am in the habit of tearing up survey reports and the copy of the bills. I keep no books, except a bank book.

Mr. Underwood:

If your Honor please, I should like to require the production of this witness' records so that I can ascertain from them the surveys he attended and the nature of those surveys from 1932 until the time of this particular fire.

(Extended legal argument.)

The Court:

He said his records are in New York, but that he would do his best to make out a statement or list and furnish it to Mr. Underwood. Is that what you wish to do?

The Witness:

I think it would be very difficult, your Honor, because I destroy records from year to year; it would be largely from memory, unless the bank book happened to show the name of the boat, which I don't think it would do. I think I would have to trace it from memory.

The Court:

You are not prepared to answer that today, but while you are in attendance on the trial here do you think you could get it up overnight and give such a list to Mr. Underwood on those that you do remember?

The Witness:

I don't think so, your Honor; I don't really think I could.

The Court:

Can't you remember any of them?

The Witness:

I don't think now it would be fair to the Court for me to strain my memory that way, because I would make mistakes, and because I have some of the boats, some of the same boats, coming on periodically, and it is almost impossible to single out any particular survey on a boat for any particular year.

The Court:

Those that come on periodically, could you give a list of those?

The Witness:

Yes. I think I have the survey reports for the past year, because those records are not destroyed. I would have to get those from New York. I could send a night letter to New York and get them down here by airmail, your Honor.

Mr. Underwood:

I am not interested in surveys since the time of this fire; I am interested in the surveys prior to that time.

The Court:

He said he destroyed his records, Mr. Underwood. I cannot require him to produce any records that he destroyed, even if I were so disposed.

The Witness:

I am an independent surveyor, your Honor. I do not have space to keep them. I have just an office which I pay rent on, and I have the use of stenographers as I need them. I do not keep a lot of files to encumber the small space that I have. I really do not have room enough to keep these records there. My office is furnished with antiques and I have no filing cabinet, and things of that kind are destroyed from year to year; I destroy them in order to get rid of them and have space.

The Court:

The Court sees no occasion to require the witness to produce the record called for.

(By Mr. Underwood):

Q. You have office space with the firm of Albert Lee & Co.?

A. Albert R. Lee, Inc.

Q. They are insurance adjusters at 90 John Street?

A. They are insurance brokers; not insurance adjusters.

Q. You are a brother-in-law of William Stevens?

A. Yes.

Q. Who is the head of the Loss Department of Chubb & Son?

A. That is correct. I might explain that the head of the Loss Department of Chubb & Son just recently died at the age of 84. I don't know if he has been succeeded since by another member of the firm. The active head is my brother-in-law, William Stevens, but I could not definitely say he is the head of that department.

Q. You do a great deal of work for Chubbs'?

A. I do.

Q. You represent underwriters in a great many surveys that you attend?

A. Yes, in a measure.

Q. A substantial part of your income is derived from the work you do on behalf of underwriters, is it not?

A. That is so.

Q. How old are you, Mr. Thompson?

A. I am 57 today.

Q. Now you stated that you served an apprenticeship of several years in England, is that correct?

A. Yes, sir.

Q. Between 4 and 4½ years at Newport?

A. About that, to the best of my recollection.

Q. What was the name of the concern?

A. Mordey-Carney Co., Ltd.?

Q. What was the nature of your work?

A. I started there as an apprentice draughtsman. After that I had certain experience as a junior draughtsman for 2½ years, and then I was put on the designing of vessels. I did the complete designing and did all of the layout work and superintending in the constructing of the vessel.

Q. While you were an apprentice?

A. Yes.

Q. What types of vessels?

A. In the apprenticeship there were all types; there were no yachts in that period, but various types of commercial vessels mostly steam propelled.

Q. Following your experience at Newport you proceeded to where?

A. To Stroud's.

Q. You spent approximately one year there as an apprentice?

A. Yes.

Q. As a draughtsman?

A. As a draughtsman; there they built steel vessels only; that firm name has been out of existence for many years.

Q. What is the name of the firm?

A. Edwin Clark & Company, I think.

Q. What was the nature of your work there?

A. The same work as I started at Mordey-Carney, with the exception that fully 50% of my work there was in connection with the building of boilers and engines.

Q. Your next connection was as an apprentice at Thornycliff?

A. At Woolston Yards, which were then controlled by the firm with whom I was originally connected as an apprentice at Newport, Mordey-Carney Co. They were associated with that yard, and I was sent there the last year of my apprenticeship.

Q. You completed your apprenticeship there, did you?

A. Yes.

Q. What was the nature of your work?

A. Similar to what I had been doing, only on larger vessels and large yachts; all steam at that time.

Q. What was your first employment after you finished your apprenticeship?

A. I went with the Fairfield Shipbuilding Co. in Glasgow.

Q. How long were you employed there?

A. About six months, I believe.

Q. Beginning in what year?

A. I don't recall. May I look at this paper?

Q. You can. Do so. You may refresh your recollection in anyway you desire.

A. I have no document; I will have to work the thing backwards.

Q. All right.

A. I went there just about at the conclusion of the Boer War. My history is not good enough to remember the year that was; it would take me sometime to do it; I would have to work the thing out backwards.

Q. I would like to have you tell me as accurately as you can what year you say you were employed by the Fairfield Shipbuilding Co. in Glasgow.

A. As accurately as I can now?

Q. Yes.

A. I know I had my twenty first birthday there, and I know how much it cost me to buy beer for the high officials there. I was twenty one then and I am fifty seven now, so you can figure it out.

Q. It would be 1903, wouldn't it?

A. About 1903.

Q. What was the nature of your employment there?

A. Ship draughtsman.

Q. Did you specialize on any part of the vessel at that time?

A. All of that time I was on fighting ships; that is the only experience I had there; they were super-dreadnaughts.

Q. From Fairfield Shipbuilding Co. where did you go?

A. To the London office of Armstrong-Whitworth Co.

Q. And that was about 1904?

A. That would probably be still in 1903.

Q. How long were you with Armstrong-Whitworth Co.?

A. In the London office?

Q. All right.

A. I left then because my father bought me an interest in a shipyard.

Q. How long were you there?

A. About 6 months, in the same year.

Q. What was the nature of your employment there?

A. There I was occupied with the design of ships and also with the design and installation of parts of battleships, ash-ejectors and other things I cannot recall in detail.

Q. As a draughtsman?

A. Yes.

Q. You were there some six months, did I understand you to say?

A. Probably about that time, as far as I can recall now.

Q. What was your next employment?

A. My father bought me an interest in a shipbuilding firm called the Dee Shipbuilding Co., Ltd., Queensferry, near—

Q. Where is that located?

A. Queensferry.

Q. Where is that?

A. Near Chester, England.

Q. What water is it on?

A. The Dee River.

Q. How long were you there?

A. To the best of my recollection about five or six years.

Q. What type of vessels were constructed there during that time?

A. Stern wheelers, shallow draft vessels and various types of commercial and passenger vessels.

Q. Propelled by steam?

A. Steam and internal combustion engines.

Q. What was your connection with the vessels constructed there during that time?

A. There I was assistant manager and naval architect.

Q. From the Dee Shipbuilding Company where did you go?

A. I got a connection with a firm of consulting engineers known as Roscoe and Little in Liverpool.

Q. What was the nature of your employment there?

A. Survey of ships; I did a lot of work in connection with Admiralty actions to recover against owners or underwriters of other vessels.

Q. How long were you with them?

A. Approximately two years.

Q. That would be about 1909 to 1911?

A. I am not checking up the years; I am not adding them up.

Q. Will you check these years for me and tell me if they are about right?

A. Now?

Q. Yes; I want to know what years you were with Roscoe and Little.

A. I can't recall it now, but it was somewhere—I left them just shortly before the Titanic disaster; that is the nearest date I can give you as to that; it was around about the time of the Titanic disaster.

Q. Did you say you participated in the construction of ships during that time?

A. Yes.

Q. Damage surveys?

A. Yes.

Q. Commercial vessels?

A. And passenger vessels.

Q. Any yachts?

A. In that particular period?

Q. Yes.

A. I don't recall at the moment about yachts.

Q. Where did you go from Roscoe and Little?

A. I started in my own business for myself as consultant engineer and naval architect.

Q. What year?

A. Immediately after I left Roscoe and Little, the occasion of my leaving them was shortly around the time of the Titanic disaster.

Q. How long were you so employed?

A. I wasn't employed; I was a member of the firm.

Q. How long was your time so occupied?

A. From that period until I left for Australia in the year 1923, I think.

Q. You were engaged from approximately the time of the Titanic disaster until 1923 on your own behalf as a consultant engineer and naval architect; is that the fact?

A. Not wholly; I had other interests at the same time.

Q. Where were you located at that time?

A. Liverpool, England, London, New York, Buenos Aires, Argentina, Glasgow and Cardiff, South Wales.

Q. You mean that you had offices in all of these places at the same time?

A. Yes, all at the same time.

Q. You had offices in these several places all at one time?

A. Yes.

Q. What was the name of the firm?

A. There were two firms; Thompson and MacGregor.

Q. And the other firm?

A. Crichton, Thompson & Company, Ltd.

Q. Where was their main office?

A. London, but not in the same office building; one office was in the city of London and the other one was in Westminster.

Q. All of those firms were in those two offices?

A. All except the office of Crichton, Thompson and Company; that company were shipbuilding contractors.

Q. Will you describe just what you did as shipbuilding contractors; what were your relationships; were any of the ships built under your supervision?

A. From what period to what period?

Q. From the time shortly after the Titanic disaster until you left for Australia what was the general nature of your work?

A. The general nature of my work all the time I was connected with Thompson and MacGregor and Thompson, Crichton and Company was the designing and building of ships of all kinds. My partner, Mr. Crichton, to a large extent controlled—and I did myself in part—from half a dozen shipyards in Great Britain.

Q. You mean that you had a controlling financial interest in them?

A. Yes, sir.

Q. Did you personally draw plans for the construction of any ships during that period?

A. Yes, I did. Do you mean from the outset?

Q. From the time of the Titanic disaster—

A. When I started I couldn't afford to employ draughtsmen and I did that work personally myself.

Q. Between the time of the Titanic disaster and your departure to Australia?

A. Yes.

Q. On what types of ships?

A. Various types of commercial and pleasure vessels, steam propelled or internal combustion engines.

Q. Can you name any internal combustion vessel the design of which you made or supervised between the time of the Titanic disaster and the time of your departure for Australia?

A. I think I could prepare a list of them, if given a little time.

Q. I would like to have you do that.

A. It is difficult to do, because, you know that shipbuilders don't go by names; we mostly go by number. We refer to them as yard numbers, and it is a difficult matter to go back over records and remember names. We often didn't know the name of a vessel until the last moment, and all during the construction period we went by yard numbers.

Q. You would get a name before the launching, wouldn't you?

A. We got the name at the launching frequently.

Q. Seldom—

A. Sometimes later but not frequently.

Q. You got the name sometime later?

A. Yes; sometimes later but not frequently.

Q. I would like for you to name for me all vessels which were driven by internal combustion engines, the design for construction of which you had in part between the time of the Titanic disaster and your departure for Australia.

A. I will try to get it for you. Most of those I would know by numbers, yard numbers, and not by names.

Q. Let me have all that you recall.

A. I am agreeable to giving you all the information I can. I do not want to avoid answering any question that you ask, but I am not going to strain my memory and give you inaccurate answers.

Q. Did you have any employment with the British Admiralty during this period?

A. Yes, sir.

Q. What type of vessels did you work on for them?

A. All types; most of them were propelled by internal combustion engines.

Q. What particular type of vessels?

A. River vessels for the Mesopotamia and French Canals and coastal defense vessels; there were innumerable types going through there all the time, including vessels built over here. I didn't design those, but they came under my observation. There were about 500 of those built over here.

Q. Let's confine ourselves at the moment to the British Admiralty.

A. They are both. Five hundred of those were built over here the first time, and the second time about 250.

Q. Seven hundred and fifty vessels?

A. About 750 vessels of that type.

Q. What type was that?

A. We knew them as the "suicide type". They were referred to as the "suicide type". I think they were built in various yards here; I think the Standard Engine Co. of New Jersey—

Q. I am asking you what type of vessels they were?

A. Gasoline propelled vessels; coastal defense vessels.

Q. How big were they?

A. The first ones as I remember were somewhere between 65 and 75 feet long.

Q. What was the nature of their propelling power?

A. Twin sets of gasoline engines. I could not definitely give you the horsepower, but several hundred horsepower.

Q. Well, just precisely what did you have to do with the construction of those vessels?

A. Approval of the contracts.

Q. Did you have anything to do with the plans or specifications?

A. No, and I am glad that I didn't.

Q. Did you ever have any direct employment with the British Admiralty or was that as a consultant on the outside?

A. Not direct. I worked at the Admiralty offices with permission solely to supervise the vessels that we were building, that was responsible for.

Q. Just what was your position with the British Admiralty?

A. Chief designer of auxiliary vessels.

Q. Does that refer to naval vessels?

A. No fighting ships; auxiliary vessels.

Q. Do you call them commercial craft?

A. I call them auxiliary vessels.

Q. Do you say that you were chief designer of commercial craft to the British Admiralty?

A. Auxiliary vessels; not commercial craft.

Q. Did you testify on the third day of November, 1927, in the case that involved a collision between the steamship Grey Cliff and the steamship Tahiti, in Sydney, that you were chief designer of commercial craft to the British Admiralty?

A. That is not correct; it was auxiliary vessels.

Q. Do you deny that you so testified?

A. I did in that respect.

Q. Just what were your responsibilities in respect to the design of commercial vessels while you were connected with the British Admiralty?

A. Auxiliary, are you referring to?

Q. Commercial vessels.

A. Please don't say that I designed commercial vessels. I assume you mean auxiliary vessels. I had in my charge approval of the plans and specifications, and the contracts were also approved by me subject to the approval of the Treasury.

Q. Treasury of what?

A. That was the department where all contracts were passed on.

Q. Did you testify on November 3rd, 1927, in the same case that I have referred to, and at the same place, as follows:

"Q. Were you personally responsible for the designing of any of the vessels while at the Admiralty or for any particular type of vessel.

"A. Yes, all commercial craft at that time; they were under my charge."

A. With the exception of the word "commercial" I did say that, or something to that effect. I cannot say more definitely than that.

Q. You went to Australia in 1923?

A. About that time.

Q. What was the nature of your employment there?

A. The same; I continued as consultant engineer and naval architect. I went there for the purpose of endeavoring to obtain orders for the yards with which I was still connected and in which I was financially interested.

Q. Did you have any occasion with the British Board of Trade between the time of the Titanic disaster and the time you went to Australia?

A. I was appointed naval architect etcetera to the British Board of Admiralty in the year 1915, when the panel was first formed.

Q. Is that your only connection with the British Board of Trade?

A. Yes. I continued in that capacity until I went to Australia; I got permission to go to Australia, and I returned again to England, and then went back again. I resigned for the reason that I thought I would be out there too long a period of time to remain on the panel.

Q. Do you remember the name of the designer to the British Board of Trade during that period?

A. I never heard of any such officer, never heard of such person existing; I do not know that the British Board of Trade ever designed any ships.

Q. You don't know that the British Board of Trade had an officer known as "chief designer of vessels"?

A. I never heard of such a thing.

Q. Have you ever been to sea as an engineer?

A. No, sir.

Q. On any type of vessel?

A. On no type have I ever been to sea as chief engineer or as engineer or in any such capacity. I employed such people for that.

Q. Have you designed any yachts since you have been in this country?

A. No, sir.

Q. Now, Mr. Thompson, you said something about gasoline tanks in the Seminole and that condensation would have some effect. What did you say would do the rusting or corroding, or whatever it would be?

A. Whatever condensation would come there would rust this surface here (indicating) and the rivets.

Q. Indicating point "A" on the diagram marked Libelants' Exhibit 99.

A. Shall I make another mark?

Q. No.

A. All right.

Q. That is the water that would do that, is that right?

A. Yes.

Q. So that what leakage you would get would be water, wouldn't it, at least until all of the water gets out?

A. Yes.

Q So that what leakage you would get would be water, wouldn't it—

A. If there was nothing but water in it you would only have water leakage.

Q. And if the gasoline is in the gasoline tank whatever water was in there would go down inside the tank and condense—

A. Yes.

Q. And that you say causes rust?

A. Yes.

Q. So if you get a leak, that cause your first leak is a water leak, is it not?

A. Possibly.

Q. Because water is heavier than gasoline.

A. That is right.

Q. Will you draw me a diagram of the bottom of a tank with a crown or as you say this one was, just the crown inverted?

A. Inverted?

Q. Inverted as compared with the other one which you drew.

A. All right; this is about right (indicating).

Q. Put your rivets and your caulk in there, please. Draw a line from the place you indicate the caulking; mark it "caulking".

A. (Witness so indicates.)

Q. Now you had better write the word "bottom" on that, because that would be the bottom of the tank, wouldn't it?

A. Yes, that would be the bottom.

Q. And you had better write the word "side" here.

A. (Witness so indicates.)

Q. When condensation occurs in such a tank where does the water go?

A. It attacks the rivets and inside of the caulking, first one and the other.

Mr. Underwood:

I offer this diagram in evidence.

(Thereupon the diagram above referred to was marked respondents' exhibit "P" for identification.)

Q. Did you take any rivets out of these tanks?

A. No, sir; I didn't do anything there. Now, Mr. Underwood, I think you are partly to blame for my limited survey. I want this put in the record.

Q. All right, since you have opened up this subject, will you tell the Court what you mean by that?

A. When I went down there last December you instructed me specifically not to remove anything, and after you said that I took particular pains not to remove anything, even in walking; I didn't want any adverse comments being made about me not obeying instructions.

Q. You made no complaint to counsel who were present there during your examination?

A. No, sir; I am only referring to the fact why I didn't do certain other things.

Q. At all events you removed no rivets.

A. I removed nothing.

Q. Do you know those tanks were manufactured?

A. How they were manufactured?

Q. Yes.

A. I don't know; I was not present at the manufacturing of them.

Q. Do you express it as your opinion that the rivet holes were punched?

A. That is what they appeared to me to be.

Q. Could you see any of the rivet holes?

A. No.

Q. You could see the heads of the rivets?

A. Yes.

Q. You could not see the points of the rivets?

A. Yes.

Q. You saw the points of the rivets?

A. I could see the rivets on one side and then the other.

Q. Well, you could see the whole bottom of the tank.

A. Yes.

Q. How could you see the points on the rivets through what opening; just tell me?

A. Through the opening of number one, where the bottom part came through to the bulkhead.

Q. You could see the points of the rivets through that opening?

A. I took them to be the points; the rivet point was on the outside and the head was on the other side.

Q. You mean these rivet heads were driven in from the inside of the tank?

A. I assumed from their shape that they were hammered down and forced in from the inside and hammered on the outside; I couldn't see the entire side clearly.

Q. You could not see the heads of the rivets?

A. I could see the rivets inside, but not quite so well.

Q. I show you this Exhibit 4.—I am simply asking you this question: do you say that these (indicating) are the heads or the points?

A. I saw the rivet point and not the head at the time—

Q. Do you say that you could see any part of the rivets on the other side of the—

A. I just glanced up and looked at them; I got an imperfect view of the other side of the rivets.

Q. You expressed the opinion, based upon your observation that the rivet holes were punched.

A. Not from that, but from the fact that they were not in line. I think this photograph is quite clear on that. That was my opinion at the time I saw them and that is my opinion still, after looking at the photograph again.

Q. You say that they are not in a straight line?

A. In my opinion they are not.

Q. Look at Exhibit No. 4 again; is that one of those on which you base your opinion that the rivets are not in line?

A. No; I based it on the tank and it is confirmed by this.

Q. Do you say that that photograph shows the rivets not in line?

A. Yes.

Q. Will you lay a straight-edge along there for me?

A. I haven't; I would say that these rivets are not in a direct line.

Q. Will you lay a straight-edge along there and show me that?

A. I haven't tried.

Q. Can you?

A. I haven't tried it.

Q. Have you got a straight-edge?

A. This is a photograph—

Mr. Underwood:

If your Honor please, this witness has said that the photograph confirms it.

The Court:

It is 5 o'clock, so we will stop for the day. We will resume tomorrow morning at 9:30.

(Thereupon an adjournment was taken to 9:30 a. m., March 24, 1939.)

March 24, 1939, 9:42 o'clock a. m.

Court reconvened, and the hearing was resumed pursuant to adjournment of the previous day. Appearances as heretofore noted.

1236 Thereupon R. J. A. THOMPSON resumed the stand and upon:

Cross Examination (Cont'd.)

By Mr. Underwood:

Q. Did you prepare a list for me, Mr. Thompson?

A. I prepared a list from memory. I don't quite recall what particular boats you were referring to.

Q. Just tell me what you have got on your list, please.

A. I have got a list here of certain boats that were built from about a few years before the war and during the war.

Q. During what years?

A. I can't definitely give you the beginning or the end.

Q. Give me the best you can.

A. Probably from 1908 or so to some time during the war.

Q. Now, just what did you have to do with the construction of these vessels?

A. These particular boats, in practically all cases, I designed them, and superintended the construction of them.

Q. By design what do you mean? Did you lay out all the plans?

A. Practically all the plans,—that is, with a staff, Mr. Underwood.

Q. Well, that is precisely what I want to know. Just what plans did you make for these vessels on this list?

A. Myself?

Q. Yes. Did you lay out their lines?

A. Of these?

Q. Yes.

A. No, sir; I had a draughtsman for that.

Q. Did you draw the specifications?

A. In many cases, yes, sir.

Q. What else did you do?

A. I supervised the laying out of the working plans, supervised the ordering of the full material.

Q. What do you mean by supervising the working plans?

A. Regularly visited the draughting office, conferring with the chief draughtsman or the particular draughtsman that was on the job; approving of the plans before they were issued. Ordinary duties of a naval architect of a reputable company.

Q. What types of vessels are these on this list?

A. This is practically,—either gasoline or what we call, not exactly crude oil, and not a fuel oil; a heavy oil with a certain amount of volatiles in it.

Q. Is that what you call paraffin?

A. Paraffin? No paraffin is different,—the paraffin is more in the nature of a gasoline, almost requires the same care, in the installation of tanks.

Q. What type of propelling power did these vessels have?

A. Various types, from two-cycle gasoline motors, four cycle and paraffin; with lamps fitted for keeping the evaporators hot; and semi-Diesels.

Q. Let me see it.

A. I am afraid you won't be able to follow it very well; these are rough, some quick notes made last night

from memory only, and it wasn't an easy job to go back over all that time.

Q. Mr. Thompson, I want their names so I can identify them.

A. I am afraid that in the vast majority of the cases I am unable to give you the names. We knew all our boats by yard numbers; everything was filed away after they were completed, under a yard number; never under a name. The whole system in every shipyard, to my knowledge, of vessels built, are built under yard numbers; they are entered in books, even in ledgers and things like that, under yard numbers; they start with a yard number, and they finish with a yard number; frequently we never hear the name of the boats, proposed names until perhaps a week or two before she is finished. The naming has very little connection with the building of a ship. It is known constantly before, during and after construction, by the shipyard number; all plans and specifications and copies of orders, all the bookkeeping go under a yard number of that boat; it is impossible to keep records properly otherwise.

Q. Can you give me, Mr. Thompson—have you finished that answer?

A. I believe so, sir.

Q. Can you give me the name of any vessel, the design and construction of which you were responsible for, from 1923 I think you said,—that is when you went to Australia?

A. I said, during the war and before; I think I said somewhere in the neighborhood of 1908, was it?

Q. When you began your firm of consulting naval architects.

A. Is that Thompson and McCormick? Because, remember, there was more than one firm of consulting architects.

Q. When you began—left the shipyard and went into business for yourself?

A. That was immediately following,—after I left the firm of Roscoe and Little; that was slightly before or after the Titanic disaster; that is as near as I can go. I think that is somewhere near 1911, I should say.

Q. You were so engaged until you went to Australia?

A. Yes.

Q. Can you give me the name of one ship for the design and construction of which you say you were responsible during that period?

A. The name? Any ship? Any type of ship?

Q. Any ship.

A. There was a yacht I built for Mr. Chrichton.

Q. What is the name?

A. —who afterwards became my partner.

Q. Please; I didn't ask you for the history of the boat, or the history of the purchaser. I just want the name of the boat. Something I can look up in Lloyd's and check.

A. Look up in Lloyd's? You mean Lloyd's Register of Shipping?

Q. Just tell me the name. You understand my question, the name of any single vessel, for the design and construction of which you were responsible, from the time you went into the business of consulting naval architect until you went to Australia.

A. Would you let me have Lloyd's Register and I will give you several.

Q. I want your testimony as to the names.

A. I say names are nothing, as I have already said. I can't just recall.

Q. Mr. Thompson, can you or can you not name one?

A. May I—

Q. No, not yet.

A. If it is a test of memory, I would rather not answer the question.

Q. Can you or can you not name one now, as you sit in the witness chair?

A. I could probably remember a dozen when I left the chair.

Mr. Matteson:

If your Honor please, the witness indicated that he would like to see a book that I have in my hand. I think he is entitled to refresh his recollection, if he would like to do so.

The Court:

Well, I think he is entitled to answer, as to whether he has an independent recollection or not before he refers to that.

Mr. Botts:

It seems to me he has answered that question half a dozen times. The fact that he does not answer it to suit Mr. Underwood I don't think prevents it from being an answer.

Mr. Underwood:

I am entitled to a categorical answer.

The Court:

If the witness wants more time to think of it on the stand, he may have it; otherwise, he can just answer now.

A. I think, if your Honor please, I would like the answer to remain as it is, if I could have permission later without looking at it, to give the names of several.

The Court:

Just for the purpose of thinking it over?

A. Yes, sir. I just want to be quite clear on that point, sir. Names matter very little with us; the yard numbers would be what we went by.

The Court:

All right.

Q. Do you remember any yard numbers?

A. From one to about four hundred in one yard, of which I have a book here giving a record of many of those.

Q. What yard?

A. J. Crichton and Company, Ltd., Saltney Shipyard, Chester; this is the yard that I designed, that I laid out the yard and was originally the manager for Mr. Crichton; afterwards I left his yard to become his partner in other businesses.

Q. Can you name the years?

A. I designed and laid out that shipyard in the year preceding the war,—1913.

Q. And when did you leave?

A. I left to go to London in either the end of 1914 or the beginning of 1915.

Q. Now you speak of hull numbers one to four hundred.

A. Roughly, from one to about four hundred.

Q. What types of vessels were they? Were they all the same type or different types?

A. No, they were mostly steel, Mr. Underwood.

Q. What types of vessels?

A. Ranging from small tenders of about 30 feet to stern wheel steamers up to 200 feet, or slightly over.

Q. What propelling power?

A. Steam, gasoline and other types, and internal combustion.

Q. How many of them had gasoline driven engines?

A. Do you seriously wish me to answer that?

Q. Yes, of course, I am serious in every question I ask you, Mr. Thompson.

A. Well, you are very flattering to my memory, Mr. Underwood.

Q. Please do the best you can.

A. I will do the best I can. The proportion?

Q. As accurately as you can get it.

A. I should imagine, oh, roughly speaking 20 per cent, but that is a guess; I can't pretend to go nearer than that.

Q. Since 1923 have you been responsible for the design of any gasoline driven yacht?

A. Since 1923?

Q. When you went to Australia?

A. I don't think so, Mr. Underwood.

Q. Since 1923, have you supervised the installation of the gas engine, gasoline tanks and equipment in any yacht?

A. I have in part; that is, mostly under repair or renewal.

Q. Not original installation?

A. I cannot recall an original installation in that period.

Q. Have you operated a gasoline driven vessel?

A. I have owned two motor crafts myself,—if that is what you mean by that; and operated those; but they have been pleasure boats.

Q. Have you ever been in charge of the operation of the motors or the engine machinery?

A. Only those two I mentioned.

Q. Gasoline driven?

A. Only those two I mentioned.

Q. How long ago was that?

A. That was when I was living in Chester, that was somewhere prior to 1915. The second one was when

I was living in London after 1915 when I owned a motor launch on the Thames.

Q. Did you ever run a motor launch yourself, handle the machinery yourself?

A. Yes, sir.

Q. As an engineer?

A. Yes, sir.

Q. What type of vessels were these?

A. Pleasure craft, for my own purposes.

Q. How big?

A. Roughly about 30 feet.

Q. Open cockpit boat?

A. Open vessels, yes.

Q. You mentioned yesterday that, as I recall it, you had an interest in six shipyards, financially. Will you name those yards for me?

A. Financial interest in five I think, and the control, I think it was six; Saltney Shipyard—

Q. Give me the years again.

A. The Shipbuilding Company, Ltd.

Q. Will you please name the year after the yard?

A. Well, as near as I can?

Q. Yes, as near as you can.

A. I am trying my best, your Honor, but these dates are very complicated; various dates; I will do my very best. I have no desire to keep back anything. The Shipbuilding Company Ltd., I was a director and part owner, in the years, I should imagine about 1905, your Honor, to 1910 approximately. I think it was that period I went with Roscoe and Little, consulting naval architects and marine enigneers in Liverpool. I think the next when I was on my own as a consulting naval architect and engineer, I received an order from Mr. Crichton to design a yacht for his own purposes; I did that. We got friendly during that, and he asked me to join him, and to start shipbuilding with him.

Q. Mr. Thompson, I dislike to interrupt you.

A. I will just give you the next date; I will do my best.

Q. All I have asked you is the names of the yards and dates, not history, but just that.

A. I then started the Saltney Shipyard at Chester, J. Crichton and Co., Ltd.; that was approximately in the year 1913; I know it was about a year before the war.

Q. Are you telling me the yards in which you had a financial interest?

A. Yes. J. Crichton and Co., Ltd., Saltney Shipyard, Chester; I was director and had a substantial interest in it.

Q. Give me the rest.

A. Do you wish to know the interest or the amount?

Q. No; I just want the names of the yards in which you had a financial interest.

A. Yes, sir.

Q. And the years, as nearly as you can give it.

A. Then some time in the early part of the war, Mr. Crichton purchased—

The Court:

Without going through the whole history, can you just give the ultimate facts and let the Reporter have those?

A. A financial interest in Hawthorne & Company, Ltd., Leeds, Scotland; well-known yacht builders of the largest types; that was about 1915 or '16; around about the same time I purchased personally a small shipyard at King's Lynn and I owned that shipyard myself, outright; that was known as the King's Lynn Shipbuilding Company; that would be somewhere about '1916 or '17, your Honor. At about the same time I joined Mr. Crichton in the purchase of a shipyard at Connah's Quay,—that is in North Wales; that would be somewhere just before

the end of the war; probably the early part of 1918, or the end of 1917. Then at about the same time—no, a little before that, an interest in the firm of C. & H. Crichton, Ltd.,—the same Crichton; that was mostly ship repairs, but a little building in Liverpool. It was a very large firm in Liverpool; that was about, I should say 1917, or so. I think I have covered the yards,—the financial interest. That is the financial interest only you are asking, Mr. Underwood?

Q. That's right. Have you finished, Mr. Thompson?

A. I don't know; I have answered all your questions, Mr. Underwood.

Q. I asked you for the six shipyards in which you had a financial interest. Have you named them all?

A. I think that is the lot, so far as my memory goes now. I don't know how many of those I gave you.

Q. Since you came to New York, your principal occupation, as far as yachts is concerned, has been in connection with their repairs, has it not?

A. Repair and revamping of the machinery.

Q. Do you remember testifying in the suit involving the Selena and the Arcadia?

A. I do sir, quite well.

Q. Did you testify there, folio 2244, "Q. And how long have you been located in New York, Mr. Thompson?" "A. About four and one half years." "Q. And what has been your occupation here?" "A. Principally in the repair of yachts."

A. I think substantially that would be a correct reply to your question, probably put to me there. As I said, yesterday, I came here I thought in 1932, first, but actually I looked up my passports last night, your Honor, and I find it was the end of 1931. But I remember now, after that was called to my attention, that I was here I know before New Year's day in '32.

Q. Reference was made yesterday to Lloyd's Rules for the construction and classification of composite and steel yachts and rules for the construction and classification of wood yachts, which are marked Exhibits 101 and 101-a. Can you name any American yachts that have been built pursuant to Lloyd's Rules?

A. American yachts? Well, the one I had a survey on this week, the Chelena.

Q. Any others?

A. The Renee, another boat I am surveying.

Q. Spell these names.

A. C-h-e-l-e-n-a.

Q. Any more?

A. The Renee: I am naming boats in the port of Miami now.

Q. Any more?

A. The Pegasus; I am afraid my earlier education has almost left me.

Q. Any more? Go on naming all you can.

A. Well, I will do the best,—this is a test of memory, The Renee, Chelena and Pegasus; those are the only three I can remember just at this moment in the port of Miami. The Vanda, that is another boat about 250 feet, that I revamped the machinery of a year ago. The Alder, another boat of about 250 feet, 240 feet. The Intrepid; all large yachts at present, your Honor. The Seaborn, belongs to Mr. Hughes, the flier, I would rather think. The Moana belongs to William Leeds; these are still large yachts. Commodore James' large yacht that was recently broken up,—I will think of the name in a moment,—she was a large yacht, was a large yacht; and the Guinivere, belonging to Mr. Palmer, the zinc king; she is a boat of about 200 odd feet. The Hi-Esmaro, a boat of about 200—250, belonging to Mr. Johns-Manville. These are all yachts, your Honor, that I deal with regularly, and are built at Lloyd's and stationed more or less in

American waters, and belong here in all instances to American owners.

Smaller boats, it would take time. I don't recall them one by one and the owners' names; but there are quite a number, Mr. Underwood; I would be glad to give you a list if you would be good enough to give me a little time.

Q. Let me put my question in another way: Do you say that the majority of American yachts are built subject to Lloyd's Rules?

A. I do not; I have never even suggested that, Mr. Underwood.

Q. A portion?

A. A proportion.

Q. Of American yachts, would you say, are built subject to Lloyd's Rules and are classed in Lloyd's under these rules?

A. Highly complimentary; I don't think I could give you the proportion.

Q. Have you ever looked through the book, Lloyd's Register?

A. Not with that in view, Mr. Underwood. On innumerable occasions.

Q. Do you have any idea what percentage of American yachts are classified in Lloyd's or were in 1935, or built under Lloyd's Rules?

A. Having a lively recollection of my oath, I prefer to say, no.

Mr. Underwood:

If your Honor please, the last Lloyd's Register that I have is dated 1933; I don't have a 1935 copy.

Mr. Matteson:

If your Honor please, we have a 1933 copy which was marked as an exhibit in connection with the deposition

that was taken in New York before the trial began. I haven't offered the deposition here yet, but the book is here; I take it it is a duplicate of the one Mr. Underwood has in his hand.

Mr. Underwood:

I don't think either one of us has a subsequent edition.

Mr. Matteson:

You are going from the book and I am going from the deposition and the book.

Mr. Underwood:

Then we can refer to that for all purposes, I take it?

Mr. Matteson:

No reason why not; it is there.

Q. Mr. Thompson, before you began your apprenticeship, will you tell us very briefly what your education was? Did you go to any technical school? I am getting at—

A. During the course of my apprenticeship, I went to two technical schools.

Q. Prior to, I said.

A. I will come to that,—no, sir.

Q. Now what technical schools did you go to during the course of your apprenticeship?

A. The Newport Technical school, first, and later I removed to Gloucestershire, during one part of my apprenticeship, I think it was called the Stroud Technical School.

Q. Did you get anything in the nature of a diploma from either?

A. I never sat for one, sir.

Q. So that you did not get one?

A. I did not get one.

Q. You are a metallurgist?

A. No, sir.

Q. Are you an electrician?

A. No, sir.

Q. Are you a boilermaker?

A. I was trained in boiler-making; that was part of my training.

Q. Mr. Thompson, in the shell of a cylindrical tank are the stresses which are parallel with the axis of the tank as great or greater than those at right angles to those stresses?

A. I don't quite get the question.

(The question was read.)

A. I don't think I could say at this time, sir.

Q. You don't know?

A. I would rather prefer,—to shorten it, I would rather say I don't know.

Q. You have said something about double riveting on these tanks?

A. Yes.

Q. —gasoline tanks, on the Seminole.

A. Yes, sir; not double riveted, lower seam.

Q. You say they were not double riveted?

A. I said the lower seam was not double riveted; that I believe was my evidence.

Q. And is that the extent of your knowledge about how the seams were riveted on those tanks?

A. The lower seam, I know it was single riveted.

Q. And do you say the lower seam should have been double riveted?

A. In my opinion, from good standard practice over thirty years, I say it must be double riveted.

Q. And for what reason?

A. To make a stronger and tighter joint.

Q. Can you calculate the stress to which the rivets at the bottom of such a tank would be put, when the tank was full?

A. I have not, sir.

Q. Can you?

A. Possibly; but in the light of the small stress that comes on that, that small sized tank, I don't think it is necessary.

Q. You gave me a double answer; you put it on two grounds, strength and tightness. Do you want to hold out for both or do you want to abandon strength?

A. No; it is the tightness I refer to; that is what I was referring to.

Q. And you abandon strength as the reason for double riveting on those tanks?

A. I have not attacked the tanks on strength, in any way. Tightness is what I referred to, or intended to refer to, all through.

Q. From which side do you say the rivets in the bottom of those tanks were driven?

A. I considered, in my limited survey, they were driven from the inside, which I would call normal, good practice.

Q. And the points were on the outside?

A. Points were on the outside; I should be very much surprised if they were riveted otherwise, and I should consider it bad practice.

Q. Did you form any opinion as to when these tanks were galvanized with respect to the riveting?

A. No, sir; I saw very little of the tanks. It was impossible to see much of them, let alone examine them.

Q. You formed no opinion as to whether they were galvanized before or after riveting, or both?

A. No, sir; oh no.

Q. Do you know what the customary practice is in this country as to that?

A. No, sir; I do not.

Q. Did you form any opinion or reach any conclusion as to how those tanks were made?

A. As to how they were made? Will you please make your question a little clearer?

Q. How they were shaped and put together.

A. Well I apparently—I thought as normally would be done, the tops and bottoms were pressed, that the side was rolled, that the three parts were afterwards brought together, and riveted.

Q. Did you consider that they were stock tanks, or specially built tanks? Did you see any evidence that led you to either conclusion?

A. No, sir.

Q. You don't express any opinion as to whether they were stock tanks or specially made tanks?

A. No, sir; none whatsoever.

Q. Do you know how the rivet holes are made in stock tanks, in this country?

A. I should think the practice varies.

Q. Do you know?

A. I don't know; I should think the practice varies.

Q. Now Mr. Thompson, in your opinion are those rivets properly spaced in the bottom of these tanks?

A. Distance from center to center—I should imagine they were correctly spaced. I saw nothing otherwise, of the few I could see.

Q. Assuming that all the rivets were spaced that distance, corresponding to those which you saw—which is a fair assumption, isn't it?

A. I should imagine so; but I am not going to give evidence of what I haven't seen. As an assumption I would say, yes; but otherwise I don't know.

Q. Those which you saw were properly spaced?

A. From center to center they seemed to be of the normal watertight pitch, four diameters; I judge them to be spaced four diameters apart.

Q. Just how would double riveting add to the tightness of those tanks?

A. Considerably.

Q. Just how?

A. The same way in which a double-sewn seam of a sail is a better seam than a single seam. I think that will apply to almost any two things brought together.

Q. Is that your best explanation?

A. Different cases—I think it is the nearest for the purposes of the Court, Mr. Underwood.

Q. Now I want to get this clear on the record, Mr. Thompson. You draw a parallel between a double sewn seam in a sail, and double riveting in the bottom of tanks. Is that your best reason why these tanks should have been double riveted at the bottom?

A. I think they would be tighter if double.

Q. Just why?

A. I think you get a better job, for the reason that standard practice—we want to make a particularly tight job, that where we have any danger of any kind from seepage or leakage, we naturally, from our experience, find a double riveted seam far better than a single riveted seam.

Q. Now Mr. Thompson, you haven't yet answered my question. I am dealing with the construction of the thing; the mechanics of the thing. Just how does an extra row of rivets around the bottom make the joint tighter?

A. For the reasons I have given you.

Q. Those are the best you have?

A. They are the best I can recall at the moment.

Q. You have been thinking about this thing for some time, haven't you?—the Seminole and her tanks?

A. No, sir; I haven't given it all the thoughts in detail as you are trying to get now.

Q. You have been in Court for ten days?

A. Yes, sir. I haven't been thinking about that seam, though.

Q. Your have been consulting with counsel?

A. I don't know if you could describe it as that. I haven't consulted with counsel as to my own evidence whatsoever; I never do; Mr. Underwood. I say that publicly, in the presence of counsel who have had me on other cases.

Q. If you were building these tanks, I want you to tell me just exactly what you would do, and everything you would do, from the time you put the bottom crown into the cylinder of the tank, until you finished the riveting job.

A. I would rivet them and caulk them.

Q. I want a little more detail than that.

A. But that is the complete thing I would do.

Q. What would you do first?

A. Counsel asked me a question and I have answered it fully: I would rivet them and caulk them.

Q. Just how would you start to rivet them?

A. I wouldn't do it personally; I would instruct men to do it.

Q. How would you instruct the men to do it?—if you wanted them to do it in the best way you know about?

A. I am afraid I can't answer that kind of question, in any other than that in which I have.

Q. Where would you put the cylinder of the tank, to begin a riveting operation?

A. Where would I put it?

Q. Yes; would you put it on a work bench, or hang it from a crane, or where would you put it?

A. Well sir, I think there is no special way to put it.

Q. Where would you put it?

A. I wouldn't put it anywhere; I have never riveted a tank. I would never give instructions; the men I have been used to needed no instructions on that point whatsoever.

Q. Well now Mr. Thompson, I need instruction on that point, and I am asking you for it, and I would like you to tell me; start from the beginning. What is the first operation that you would have your men do, to put that crown in the bottom of the tank?

A. I give no instructions whatscever, sir.

Q. Suppose you had a green man who didn't know much about riveting, and needed instruction as I do, on how to do this; what would you have him to do first?

A. I am afraid you would have me completely puzzled; I wouldn't attempt to instruct hm. If you are green as you make out now, I would not attempt to instruct you as to how to do the job.

Q. How would you hold the crown in place, when you drove the first rivet?

A. First of all the crown would be bolted in place.

Q. And which row of rivets would you drive first, the top row or bottom row? Or would you drive some in one row and some in another?

A. A careful tank riveter would see that his joint was fairly good before he started riveting. Different men have different methods. All we ask—

Q. I want to know what you would do, Mr. Thompson.

A. I wouldn't do anything, because I don't do such work.

Q. Do you know how to instruct a man to rivet a tank?

A. I have never had occasion to instruct a man.

Q. Do you know how?

A. I think I would.

Q. Well, tell me how.

A. But you are so green I can't tell you, Mr. Underwood.

Q. Perhaps the Court will understand; don't worry about me.

A. I can answer no more than this: and it is a repetition of what I have already said. That inverted crown plate would be bolted to the shell of the tank; it would be seen it was a properly fitted job before they commenced riveting. The riveting then would go on, and the job would be finished and the tank caulked. Beyond that I don't know how—I would have to go out to a long explanation, make speeches and have models, and I am afraid I wouldn't be able to show you then, Mr. Underwood.

Q. Perhaps you can answer this simple question. Which row of rivets would you drive first, the higher or the lower?

A. If you are instructed it is advisable to rivet one complete row of rivets and then the other, you have been wrongly instructed.

Q. I am asking you, Mr. Thompson, and I would appreciate an answer.

A. I do not, neither.

Q. Which would you do? Would you rivet some of one row, and then some of another, all the way around the tank?

A. They are riveted one after the other; they are not done all at the same time.

Q. Would you just do one in one row and then one in the other row, or would you complete one row before starting the other?

A. No, most decidedly I wouldn't complete one row; no good workman would.

Q. Then you would do your caulking after you had both rows of rivets driven, is that right?

A. I should imagine so, Mr. Underwood.

Q. So that there wouldn't be any caulking between the two rows of rivets; is that right? May I have an answer?

A. It would be, no, sir.

Q. Isn't it caulking that keeps the tank from leaking?

A. A tank of that description should be caulked, and the caulking will take care of any seepage that posses the rivets. We build tanks with caulking, at times, Mr. Underwood; in other words, the riveting keeps the tank tight.

Q. Sometimes the riveting keeps the tanks right, does it?

A. Yes, sir.

Q. Gasoline?

A. No, sir; oh no, no. I said, tanks. We are talking about tanks in general, not gasoline tanks, Mr. Underwood; that's my understanding of your questions.

Q. Do you want to make any changes in your testimony in answer to my questions, if I ask you to assume that we are talking about tanks like those in the Seminole?

A. In what regard?

Q. In any regard.

A. Well I can't remember all the questions.

Q. Do you say you didn't realize that I was asking you about the Seminole tanks, or tanks similar to those?

A. No, I thought your questions were in regard to tanks in general, frankly.

Q. Isn't it a fact, Mr. Thompson, that those gasoline tanks on the Seminole could without a great deal of difficulty have been subjected to a hydrostatic test?

A. I doubt it; whether you qualify it—without a great deal of difficulty. I should imagine it would cause a lot of trouble, to put them separately under hydrostatic test, to eight feet above the top of the tank.

Q. Just what sort of a tank is it that the rules require to be tested with a head of eight feet?

A. The rules? What rules?

Q. Any rules.

A. Oh I am afraid to answer such a question; as to any rules, any one set?

Q. Any rules that you know of.

A. To the best of my belief, Lloyd's would ask a height of eight feet above the head of the tank.

Q. Gas tanks?

A. That is my—the best of my recollection; yes, sir. If you would show me the rules I would turn to them. (Book handed to witness by counsel). Oil fuel—that of course is not gasoline; oil fuel, there is a difference. I think it is in this book, I don't think it is in that book, if I remember right.

Q. All right, you may look anywhere you like.

A. Have you the proper Lloyd's rules—the whole rules?

Q. I have those that are in evidence.

A. These are just yachts; the other book is the one I am most acquainted with, the large book of rules. Have you that? Yes, that is it; sorry to have taken so long. (Book handed to the witness by Mr. Matteson.)

Q. Perhaps in order to save time we will let you look it up.

A. Yes; it is eight feet; I think, Mr. Underwood.

Mr. Botts:

Let me have that, and while I am sitting here I will see if I can find it.

A. The rules are rather extensive.

Mr. Matteson:

I have it here in this one.

A. Mr. Underwood,—Testing; it says here, Tanks are to be tested by head of water six feet above the crown of the tank; that is double bottom with fuel oil, deep tank.

Q. That is not a gasoline tank, is it?

A. I imagine that is not a gasoline tank. I think gasoline tanks are to be eight feet; I think I can turn that up

later, your Honor. It says, six feet, there, for a double bottom.

Mr. Jones:

I will look further.

A. Yes, I think it is eight feet.

Q. Could these tanks be subjected to an air pressure test?

A. I wouldn't approve of it; I prefer a hydrostatic test. They could be, yes, with efficient closing of all openings; oh yes.

Q. Do you know how the motors on the Seminole were started?

A. I didn't know the Seminole before—before the fire; but I believe they were started by air.

Q. You have told us that in your opinion the tank compartment was not suitable because there wasn't room for a man to go in and look at the tanks; is that right?

A. To examine and repair.

Q. To examine—

A. And repair; examine the tanks efficiently, and repair them if necessary; but particularly to examine them.

Q. There isn't any question of repair here.

A. Well, we will say, examine; we will just let it go at examination.

Q. Could a man adequately test those tanks by going into the compartment wherein he had ample room to go all around them, on top of them and below them, and test them?

A. I said, examination; not for testing.

Q. Could he adequately examine them?

A. If he could get all around them?

Q. Yes.

A. Externally?

Q. Externaly.

A. He could adequately examine them externally.

Q. Would you be satisfied with such an external examination, to determine whether or not tanks were leaking or seeping?

A. No, sir; I would want an internal test; a hydrostatic test periodically, as well; all good practice calls for it.

Q. The purpose that you have in mind is to determine the condition of the tanks?

A. The condition—to determine whether they are in a state—whether they are proper tanks for the carrying of gasoline in bulk.

Q. That means whether they leak, or are about ready to leak? Is that right?

A. I wouldn't say, about to leak. I don't understand that term.

Q. Do you mean, whether they leak or not?

A. Well, whether they are gas tight; I would rather leave it that way.

Q. By gas tight, do you mean tight for gasoline?

A. Tight for gasoline, if you prefer it that way.

Q. It is because you say that that couldn't be done, that you say this tank compartment was bad in that respect: is that right?

A. I say the installation was bad in that respect.

Mr. Botts:

May I just call the witness' attention—I don't know whether this is the point they were looking for, or not.

A. Fuel tanks; but there is one I think on gasoline tank; this says fifteen feet of head.

Mr. Botts:

This is for internal—

A. That is for fuel oil, not gasoline. For fuel oil they ask fifteen feet head, your Honor—the reference Mr. Botts has just shown me.

Q. Now were these tanks supported on the bottoms, so far as you could tell from your examination of them?

A. Well at the time I saw them, I would rather not go on record as to their supports; I didn't see much of that, Mr. Underwood; I only saw them after the fire.

Q. Did you put your head in that little square hole and look up,—the square hole in the forward bulkhead?

A. I don't recall whether I did or not, now. I was rather perturbed that day; you had given me an instruction I had never received before in my life from any one; and I wish to emphasize it, too. I was called all the way down from New York to make a special survey; I rushed down here at—I wouldn't say great expense, but I went to extraordinary trouble to get down here on that particular day. I came for a survey, and I am immediately stopped in my survey; and I wish to register a protest, a strong protest, now: In the whole of my career of thirty or forty years it has never been done before. I register that frankly and fully.

Q Do you have anything more to say on that subject?

A. No, sir. You mentioned it with me now, sir, and I just tell you exactly how I felt at the time.

Q. Just what do you say I told you you could or could not do?

A. You told me definitely that I was not to move anything; and you told Capt. Patten he wasn't to touch certain things. I don't know how it could be possible to be a survey, in any circumstances.

Q. What did I tell Capt. Patten he couldn't touch?

A. I believe now, speaking from memory, I believe he was getting hold of a pipe or a fitting, and you told him not to touch that.

Q. Which pipe? Which fitting?

A. I was not taking notes at the time; I was going on with my own survey as far as I could. My survey was not with Capt. Patten; I was making an independent survey.

I have not conferred with Capt. Patten as to the evidence I should give in this case.

Q. Who else was present, at the time of this survey?

A. Quite a number of people. Mr. Dyer was present; you were present; Capt. Patten, one or two others, but I don't know that I know their names.

Q. Did Mr. Dyer make any protest?

A. He did not, as far as I can recall; I didn't hear one, now.

Q. Have you read the terms of the Order of the Court?

A. No, sir.

Q. —which permitted that examination?

A. I have not. I have given the whole of the facts as far as I know them.

Q. Is that the reason you didn't put your head through the square hole and look up at the bottoms of the tanks?

A. I have said, sir, I don't know whether I did put my head in. I have said my survey was restricted, and I did not go to the same trouble as I usually do.

Q. Did I tell you you couldn't go into the compartment under the tanks?

A. I could observe, but I couldn't go into that compartment.

Q. Did I tell you you could not?

A. No, sir; I have said as far as what you said; I do not state you said anything more than that, but that was sufficient for me, as a professional man.

Q. From your observation, what was under those tanks?

A. As far as I can recall now, sir, there were longitudinal angles with foundation plates; that is all I can recall, and I think I stated that in reply to Mr. Matteson.

Q. Did you see any drip pans under those tanks?

A. I did not see any drip pans.

Q. Did you see any pans of any kind under those tanks?

A. I did not.

Q. Did you see any steel or metal plate of any kind under those tanks?

A. I have just said I think I recall foundation plates.

Q. By foundation plates, do you mean one that is coterminous with the compartment itself?

A. I say it is part of a seating; it may be continuous, it may be just in pieces.

Q. Are you sure there weren't any trays under those tanks?

A. I saw none, sir; I saw no evidence of any whatsoever.

Q. Have you ever been on a vessel of the size of the Seminole, which was driven by motors such as she had?

A. Identical dimensions?

Q. Approximately.

A. Approximately? Several times, yes.

Q. What is this sixteen to one theory of proportion as relates to vibration, that you were telling us about yesterday? I don't understand it, and I would like to have you tell me.

A. I hope I didn't mislead you. There is no such theory as a sixteen to one theory. What I stated, I believe from recollection, that I thought that her depth to length was so great that she would be apt, in my opinion, to vibrate unduly. I believe that was the substance of my evidence, your Honor.

Q. You mean that the proportion, she was so deep in proportion to her length, that she would be likely to vibrate unduly; is that a fair way to put it?

A. Just the reverse, I should say.

Q. She was so long in proportion to her—

A. Depth.

Q. Is that right?

A. That is right; and she had very few cross members, I believe I added. And I think an additional reason was, she was flat bottomed—sort of flat of bottom; I am just speaking from recollection, naturally. But those are the three things I stated, I believe.

Q. What kind of vibration do you have in mind? Vibration in a seaway, or vibration from her propelling plant?

A. Both, I should say; both. I think I stated, both. I intended to.

Q. Well, let's take those up one at a time. Do you think that in a seaway, due to this characteristic of hers, she would hog or sag on the waves?

A. Unless you break her back, Mr. Underwood.

Q. Is that what you mean?

A. No; I said, in my opinion and from my experience, particularly as I have specialized for many years in the design of shallow draft vessels, with that proportion, and even worse proportions I, speaking from experience, know that that type of boat is apt to vibrate more than boats having greater depth in proportion.

Q. By vibration, now, we are talking about vibration in a seaway; I am leaving out for the moment any vibration that might result from the operation of her machinery. Did she have an expansion plate?

A. Certainly not.

Q. Or, expansion joint?

A. I hope not. I thought she was bad enough, but I didn't think she would be as bad as to have that.

Q. Will you tell us what an expansion joint is for?

A. Expansion joint? To overcome difficulties set up by varying temperatures; the same as you have in bridges.

Q. Is that the only purpose of an expansion joint?

A. In my experience it is, sir; that is in a ship, at least, Mr. Underwood. I want that record to be right as far as my evidence is concerned; and that refers to a ship—the construction of a ship.

Q. Now let's go to this—no, let's not go yet. What effect do you say that her vibration in a seaway would have on her gasoline tanks and lines?

A. I think that vibration would be, as I think I have already said, apt to loosen the joints, the pipes.

Q. You think she would vibrate throughout her whole length, in a seaway?

A. Unduly so.

Q. What was the distance from the tanks to the carburetors, approximately?

A. I don't know that I actually saw the carburetors, Mr. Underwood; and I don't want to be caught. Please don't think I think you are intending to catch me, because I don't think you are. But I want to be—

Q. Assume that they were on the after end of the engines.

A. Well any part of the engines—speaking from memory, I didn't note it then, but just bringing back that wreck to my mind now; you mean from the after bulkhead of the tank space, to approximately, perhaps the end—the after end, or middle part—

Q. Of the motors?

A. This is a guess, Mr. Underwood.

Q. Well, make your best estimate. You are an experienced man, now?

A. Yes, but I didn't apply that experience to that particular point, please remember.

Q. Didn't you observe the engine room?

A. I observed the engine room.

Q. What is your best estimate of the distance from the after end of the motors to the forward bulkhead?

A. As an estimate now, not having considered the point either at the time or since, only when you asked me to, I should say the distance from the after bulkhead of that tank space to the section of the engine which was probably the position of the carburetor would be, probably eight to nine feet; ten feet perhaps.

Q. Do you say that vibration of a ship in a seaway would cause any material derangement of such a gasoline line in that space?

A. Emphatically; emphatically.

Q. Do you have any means of knowing how much vibration, if any, was set up by the operation of her machinery when she was under way?

A. I have no experience with that boat, Mr. Underwood, at all; of anything—I don't know; I have no evidence she was ever under way, myself.

Q. You have told us all you want—strike that much, please. You have told us about the two kinds of vibration that you think might affect her gasoline system, have you?

A. I am quite certain I did, Mr. Underwood; not just a matter of thinking; I am quite certain that if that boat was under commission for any length of time, that vibration would affect her.

Q. Just where?

A. At practically every joint, unless it had at that particular spot an expansion—what I call an expansion coil or curve; that was the evidence I indended to give yesterday.

Q. Let's look at Exhibit 2; do you say that leaked?

A. I don't know; I couldn't tell you.

Q. Speak out, Mr. Thompson; I want to get every word you utter.

A. I don't know whether that leaked or not; I couldn't say whether it leaked. I don't know where it came from, even.

Q. Assume that it came from the Seminole, and was in use prior to the fire; did it leak?

A. I should say it would leak, yes.

Q. Where? Where did it leak?

A. That condition is changed; at any one or more of the joints.

Q. Just where?

A. At any one or more.

Q. I want to know whether your testimony is that that piece of material from the Seminole, leaked.

A. I don't know. How can I possibly know that, Mr. Underwood? I just expressed by opinion that it would leak at any one or more of those joints. I never have seen such an awful contraption before in my experience.

Q. Let's look at Exhibit 17. Do you say that that piece leaked?

A. I don't know, sir. I don't know it was on board, even.

Q. Assume it was on board the Seminole; did it leak?

A. I think it should, would, leak; but I don't know whether it did.

Q. Where?

A. At any one or more of the joints; and at the petcock, if there was a petcock, at the bottom of that.

Q. Are you willing to express the opinion that a petcock, of the existence of which you are not sure, leaked?

A. A hypothetical case— say, any petcock—

Q. I understood you to say that if there was a petcock there, it leaked; is that right?

A. In my experience, it would leak; any petcock, in that position.

Q. Did this petcock leak?

A. I don't know, sir. I don't know it was on board.

Q. Can you say that any particular joint in that piece, Exhibit 17, leaked?

A. I do not know, sir.

Q. Now I show you two drain valves, Exhibit 11: did they leak?

A. Am I am speaking too loud for you?

Q. Do as you like.—Did they leak?

A. I don't know. I don't know that they were on board.

Q. Assume that they were on board: did they leak?

A. I couldn't say, sir.

Q. Now you have said, I think, that you wouldn't approve a petcock in the bottom of a strainer, and that you would prefer—

A. A ground plug.

Q. A ground plug. Draw me the sort of a thing that you say would be a proper fitting at that point.

A. A very rough thing.

Q. Mr. Thompson, you are very smooth; now you do a smooth job on this.

Mr. Matteson:

I object to such statements on the record. We move to strike that.

The Court:

The motion is granted; strike that out.

Mr. Botts:

I think it might be well to suggest that counsel could be a little more courteous to the witness. There is no use, because the witness is testifying in a way he doesn't like, for him to be as discourteous as he is.

Mr. Underwood:

If I have been discourteous, I apologize.

A. I understood you said the witness could take care of himself; and if at any time I have appeared to show any heat, it is purely because I think you have aggravated me; and I did not mean it personally, Mr. Underwood.

Q. All right; go ahead, now.

A. I am just going to give the thing diagrammatically, if I may, just applying to the part you have asked for.

Q. I have asked you to draw the kind of a fitting that you would approve. You may draw it in any—in your own way.

A. This is a very rough thing. That is the plug.

Q. Won't you mark it, please?

A. Yes, I will mark it. These are the ground surfaces; I have marked it to make it clearer for you.

Q. Now this—

A. That is the body of the strainer.

Q. Would you continue the line up on this side and mark it Strainer?

A. Well, I am not designing a strainer; I am just showing a sketch of the part you have asked me to.

Q. Just mark the strainer. Will you mark this side, the Strainer, please.

A. I will call that Strainer.

Q. Now the plug is composed of these three pieces; is that right?

A. I am afraid—that is a screw plug with a hexagon head on it; your experts will tell you, that is a rough sketch of a plug—a screw plug.

Q. These three surfaces here are the three of the hexagonal surfaces of the head?

A. That is right. Maybe I am to blame; that should probably be a little wider there; there are on an angle; that is probably near the proportion; that is not to scale, just intended to be a rough sketch; doesn't indicate as well as a good drawing.

Q. Surfaces marked with the red arrow are the ground surfaces?

A. Where the ground surfaces are, on the plug and also on the fitting.

The Court:

Now would that plug be inserted in the strainer?

A. Screwed in, sir, and fastened up with a heavy wrench—metal to metal.

Q. May I have that marked, please?

A. Mr. Underwood, I show a metal joint there; the only joint I would pass, myself.

(Said sketch was marked respondents' Exhibit Q for identification.)

Q. You would install this and set it up with a wrench?

A. I would n't; I would approve it being done that way.

Q. And in operation, that would be removed daily, I suppose, to draw off the water from the strainer, or any other thing that might be in there?

A. No; I think I would change my gas supply if I had to draw that off every day, to drain water; I would go to a new gas supply.

Q. It is a thing that has to be used frequently in operation, is it not?

A. Intermittently, according to the quality of the gas you buy, where you can't get inside to clean them, you may have to take that plug off more frequently than if you had proper tanks where you could get inside to clean them.

Q. I notice that you didn't draw a taper angle on the plug.

A. I made no attempt; and I would think nothing about a taper angle in there.

Q. Flat surface?

A. Flat surface.

Q. For gasoline?

A. Well you know, Mr. Underwood—

Q. Is that right?

A. That's right; and I can give you something I think probably would help you—

Q. I don't need help at the moment, thank you, Mr. Thompson. Did you say that the Seminole should have had a stop valve on either side of this strainer?

A. Should have had sufficient means for closing the inlet to the strainer, and the outlet, so as the strainer could

be taken away with perfect safety on the closing of those two valves or cocks.

Q. And that is the purpose?

A. That is the purpose for those two; yes; safety purposes.

Q. Could that purpose be accomplished by shutting off the gasoline supply at the tanks?

A. Depends upon the nature—of course of you could shut off the supply, the only difficulty then, Mr. Underwood, you still have the distance from that strainer to the valve on the tank, to account for. You would have ascertained length of pipe highly objectionable, to remove the pipe and for the gasoline in that length to fall into the bilges. So undoubtedly the better practice—the only good practice is to have that valve tight up against that strainer; a valve each side. It could be done otherwise, but it would not be good practice.

Q. When you drain such a strainer, what do you do? Put a bucket under it to catch whatever comes out?

A. Well, sir, do you mean, what would a cautious engineer do?

Q. Yes, what would a careful man do? What would you have done?

A. Well, I don't want to throw boquets at myself, Mr. Underwood, but I would do as a normally cautious person.

Q. First you shut the valves?

A. I would shut the valves.

Q. Then what would you do?

A. Then I would remove the strainer.

Q. What would you catch the liquid in?

A. I would not clean it in the engine space at all; neither would a cautious person.

Q. Would you put a bucket under it?

A. No, sir; just carry it to a place where there was no danger of leakage from that in the engine room; I would have that cleaned outside of the closed engine room, not inside. I have a very great respect for gasoline.

Q. What purpose does the valve between the strainer and the carburetor, serve?

A. The one at the Carburetor?

Q. No, the valve. You said you would have a valve at either side of the strainer, as I understand your testimond?

A. Yes.

Q. What purpose does the one between the strainer and the carburetor, serve?

A. Well, it is just a lockage of that pipe for gas in that flowing back in the bilge; I want to prevent that danger.

Q. Of course in the event of gravity feed, the pipe from the strainer to the carburetor, would normally run down and away from the strainer, wouldn't it?

A. Yes, sir; but I wouldn't want to have to test to see where that pipe ran all that extra length. I would be satisfied, and I think the only good practice is to be quite sure, normally sure—and every reasonable person should be that on a gasoline boat,—is to see I had a valve immediately attached to that strainer on either side.

Q. You would take the risk of the extra fittings in order to achieve that end?

A. I certainly should.

Q. You have used the expression yesterday, corrosion fatigue, Mr. Thompson. Tell me what you mean by that.

A. Yes, sir. Until recent years, engineers—we were all of the impression fatigue was one thing only. But in recent years we have discovered that there are two forms of fatigue; one is ordinary fatigue, which is crystallization—some people call it crystallization. The other is fatigue that could be set up very quickly by a crack on the periphery of any material coming under concentrated stress, opening up slightly, and the fatigue in the form of corrosion striking rapidly down through it; and you will find in corrosion fatigue that the severed surfaces show definite evidence of rust as well as fatigue.

The Court:

How do you spell that, fatigue?

A. F-a-t-i-g-u-e sir. That arises generally from the same thing as a human body, sir; a failure to rest a thing regularly.

Q. What distinction do you draw between corrosion fatigue and fatigue from continuous application and removal of stresses?

A. Well I think ordinary fatigue is a slow process, that may not cause any ill effect for quite a long time. But we have found from experience—this is not an opinion, Mr. Underwood, I am speaking now from what has been ascertained; it is ascertained that corrosion fatigue can be set up in a matter of hours. I don't know that you can find that in the normal textbook; I have articles in the Proceedings of the Institute of Mechanical Engineers, London, dealing with that subject, in the past five years or so.

Q. Is the expression a common one,—corrosion fatigue?

A. Common to who?

Q. Engineers; metallurgists.

A. Oh, to metallurgists, they all know.

Q. Metallurgists all know, shouldn't they?

A. They all know it, I would say, definitely.

Q. I don't quite understand you yet. What do you say is the operating cause of this thing which you call corrosion fatigue? Is it an application of physical stresses, and the removal of those stresses?

A. I think it is. It will vary, on different occasions, in different phases.

Q. That is the characteristic cause?

A. The general characteristic—may I speak that way,—generally; if you will be good enouooh tg add the word, general, I think I can give it to you.

Q. You may explain in your own words.

A. The general characteristic is that it is found to operate at a point where there is concentration of stress,

with a crack, perhaps unobservable to the eye at the time,—a surface crack.

Q. Does the fatigue cause the crack?

A. No, sir; I say, the concentration of stress prior to this crack being there.

Q. Do you mean to say—

A. It may be a flow; it may be a change in the composition of the material at that particular spot; there are so many reasons. I don't want to burden the Court unduly, so I will explain it simply; it commences—the premise, you have to have concentration of stress, that causing a crack in the surface; every slight crack. And then that, under continued concentration of stress, aggravated by the fact that you have lowered your sectional area at that point, that crack opens and fatigue strikes down, almost in a vertical line. Now I have had that experience in shops; I have had it in large Diesel engines; I have had quite a lot of experience in the last four or five years with that; and when I originally gave to underwriters and owner my opinion as to the cause of a disaster, a lot of engineers disagreed with me; but that is accepted now.

Q. I am just asking for your definition.

A. I defined it to the best of my limited ability.

Q. You have commented about the two draw-valves on the Seminole, Exhibit 11, and said that one reason why there should not be such things, is that somebody might tamper with them; do you remember that?

A. I thought I objected to the whole thing; not so much the way it was fitted up. I object to a draw-off altogether.

Q. And one of the reasons you gave, is that some one might tamper with it; is that right?

A. No, sir; not even that. I object to the whole thing. I would not pass any drain of any description in an engine room, or any other confined space where gasoline was stored or used.

Q. Then one of the reasons you have for that view, is that somebody might tamper with it and permit gasoline to get out of it; is that right?

A. The principal reason—

Q. That is right?

A. No, sir.

Q. That is not one of your reasons?

A. That may be one of the reasons for the valves, but that is not the reason for the valve itself—my objection to—

Q. Did you or did you not give as one of your reasons why there should not be such a thing, the fact that somebody might tamper with it?

A. No; I don't think that would be a fair interpretation of my evidence, whatsoever.

Q. You didn't say that?

A. No. Please try to interpret my evidence so as I can answer you properly. I will go through—

Q. Did you give as one of your reasons why there should not be such a thing, the thought that some one might use it negligently?

A. Not in a dangerous place; outside of a dangerous place. A hypothetical case I understood was put up for the use of valves. I object primarily to the whole thing.

Q. The basis of your objection as I understand it, is that in the process of getting gasoline out in the confined space, there may be vapor; is that right?

A. That is one of the reasons.

Q. Of course if no gasoline ever comes out of it, it doesn't do any harm, does it?

A. No, sir.

Q. Have you ever experienced a leak in a carburetor, due to getting grit in the valve?

A. Oh, I frequently have seen carburetors leaking, Mr. Underwood.

Q. Due to grit under the valve seat?

A. Possibly at times, yes.

Q. But you don't condemn the existance of carburetors in the engine space, do you?

A. No; no, sir.

Q. In other words, Mr. Thompson, there are some things that are necessary to the operation of a gasoline driven plant, aren't there?

A. Yes, sir, oh yes.

Q. There are some risks we have to take, aren't there?

A. Yes, sir; and we don't want to increase them, or to have unnecessary ones.

(Brief informal recess was had.)

Q. You spoke of a glass gauge, Mr. Thompson. Is it a fact that your reason for not wishing to approve such an object, is that it might be broken, or that it might leak?

A. That's right, sir.

Mr. Botts:

I didn't hear the answer.

A. That is right, sir.

Q. You observed, I think you said, that the valves to the gasoline tanks were at such point that all the gasoline could not be drained off from the tanks through those valves; is that right?

A. Yes, sir.

Q. And what did you say you would do to remedy that?

A. To remedy it?

Q. Yes.

A. On those tanks?

Q. Yes; did you say that you would have a plug in the bottom?

A. Not of that tank, no; a plug in the bottom of that tank would be no use at all.

Q. Did you say that you would have a tank with a flat bottom or a bottom concave, and a plug in the bottom of that?

A. I said that in some circumstances would be allowable; but I wouldn't say that I would care to have it fitted in that way in any case, myself.

Q. Well, do you approve of some device in the system of a tank so that all the gasoline can be drained off?

A. No, sir; I would not approve of that device.

Q. Would you disapprove of one if it were there?

A. Not where the tanks were fitted in a position where leaks might cause collection of dangerous gases.

Q. Did I understand you to say yesterday that a ground plug would be the proper kind of a plug in the bottom of a gasoline tank, if you had a plug?

A. A ground plug in the bottom of a gasoline tank, and the gasoline tank fitted where a leak from that plug would not create a dangerous hazard.

Q. The same kind of a plug that you have drawn on Exhibit Q?

A. Well, sir, it would have to be fitted into a double plate, and that is just a rough indication.

Q. But the same kind of a plug?

A. Not as to size or length of that plug; just roughly indicates it.

Q. Shall we say, the same type?

A. Somewhat the same.

Q. A ground surface?

A. Yes; a ground surface.

Q. With no washer of any sort? Metal to metal?

A. I prefer metal to metal; that is my own personal experience, it is much preferable to any joining material.

Q. Have you ever seen such a plug;—a ground surface plug?

A. Oh yes, sir; had it made. I haven't made them myself, but I have ordered their manufacture or purchase.

Q. Would you do anything else besides provide for a ground plug in the bottom of a gasoline tank?

A. What purpose, Mr. Underwood?

Q. To close up the bottom of the tank.

A. I am afraid I don't recall the question.

Q. If you were fitting a gasoline tank in a compartment that was so arranged that there could not be any accumulation of gasoline vapors, and you were preparing specifications for a plug in the bottoms of those tanks, what would you specify?

A. I don't know at the moment, because I have never—I can't recall having fitted a plug in the bottom of a tank.

Q. You mean that is a subject that you have never Contemplated, and are not prepared to answer at the moment?

A. Substantially, yes.

Q. Do you know of any rules published by anybody for the lay-out of vessels that are propelled by gasoline power?

A. I can't recall any at the moment, Mr. Underwood. Rules—there may be rules, I can't just recall any.

Q. Have you ever been present when a fire or explosion occurred on board a vessel propelled by gasoline, at the time of the origin of the fire or explosion?

A. Not a serious one; if I can recall aright, I think I have been on board a gasoline vessel in a small fire, but I am not certain as to that, even, Mr. Underwood.

Q. You said yesterday that explosions have occurred in cases where gasoline vapor was not noticed prior to the time of the explosion?

A. Yes, sir.

Q. Do you base that statement upon what other people have told you?

A. Yes, sir.

Q. You have said that a certain hazard still remains when one has done all that is humanly possible to avoid it, is that right?

A. Humanly possible—normally possible, walking around an engine room and examining the condition of things, that's what I meant.

Q. Shall we say, all that is reasonably possible?

A. All that is reasonably possible, that a normal man would do—A man with any intelligence, would do.

Q. Do you say that the gasoline tanks of the Seminole leaked prior to the fire?

A. I don't know, sir; I wasn't present.

Mr. Underwood:

That's all; thank you.

Re-Direct Examination.

By Mr. Matteson:

Q. Mr. Thompson, in the course of your testimony, you indicated that you would like to refer to a book that I have in my possession, which I hold in my hand, but you were not permitted at that time. Will you tell me what this book is?

A. That book is a book that was prepared for me by some of the staff of my office in Westminster, London. I believe in the year of 1917, and presented to me at Christmas time of that year. It contains, I believe, photographs and descriptions of a few of the vessels built in one of the wards, during the war, for war purposes; or vessels that were turned into vessels for war purposes; that is, purposes connected with the war; some would be for hospital work.

Q. What did you have to do with the construction of these vessels?

A. Those particular vessels?

Q. Yes.

A. Well, I supervised the construction of the whole of them; I don't know, I think most of them were—a lot of

them were designed by the Government, but I superintended the construction, I can say that, of the whole of them. I supervised the design—by that I mean from the time I was about twenty-seven years old, I didn't actually work at the drawing bench; I supervised designs. I supervised the design of several of them, I don't know how many; I haven't considered that point. Those all refer to one yard, and a certain number of boats only in that period. I think it states that on the inside cover.

Mr. Matteson:

I offer this book in evidence, if your Honor please.

The Court:

Objection?

Mr. Underwood:

May I see it?. If your Honor please, I won't take time to examine this thoroughly now; I probably sha'n't object to it, but may I reserve my objection?

The Court:

Yes.

(Said book was received in evidence and marked Libelants' Exhibit No. 102.)

The Court:

To keep the record straight, let it be admitted in evidence subject to motion to strike.

Q. I take it this book shows photographs of the types of vessels, and on the opposite page the description relates to those photographs; is that right?

A. I believe that is so, sir. I did not know that book existed until I was informed of it last night; I thought it had gone, years ago.

Q. Does that book represent all of the boats—

A. I would like to correct that: I thought it had gone years ago, until we removed down to Miami this winter, and it turned up in the course of moving; I told my wife to throw it away, destroy it, but I found last night it hadn't been thrown away.

Q. Do the pictures and descriptions in that book represent all of the boats that were built in that yard under your supervision, or not?

A. Oh, by no means; just a few. I think actually it states so in the book.

The Court:

Mr. Thompson, who is M. Vince?

A. M. Vince was my private secretary, sir.

The Court:

Who is W. T. Brown?

A. He was my chief draughtsman.

The Court:

Who is James Clayton?

A. He was one of my assistant draughtsmen, at the time, sir.

The Court:

What connection did you have with the Saltney Shipyard Chester?

A. I was one of the managing directors, and I had a fairly considerable financial interest in it.

The Court:

All right.

A. That yard has been referred to in evidence, sir.

Q. I am looking for the drawing that Mr. Thompson made yesterday; are they supposed to be here?—the

tanks?—Mr. Thompson, yesterday you made this drawing, which was marked Respondents' Exhibit P for identification, showing a partial section of a tank, where the bottom is convex instead of concave, as you described it, on the Seminole. You were asked about the effect of condensation in a tank so constructed. Will you tell us what difference if any there would be between the action of condensation in a tank so constructed, and in a tank constructed as you have indicated in Libelants' Exhibit 99.

A. The difference in the effect of condenation, is that it?

Q. Yes.

A. Well, in my opinion, the condensation is very much less apt to get down at the joint—that is the joint here—that is between the cover and the shell; in my opinion most of the condensation would be caught on the top and would fall down or into the bottom, rather. In the other type—

Q. Referring to—

A. That one with the convex bottom.

Q. Respondents' Exhibit P?

A. Yes.

Mr. Underwood:

Why not write Convex in one, and Concave in the other, so as to keep it straight. Would you object to that?

Mr. Matteson:

No.

A. Put Convex—that is not a very good description; convex type of bottom?

Mr. Underwood:

Just Convex is enough; Concave on the other.

Q. I would like to have you mark on that exhibit—use this to write on—the point at which you say the condensation would be caught.

A. It would be caught—shall I mark that?

Q. Yes, mark it with an arrow.

A. It would be caught—originally?

Q. Yes.

A. Caught originally at Mark A, or One—?

Q. Mark A; letter A. And then where do you say it would go from there?

A. I think the most if not all of the condensation caught at point A, would flow over the horizontal plate, which is only about one quarter of an inch thick; it is not so thick as I show in this sketch: and flow over the edge—B?

Q. Yes.

A. And from that edge by gravity, fall down into the bottom, towards the bottom, which I mark—C?

Q. That is right. Now you have drawn a light line here which I take it indicates the direction of the flow?

A. Yes. Shall I mark that clearer?

Q. Yes.

A. Might call that BC, that line.

Q. I think it is sufficiently indicated; it leads to the point C?

A. To the point C, and beyond of course.

Q. Now what advantages does one type of construction have over the other, if any?

A. Other advantages? In addition to the one I have pointed out?

Q. Yes, if any.

A. The head of the rivet is inside what should be normally a tight—the inside, which normally should be tight in a tank.

Q. You are referring now to which type?

A. That is the convex type, has the advantage.

Q. Respondents' Exhibit P.

A. In my opinion, those rivets are likely to leak less in—as shown in convex type, that they are in the concave type; due to the fact that the head of the rivet, which I now mark approximately on the sketch and designate as E?

Q. All right; the letter E points to the rivet head; is that right?

A. Yes.

Q. Explain to us then.

A. Any leak, beyond the rivet head, that is any seeps or corrosion beginning at the back of the head, is inside of the tank, not outside, as it would be on the concave type. I will now mark approximately the rivet on the concave type; we will call that—mark that as B on concave.

Q. Libelants' Exhibit 99?

A. 99. That rivet is shown there with a plain neck; I attach no importance to the type of rivet I am showing.

Q. In which type would the condensation or other sediment be more apt to attack; the rivet or the binding surfaces?

A. Is the concave type, Libelants' #99 sketch.

Q. And why is that?

A. Because the whole of it is retained at a point where it is liable to attach the rivets and the caulking at the bottom.

Q. That is with respect to the concave type?

A. Concave type.

The Court:

Would that rivet head be inside the tank—

A. On the concave type, sir.

The Court:

On the convex type?

A. On the convex type inside, on the concave type outside; then, should I mark here the inside of the tank?

The Court:

On the concave, the rivet head would be—

A. Outside; and the convex inside.

Mr. Botts:

Do I understand that on one type both the head and the point of the rivet are outside, and the other type the head is inside and the point outside: is that correct?

A. That is so.

Q. You were asked a general question as to whether stresses parallel to the axis of a cylindrical tank, or perpendicular to the axis, would exert a greater strain. Is it possible to make any answer to a question of that kind, unless further information as to the situation is given?—without further information as to the situation of the tank and its use?

A. I think further information would be necessary, Mr. Matteson.

Q. You were asked something about the standard practice for making rivet holes in tanks, in this country. Do you know anything about that?

A. As to the standard practice?

Q. Yes.

A. May I have that question read? (Question read by reporter.) No, sir.

Q. You were asked a question as to whether these drain valves, Exhibit #11, leaked; and I think your answer was shut off before you completed it. Did you have something you wanted to add to what you said?

A. The tank as I examined it—the valve as I examined it yesterday? I think in the state it is now, that that valve would definitely leak; and it is in such bad order, I do not consider the valve any longer, because I think it is worn out.

Q. And what was the condition that you referred to?

A. The condition of the valve.

Q. And by the valve you refer to the upper part of the mechanism—

A. The valve spindle.

Q. Which is attached to the valve spindle?

A. That is right, sir.

Q. You were asked a question this morning by Mr. Underwood—

A. May I amend that? Perhaps this is a little disconcerting. The whole thing is a valve; but to me as an engineer, the part of the thing which really stops the flow, makes the line tight, is the part that seats on the seat; I call that part the valve; although the whole thing is referred to as a Globe valve. The valve itself is really part of that; and I meant that that part attached to the spindle was worn out, or in such a state it would no longer be gas-tight.

Q. You were asked by Mr. Underwood whether one of the objections that you had to the presence of a valve in the engine room for the purpose of drawing off gasoline—whether one of the objections was the possible negligent use of such a valve. I am not clear whether—what your answer is on that.

A. Well I am not clear myself as to whether that was the question; I didn't understand that was the question. One of the objections—

Q. It is one of the objections.

A. Oh, yes, that is one of the objections. I thought—I misunderstood Mr. Underwood; I am sorry. That isn't my objection; that is one of my objections; I have other objections.

Q. You were asked about plugs in the bottom of tanks, for the purpose of drawing—of draining the tanks off. Are such plugs ever used, and if so, under what conditions?

A. They are frequently used—for gasoline tanks?

Q. Yes.

A. Oh, I don't think I have ever seen one in a gasoline tank. They are frequently used in tanks—ordinary tanks, water tanks, or containing other fluids with no danger of a leak. But I would not approve of a plug in the bottom of a gasoline tank; particularly if that tank fitted in a compartment where a collection of gasoline fumes may occur, I would object to a plug absolutely.

Q. I think you said that after everything had been done in the engine room, that an engineer could normally do, or would normally do, to ascertain tightness of the connections, there still remained a danger. What if any steps can or should be taken to overcome that danger?

Mr. Underwood:

If your Honor please, I object to that as a hypothetical question, without facts.

The Court:

Let me get the question again now.

(Question read by reporter.)

Mr. Matteson:

I think Mr. Underwood's question was general. I tried to put it in the same terms. I think it is general; applies to any type of gasoline vessel.

The Court:

Are you quoting his statement as applied to the Seminole, now?

(Question re-read.)

Mr. Matteson:

I am applying it to any type of a gasoline vessel. The question Mr. Underwood asked was general, with respect

to any type of a vessel. He said after everything that could normally be done in an engine room of a vessel of this type, a hazard still remains. Now I am asking what steps if any can be taken to reduce or minimize that hazard.

The Court:
I will overrule the objection.

A. Now may I have the question read again, sir?

(Question again read.)

The Court:
Now let me ask you this: does the first part of that question correctly state what you have stated? Has Mr. Matteson correctly summarized your statement?
A. I think so, in substance, I believe that is right.

The Court:
All right.

A. Before he manipulated any electrical device of any kind, or attempted to start the engine, he should see that the place was properly ventilated, either by the opening of all his ventilating devices, and also with the operating of either manually operated fans or mechanically operated fans: in other words, the place should be ventilated to the best of his ability at that time, and for a period before he commences to operate his engines. That is the normal, good, standard practice. Failure to do that, your Honor, has to my knowledge, in my experience, caused explosions, in vessels that were otherwise well fitted. But that is an essential thing, that he should have that place properly ventilated.
Q. Is the matter of ventilation in such places, emphasized in these rules of Lloyd's that you refer to?

Mr. Underwood:

If your Honor please, I object to that on two grounds. I didn't go into ventilation on cross; and the rules speak for themselves.

Mr. Matteson:

It seems to me, if your Honor please, this all hangs together. Mr. Underwood has attempted to infer by his question that there are hazards that can't be escaped; and in redirect I am bringing out how they should be escaped, and the importance of those measures and the emphasis placed on them in the rules. I simply want Mr. Thompson to tell us whether that emphasis is there or not.

Mr. Underwood:

The book speaks for itself as to that, your Honor.

The Court:

Well, the book is admitted on the theory that has been expressed by the Court, not as speaking for itself, as a document, but as corroborative evidence of his own opinion. I think he may corroborate that, under that rule; so I will overrule the objection.

Mr. Underwood:

If your Honor please, I don't mean to press it unduly, but the question is, what the book does, not what Mr. Thompson does.

Mr. Matteson:

I am simply—

The Court:

By this question it is sought to develop as to whether he is corroborated in his opinion by the book?

Q. Will you answer the question now?

A. I can't say that it does, of my own recollection now; I didn't go by rules; I go by my own experience. I have generally spoken from my own experience, rather than rules.

Q. I call your attention to—

The Court:

Hasn't he expressly excluded the book as corroborative of his own testimony on that feature?

Mr. Matteson:

He says he does not base his opinion on the books; but he hasn't excluded the corroborative evidence in the books, if your Honor please.

The Court:

I though he said he didn't know whether it was in the book; that the book didn't mean anything to him on that point.

Mr. Matteson:

I think he means that in giving his opinion evidence he is relying on his own considerable wealth of experience and information.

The Court:

Well if he is not conscious, Mr. Matteson, of there being anything in the book on that, to which he can now refer or to which he has ever referred in formulating his opinion, I don't see how under my ruling it would be competent for him to now look at it and corroborate it now, when he is not conscious of it having helped him in the formation of his opinion.

Mr. Matteson:

It seems to me the matter of corroboration is independent of the way in which he reaches his conclusions.

He has testified that he is familiar with these rules, and that these rules do constitute the standard.

The Court:

But he says he is not familiar with any rule on that particular point, I understood; he is not familiar with anything in the book on that point; isn't that right?

A. I couldn't recall it now, sir; that is quite true.

Q. Well, have you recently examined the book, Mr. Thompson?

A. I have recently seen it; yes.

The Court:

I will sustain the objection to that.

Q. You were asked, Mr. Thompson, about the double riveting of tanks, and the inference seemed to be that that would be somewhat unusual. Can you tell us whether or not in some instances double riveting of tanks is required by Lloyd's rules, Libelants' Exhibit 101?

A. May I ask whether the question means, gasoline tanks or tanks in general?

Mr. Matteson:

I will withdraw the question, if your Honor please, and put it in a different way.

Q. I show you Rule #8 of page 113 of Libelants' Exhibit 101, and ask you if that rule does not require double riveting of tanks.

A. What rule is that?

Mr. Underwood:

If your Honor please, I object to the question on the basis that the rule speaks for itself.

The Court:

Are you aware of anything in that book, Lloyd's Register, which has been helpful to you on the matter of the formation of your opinion—the corroboration of your opinion or the formation of your opinion on the matter of double riveting of gasoline tanks?

A. Recently, do you mean, your Honor?

The Court:

Any time.

A. Yes, sir.

The Court:

Do you think you can find something in there that has helped you in your study of that subject?

A. And in complying with rules.

The Court:

All right, sir; the objection is overruled.

A. Yes, sir.

Mr. Underwood:

What is that provision?

A. The shell boundary bars and the butts of the bulkhead plating and shell plating are to be at least double riveted.

Q. Does that rule refer specifically to gasoline tanks?

A. To deep water tanks. The sub-heading is, riveting deep water tanks.

Q. Would or would not such a provision be more or less important with respect to tanks containing gasoline?

A. They would be equally important, and in my opinion more important. That is also referred to later down in the next paragraph; deep oil fuel tanks; it is repeated. Do you wish me to draw attention to that?

Q. Yes, please call attention to that.

A. In the next paragraph, your Honor, it states, the shell boundary bars and the seams and butts of shell, deck and bulkhead plating are to be at least double riveted. It further states, double bars, single riveted, if desired, may be fitted to the boundaries—double bars. For single bars they have to be double riveted.

Q. And this second provision—

A. I have read that.

Q. This second provision that you read is in the paragraph headed Deep oil fuel tanks?

A. Yes, sir.

Q. What is the difference between the characteristics of oil fuel and gasoline?

A. From my experience and in my opinion gasoline is much more apt to leak and seep, rather than fuel oil; and fuel oil has not the highly volatile gases in it. Fuel oil I believe is oil having a flash point of 115 above,—speaking from memory, your Honor.

Q. What is the difference between a single bar and a double bar?

A. Well one is a single iron—one side; the other is each side of the plate.

Q. If there is one each side, you have three pieces of metal joined together, is that correct?

A. Yes; three steel joint is a better joint than a single bar with the same size of angle.

Mr. Matteson:

I think that is all at this time, if your Honor please.

Re-Cross Examination.

By Mr. Underwood:

Q. Mr. Thompson, do you say that these extracts which you read from page 113 of Libelants' Exhibit 101, refer to cylindrical tanks?

A. No, sir; no.

Q. Of the type on the Seminole?

A. I didn't say that at all.

Q. They don't have any reference to a cylindrical tank like those on the Seminole, do they?

A. I will read that—

Q. They don't, do they?

A. They don't refer to the Seminole tanks at all.

Q. I am not clear, Mr. Thompson, where we stand about this exhibit. I understood that I asked you if you could say that Exhibit #11 leaked on or before the time of this fire, and that you told me you could not say: is that your evidence?

A. That was my evidence.

Q. I asked you a question about the stresses parallel with the axis of a cylindrical tank, and the stresses at right angles to those stresses. What further information do you need to answer my question?

A. Well I can't quite follow what—could you get your adviser to make a sketch, make it clear when you want from me? I will answer you frankly and fully.

Q. I ask you to assume a cylindrical tank of the type which you saw on the Seminole.

A. Yes.

Q. I ask you to assume that it is standing upright.

A. Yes.

Q. And that it is full of gasoline.

A. Full of gasoline.

Q. Will you tell me which are the greater; the stresses that are vertical with the axis of the tank,—parallel with the vertical axis of the tank, or the stresses which are at right angles to those stresses?

A. I would say; those were perpendicular.

Q. Which are the greater stresses, Mr. Thompson?

A. At what point—perpendicular—due to the head of the oil.

Q. Mr. Thompson, I show you Exhibit 99 and ask you whether or not the head of the rivet is inside or outside of the tank.

A. Outside the tank; that is the concave type bottom.

Q. Assuming that the surface between the tank shell and the concave bottom above the rivet is not tight, at the point A; at how many points can the liquid there get at the rivet?

A. Get all around the rivet.

Q. In the plane between the two pieces of tank?

A. I believe that was my evidence; yes, sir.

Q. Now look at Exhibit P for identification; is the head of the rivet inside of the tank?

A. Yes, it is.

Q. Assuming that there is a space between the shell of the tank and the convex bottom, is it not a fact that the liquid there can get at the rivet between that?

A. Exactly the same as in the other.

Q. And is it also not a fact, if the rivet head is not tight, the gasoline or whatever the liquid may be, can get at the rivet also, between the head and the—the head of the rivet and the head of the tank?

A. Which liquid do you refer to?

Q. Any liquid that may be in the tank.

A. Water wouldn't, because it would flow through there, as I described, going down to point C.

Q. Whatever the liquid in the tank is, it can get at the rivet in two places, assuming the thing is not tight, with the convex bottom, but only one place with the concave bottom; isn't that so? Isn't that so?

A. Yes, but that does not constitute a danger at all; that does not increase the hazard in any way; the other does.

Mr. Underwood:

That is all.

Further Re-Direct.

By Mr. Matteson:

Q. Will you just explain your last answer to us, Mr. Thompson?

A. Any attack on the neck of the rivet, your Honor, at the head, in the convex type, would have very little effect on the tightness of the rivet, provided that rivet was a fitted rivet in a drilled hole; and that is one of my objections to—one only, there are others—objections to a punched plate in a gasoline tank. In the process of riveting, with the fitted rivet, under heat, your Honor, any leak there in a properly fitted rivet will not be—any leak there will not be transmitted, in a properly fitted rivet, along the rivet. It will attack the corrosion—that is water will attack the corrosion, the rivet there, just the same as it would, as Mr. Underwood has rightly pointed out in the concave type; or rather in addition; in other words, in the concave type, moisture, water, would attack the rivet there.

Q. Indicating the section of the rivet—

A. Vertical at A.

Q. Indicating the section of the rivet between the two plates.

A. Yes, sir; it is true, that moisture would do the same thing in the convex type, and also at the back of the head of the rivet; but that would not increase—would not add to the danger of that rivet, with a properly fitted rivet in a properly drilled plate of a tank. With a punched plate, I admit that there is a grave danger—Mr. Underwood didn't ask me; a grave danger that he has pointed out. I just replied to the question he gave me.

Q. But in the concave type, or the convex type, as I understand your opinion, water would be less likely to remain in the vicinity of and to attack the rivet?

A. Yes, sir; I have already stated that.

Q. You have been asked about these cylindrical tanks. Will you tell us whether or not they are commonly used in vessels of the type of the Seminole, for gasoline tanks?

A. Do you mean, tanks of that size, Mr. Matteson?

Q. Yes.

A. Approximately that size?

Q. Yes; cylindrical tanks of about this size; is it usual good practice, or is it not?

A. That type, with the concave bottom, and no chance of getting inside?

Q. I am talking generally now just about the type of tank; a large cylindrical galvanized tank of the capacity of about 550 gallons; is that type of a tank ordinary good practice, in yachts of the type of the Seminole?

A. From my experience and in my opinion I would not call it common or good practice. I don't know that I can go any farther than that, Mr. Matteson.

Q. Is there any difference between a cylindrical tank and any other sort of a tank, in the requirement with respect to riveting to make the tank tight? I refer particularly to double riveting.

A. Oh, no; the same thing would apply definitely to both; just as necessary in both.

Q. One more thing. In answer to Mr. Underwood's question you said that you could not say that this valve leaked, prior to the fire; referring to Exhibit #11. Why did you answer the question that way?

A. Because I can only speak of that valve as I see it today. I don't know what its state was at that time. My evidence has been on the valve that I saw yesterday, not—

Mr. Matteson:

That is all.

Mr. Underwood:

No further questions.

(Witness excused.)

Mr. Matteson:

Would there be any objection to our making arrangements to open these other valves in this suit? We couldn't open them in Court the other day; it would take a heavier wrench. If Capt. Patten can arrange it, we would be glad to arrange it, under any circumstances that the Court and Mr. Underwood think fit.

The Court:

Anything is agreeable to me if you are agreeable. Is there any objection to Capt. Patten looking after that?

Mr. Underwood:

I think Capt. Patten and Mr. Monroe might attend to it together. * * *

The Court:

It is agreed then it may be taken from the Court room by Capt. Patten.

(At 12:30 o'clock p. m., Court recessed until 2 p. m. of the same day, March 24, 1939.)

March 24, 1939. 2:00 P. M.

Reconvened pursuant to recess.

Appearances same as heretofore noted.

1312 Thereupon J. N. PATTEN, a witness in behalf of the Libelants, resumed the stand and testified further as follows:

Direct Examination.

By Mr. Matteson:

Q. Captain Patten, during the lunch hour today, in company with Mr. Monroe, did you take apart this Crane valve number 150, which is a part of Exhibit 11?

A. I didn't take it apart, but the machinist down at the shipyard did in our presence.

Q. What did you find the type of this valve to be?

A. The valve is really a floating type, with a composition or fiber seat, or washer rather.

Q. Will you show us how this valve goes together. We have three parts here. First of all, this upper part, what do you call that?

A. That's on the stem.

Q. This smaller part, what do you call that?

A. That's the floating valve, because it is not an integral part of the stem.

Q. It slips on and off in a slot on the end of the stem?

A. Yes, sir.

Q. All right; this floating valve—

A. This is the floating valve.

Q. This floating valve had what kind of a seat?

A. Composition or fiber.

Q. In one side of this valve there is a depression and a screw which screws into a threaded hole in the center, is that right?

A. Yes, sir.

Q. And that comes out and under that is fitted the fiber seat?

A. Fiber or composition.

Q. Then the threaded part is screwed in to hold that seat in position?

A. Yes, sir, and in turn sets on this seat in the body of that valve.

Q. In the body of the valve there is a hole against which this composition seat fits—this composition seat, I take it, is somewhat larger than the hole, is that correct?

A. Yes, sir.

Q. So that when the valve is screwed down tight the composition seat goes against this hole and that is what prevents the flow of liquid through the valve; is that correct?

A. That is correct. That is similar to what you have on faucets in a kitchen.

Q. When this valve was taken apart did you find any trace of the original composition or fiber?

A. There is some on that paper there that fell out.

The Court:

You say this portion right here unscrews?

A. Yes, sir.

The Court:

And this composition washer goes underneath there?

A. Yes, sir. The composition washer has a hole in it and this screw goes through that hole and holds the washer in place.

The Court:

When the stem is pressed downward by turning the wheel at the upward end of the stem, does not throw this piece that I have my finger on?

A. No; that stays stationary.

The Court:

What does it throw against the hole of the seat?

A. This washer in this stays on this flat edge here.

The Court:

The washer that is underneath that sets around the edge?

A. Yes, sir.

(By Mr. Matteson):

Q. This entire seat moves up and down in the valve when the handle is turned, is that correct?

A. No, the seat doesn't move.

Q. But the stem on the assembly part of the valve moves up and down?

A. Yes, sir.

Q. As the handle is turned?

A. Yes, sir.

Q. That is right?

A. Yes, sir.

Q. And that brings the washer against the seat?

A. Yes, sir.

Q. Is there any part of the washer remaining in this assembled part of the valve?

A. Yes, there is some in there and there is some on that paper there, too.

Q. Are these the remnants of the fiber or composition seat on this paper?

A. Yes, sir.

Mr. Matteson:

I would like to put this in an envelope and have it marked as an exhibit. Mr. Underwood, may I inquire if you would feel disposed to concede that these remnants are a part of the fiber or composition seat. It would seem to be the fact, and I thought we might save ourselves the trouble of trying to preserve these remnants.

Mr. Underwood:

I cannot agree to it in the way in which you put it. It was some sort of a seat which was not metal. If that will serve your purpose, I will agree to that, but I don't know whether it was fiber or whether it was composition or what it was.

Mr. Botts:

Fiber or composition would cover about everything.

Mr. Underwood:

Is it your point that you want to exclude "metal"?

Mr. Matteson:

I don't think it is metal. I think it is fiber or composition.

Mr. Underwood:

Is the point of your request of me that I agree that it wasn't metal?

Mr. Botts:

We will agree that it is remnants of a washer and not metal but a composition or fiber.

Mr. Underwood:

That is satisfactory.

Mr. Matteson:

If your Honor please, I think we had better keep the remnants. We will get an envelope and put them in it. It is agreeable to me to agree that it was not a metal seat.

Mr. Botts:

And that it is some kind of a removable washer of some substance other than metal.

The Court:

Let it be marked.

(Thereupon the remnants above referred to were placed in an envelope and marked Libelants' Exhibit 103.)

(By Mr. Matteson):

Q. Captain Patten, I take it that this is not a valve with a metal to metal seat?

A. That is right.

Q. Would you consider a valve which does not have a metal to metal seat, which has a composition or fiber washer of some kind, a proper valve for confining gasoline?

A. I think I answered that question before but I will confirm it by saying that it is not proper.

Q. Why is that?

A. Well, the action of alcohol or any liquid in a short period of time will cause these washers to soften up and disintegrate and cause a leaky valve, and that happens on fresh water vessels.

Q. You said "alcohol", did you mean alcohol?

A. Gasoline, and I imagine alcohol would have the same effect.

Mr. Matteson:

That is all.

Cross Examination.

By Mr. Underwood:

Q. I show you a paper which has on it a diagram of a valve and ask you to tell me whether or not that represents substantially the type of valve that you have just been talking about?

A. It is not the same valve.

Q. What are the differences?

A. That screw that—

Q. Perhaps I can shorten it up. Does it represent the manner in which the flow of gasoline was set by the valve that you have just had in your hand; if not, what are the differences?

A. This is the stem—this small screw with the flat head.

Q. In other words, on the diagram the screw has a head, whereas on the valve itself there is no head?

A. Evidently the keeper screws on this stem there, and this keeper on that is not as big as—

Q. By "keeper" you refer to the thing marked on the diagram "disc detaining nut, brass"?

A. Yes, sir.

Q. Now will you point out any other differences that you observed?

A. Well, they call this washer (pointing) "Crane Renewable Disc."

Q. And you call it a washer?

A. Yes, sir.

Q. Any other differences? I mean in construction now and now in the names of the parts.

A. This stem principle—let me have that to compare them.

Q. Here is it, and if you need the other part you may have it.

A. That bonnet is the same.

Q. Are the two substantially the same in principle and operation?

A. They are quite similar, yes, sir. I imagine this is a refined type of the same valve; it looks so to me; they have used a lot of the same principles in design.

Mr. Underwood:

May we have this diagram marked.

(Thereupon the diagram above referred to was marked Respondent's Exhibit "R" for Identification.)

Q. Now, as I recall, Captain Patten, when I asked you the other day what the figures 150 on there mean, you told me that you did not know?

A. I did not. I said it was pressure.

Q. It is intended and designed and sold to withstand a pressure of 150 pounds?

A. Yes, sir.

Q. Of steam?

A. Steam or water.

Q. How much pressure would have to be applied to such a valve on the Seminole tanks, assuming all valves up to that valve were open and the tanks full?

A. Less than three pounds; wait a minute; about three and a half pounds, I would say, with a full head of gas in the tank.

Q. Not more than four pounds?

A. No, sir.

Q. Do you know whether Crane Company made any composition seats that were designed for gasoline?

A. No, I do not know, but from practical experience I would hate to experiment with it.

Q. You don't know whether Crane Company made any such things or not?

A. No.

Q. I call your attention to a paragraph in this pamphlet, which is on the reserve side of the diagram that you have just examined, Respondents' Exhibit "R" for Identification, as follows: "For special service, such as oil or gasoline, orders should specify the service, as the valve are furnished with a special disc to suit conditions." Did you know that Crane Company furnished a special disc for gasoline?

A. I did not.

Mr. Underwood:

That is all.

(Witness excused.)

1320 JOHN A. THOMPSON, previously called as a witness by the Libelants, resumed the stand and testified further as follows:

Direct Examination.

By Mr. Matteson:

Q. Mr. Thompson, I show you this Exhibit 11 and call your attention to the valve which is marked Crane 150,

which has now been taken apart, and ask you to examine the parts and tell me what type of a valve that is?

A. The whole thing is a globe valve, a valve having a float and the seat is not metal to metal.

Q. What sort of a seat does it have?

A. It appears to have interposed between the valve and the seating some kind of a washer, the nature of which I cannot tell.

Q. Assuming that it was not a metal washer, in your opinion would this valve be a proper valve for confining gasoline?

A. From my experience I would say it was an improper valve for gasoline.

Mr. Matteson:

That is all.

Mr. Underwood:

No questions.

Mr. Matteson:

If your Honor please, I want to offer in evidence two additional depositions which were taken in New York the day before the trial opened, the deposition of Ruth E. La Barr, secretary to Mr. E. D. Wright, whose deposition had been taken the week before and which I offered in evidence at the opening of the trial, in connection with which there was offered as Exhibit 28 thereto Lloyd's Register of American Yachts for 1933, which was here this morning, and which has been referred to and marked for identification; also a short deposition of Mr. E. D. Wright, recalled, which follows the deposition of Miss La Barr in the same volume.

Mr. Jones:

Did you receive copies of those depositions?

Mr. Underwood:

Yes. I have no objection to them, except reserving the objections made at the taking of the depositions.

The Court:

The same ruling made as made to the other depositions offered in evidence.

(Thereupon the depositions above referred to were marked Libelants' Exhibit 104.)

Mr. Matteson:

Reserving the questions arising out of the agreement in connection with the appointment of an auditor, I think that is our case at this time.

Mr. Botts:

If the Court please, subject to the reservations or understanding in connection with the information to be secured through the auditor, which we can probably cover by stipulation, the defendant Pilkington has no further testimony to offer.

(Thereupon the case of the Libelants and the case of respondent Pilkington concluded in chief.)

Mr. Underwood:

At the suggestion of Mr. Botts, I took the bills from Mr. Pilkington, the receipt or indorsed portions of the checks by which these bills were paid, and the vouchers insofar as I had them, and have put them together in chronological order by years, and I have one group for 1928, consisting of four checks, four vouchers and two bills; one group for 1929, consisting of three checks, two vouchers and four bills; one group for 1930, consisting of eight checks, seven vouchers and seven bills; one group for 1931, consisting of fifteen checks, fifteen vouchers and

twenty bills; one group for 1932, consisting of 16 checks, 16 vouchers and 22 bills; one group for 1933, consisting of fourteen checks, fourteen vouchers and thirty-five bills; one group for 1934, consisting of thirteen vouchers, thirteen checks, and eighteen bills; another group for 1935, consisting of five checks, six vouchers and five bills. Many of these documents are new, but some of them have already been marked in evidence. These include exhibits which have been marked heretofore Libelants' Exhibits 58-A, 58-B, 59-A, 59-B and 75 for identification. They also include Pilkington's Exhibits 1 to 6, inclusive, for identification, and Respondent Phipps' exhibits 1 to 8, inclusive, for identification. I hand these to Mr. Matteson, at his request.

Mr. Matteson:

I would like to have an opportunity to examine them.

1347 Thereupon JOHN L. CODY was produced as a witness in behalf of the Respondent Phipps, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Underwood:

Q. Your full name is John L. Cody?

A. Yes.

Q. Where do you live?

A. At the present time?

Q. Yes.

A. Cordele, Georgia.

Q. What is your business there?

A. Fire chief.

Q. Did you live in Fort Lauderdale in the summer of 1935?

A. Yes.

Q. What was your business there?

A. Fire chief.

Q. When did you first become fire chief of Fort Lauderdale Fire Department?

A. December 12, 1932.

Q. Did you attend the fire at Pilkington's Yard on June 24, 1935?

A. Yes.

Q. What was the first you knew about that fire?

A. By telephone; I received the call myself.

Q. From whom did you receive the call?

A. Mrs. Pilkington.

Q. What did you do after you received that call?

A. We left the station and made a run to the basin.

Q. With what equipment?

A. One combination pump and engine.

Q. About how long did it take you to get to the basis from the time you got the call?

A. Well, I would say between four and five minutes; possibly four minutes.

Q. Do you remember what time you received that call?

A. Well, I don't remember exactly but a running card was made out.

Q. I show you this card. Will you tell me what kind of a thing it is? Don't read it; just tell me what it is.

A. It is a fire record card.

Q. Is that a copy of the fire record card on the date of that fire?

A. Yes.

Q. In whose handwriting is it?

A. Mine.

Q. When did you make it?

A. June 24, 1935.

Q. Mr. Cody, refresh your recollection from that card and tell me what time you received the call advising you of the fire.

A. 1:10 p. m.

Q. When you got to Pilkington's basin what was the condition of things as far as the fire was concerned?

A. Practically the entire basin was afire, excepting the northside; from the east end to the west end flaming, and it came around the west end of the basin and up the southside.

Q. Had you ever been there before?

A. To the basin?

Q. Yes; on previous occasions had you been there?

A. Yes, I had been to the basin.

Q. What did you do about the fire; just tell us in your own words what work you did?

A. Well, upon arrival and seeing conditions existing, I first looked for a runway that was originally built there while the basin was in the city limits; at the time of the fire it was out of the city limits. I found that it had been obstructed, so it was necessary to build a platform to fun the pumper over to get at the river where we could draw water from the river, and after getting the pump in operation we operated three lines from the engine.

Q. Did you hear any explosions at any time?

A. During the fire?

Q. At any time that afternoon?

A. I did, yes.

Q. Will you tell us about those, what they were, when you heard them and how many?

A. Well, I don't know exactly the number but there was several or more down in the middle of the basin; several explosions.

Q. What time did you leave that afternoon?

A. I left late in the afternoon.

Q. You may look at your card to refresh your recollection, if you desire to.

A. Five-forty five p. m.

Q. How long did these explosions continue with reference to the time you left?

A. Well, I would say that as fast as the fire would reach—coming back up the southside from the west to the eastside—every now and then there was an explosion on a boat because some of the boats it had not reached as yet; there was quite a number of empty tanks floating on the water from boats that had burned to the waters-edge, and they exploded—

Q. Did you notice what kind of tanks those were; what shape?

A. No, I couldn't say that I did; they were just tanks, different sizes.

Q. Prior to the time you left the basin where did you go?

A. You mean before I left the basin?

Q. Before you left Pilkington's basin with your equipment, where did you yourself go?

A. I was in the Captain's residence, which his office was located in too; I was in there to use the telephone to call up the fire station and ask them if everything was okay, and telling them I would come in shortly.

Q. Who was present at the time you were in there where the telephone was?

A. Captain Pilkington, Mr. Riley and a Mr. Webber, and another gentleman; I don't know his name, but he was a big, stocky fellow.

Q. Was there any conversation?

A. Yes.

Q. Will you tell us what that conversation was, particularly what Captain Pilkington said?

A. When I finished the telephone call they were in conversation relative to the origin of the fire.

Mr. Matteson:

If your Honor please, I object to the conversation that took place at that time; it certainly is not binding on the libelants here in any way, shape or form.

(Extended legal argument.)

The Court:

This particular question as framed is not proper. I don't think the evidence is admissible as against the libelants. I will sustain the objection.

Q. Go ahead and tell us the balance of the conversation.

A. Mr. Riley asked Captain Pilkington what he thought was the cause of the explosion, and he said he couldn't account for it, that there was no gasoline in the boat, and that in the month previous he had attempted to start the generator in the boat and was unable to do so because there wasn't any gasoline.

Q. Now, I will have to ask you the question over again in a slightly different way. Is it a fact or is it not a fact that on the afternoon of the fire, the afternoon of June 24, 1935, at or near Captain Pilkington's house, Captain Pilkington said in substance to or in your presence: "I cannot account for the fire; I know there was no gasoline in the boat because I had been in her engineroom and attempted to run the generator within the month and couldn't do so for lack of gasoline."

A. He said that; something similar to that.

Mr. Underwood:

You may cross examine.

Cross Examination.

By Mr. Botts:

Q. Mr. Cody, as I understand it, this conversation which you have related occurred in the office which Captain Pilkington maintained in his home?

A. He had a desk in there; that is the way I construed it; that is where he kept his records.

Q. All right, sir, do you recall anything about the construction or location of the front porch of that house?

A. No, I can't say that I do. When I went in it I came around in the back porch; it was a frame dwelling, and it was on the east end--the fact is that we felt we saved at least that much of the house out of the fire.

Q. Mr. Cody, I have drawn here a rough sort of a sketch. I wonder if you can recollect whether or not it is a fact that the front of the house faces diagonally a little toward the line of the basin.

A. No, I couldn't say.

Q. You don't remember?

A. No, sir.

Q. Do you remember whether or not the front porch of that house runs partly across that front with a notch out there (indicating), and then a room and the right end of the porch as you face towards the house—do you recall that?

A. No, I don't.

Q. Then you would not recall whether or not there is a door into the room and another door into the house in substantially the location that I have indicated on that sketch?

A. No.

Q. Do you remember what part of the house it was that you say you construed to be the office?

A. Well, I was awfully busy, and I walked in and didn't take time to look at the house. I had been to the basin on a number of occasions before, but I never had been in the house before; I just walked in the back way.

Q. You walked into this place through the back part of the house?

A. Yes; there was a little porch there.

Q. Do you remember whether you walked through one or two rooms from that back entrance before you got into the office?

A. I don't.

Q. Did these other gentlemen walk in the same way?

A. They were in there when I walked in.

Q. You don't know which way they went in, do you?

A. No, I don't.

Q. You know Garry Miller of that Fort Lauderdale, do you not?

A. I do.

Q. Did you see him there that afternoon?

A. No, sir.

Q. Did you see him at all there that afternoon?

A. If I did I don't remember it. There was lots of people there. Two or three of the fellows from Fort Lauderdale were there; I don't know whether Garry was there or not; if he was there I don't remember seeing him or talking with him.

Q. Then you would not recall whether or not Mr. Garry Miller was in this room when this conversation occurred.

A. He wasn't that afternoon; not when I was in there.

Q. Was Mrs. Pilkington in there?

A. No, sir.

Q. Do you know Joe Anderson, Mrs. Pilkington's brother?

A. The man that acted as captain that worked around the basin?

Q. Yes.

A. I know him pretty well.

Q. He wasn't in there?

A. No, sir.

Q. And the conversation, as you recall it, is that Captain Pilkington said that a month or so before he had attempted to start up the generator and had been unable to do so because he could get no gasoline.

A. He said a month before.

Q. About a month before?

A. Yes.

Q. What was Captain Pilkington's condition at that time; was he excited or calm?

A. Well, he appeared to be as normal as he ever was.
Q. Quite calm and collected?
A. As far as I could see, yes.

Cross Examination.

By Mr. Matteson:

Q. Mr. Cody, it is well known that tanks which have had gasoline in them will explode.

A. I have been told so; I never had experience.

Q. You spoke of seeing a number of them explode as they came floating from the boats?

A. That is right.

Q. And this conversation that you had with Captain Pilkington, would you fix it by hour as nearly as you can? What was the time you left there?

A. Our running card shows 5:45.

Q. How long before that was this conversation?

A. Just a short time before that; I don't know exactly.

Q. What do you call a short time; half an hour?

A. Possibly so; maybe more or less; I don't know the time.

Q. Half an hour is about as near as you can come to it?

A. I would not say. I know I called up myself prior to leaving there.

Q. Was the fire out when you left?

A. Yes, practically out; there was some smoke and smoldering.

Q. Where was Mrs. Pilkington at the time you left?

A. I didn't see her at the time I left.

Q. Did you say you didn't see her at the time you left?

A. That's right.

By Mr. Botts:

Q. Did you see Mr. Riley; did you say Mr. Riley was there?

A. Mr. Riley, yes.

Q. Who was Mr. Riley, do you know?

A. I didn't know him at the time, but about two months later I found out who he was.

Q. What Mr. Riley was it; was it the Mr. Riley who is said to be Mr. Phipps' secretary?

Mr. Underwood:

I object to that.

A. He never told me.

Mr. Underwood:

He is making him his own witness, I think—

Mr. Botts:

He has testified that a Mr. Riley was there. I have a right to inquire as to what Mr. Riley he means.

The Court:

The objection is overruled. This is just for identification.

A. I didn't know who he was at the time.

Q. When you finally found out who he was, what Mr. Riley did you find out it was; what was his connection?

A. I figured out that he was connected with the owner of the Seminole boat.

Q. He was connected with the owner of the Seminole boat?

A. He didn't tell me that. He had something to do with the boat; I don't know what it was.

Q. Who were the other men you say you saw there?

A. Mr. Webber and another gentleman; I don't know the other gentlemen's name.

Q. Now then did Mr. Riley have anything to say on that occasion?

A. Only just what I have said a minute ago, when he asked the Captain as to the origin of the fire.

Q. He just asked the Captain what was the origin of the fire; he just asked Captain Pilkington what was the origin of that fire?

A. Yes.

Q. He didn't say anything else?

A. If he did I don't remember it; I didn't stay there very long; I was trying to discover the origin of the fire myself.

Q. Was the fact that Captain Abel had boarded the boat at that time discussed?

A. Who is Captain Abel?

Q. He is the man that was killed.

A. Yes—he was in the boat; the man that was killed was in the boat.

Q. You misunderstand me. Was the fact that Captain Abel boarded the boat mentioned or discussed at this meeting which you have mentioned?

A. No.

Q. You don't remember any mention of Captain Abel there?

A. No.

Q. By either Mr. Pilkington, Mr. Riley or Mr. Webber?

A. No, sir.

Q. Or yourself?

A. No, sir.

Q. It was not mentioned that Captain Abel had gone aboard the boat?

A. That was talked about when I first arrived at the fire, relative to the man on the boat.

Q. It wasn't mentioned as to how the fire started?

A. No. At the time I was using the telephone.

Q. It never was suggested that perhaps Captain Abel did something that started the conflagration?

A. No, sir, nothing was said relative to that.

Q. Now, Mr. Cody, I want you now to think back and tell us if it is not a fact that you actually saw and talked to Mr. Garry Miller up there at that fire that afternoon?

A. I can't remember that I did; I can't say, sir.

Q. You would not want to say that you did not see him?

A. No, sir.

Q. I want to ask you this question; if it is not a fact that that afternoon up at the fire, sometime after the fire was pretty well burned out, along toward the latter part of your stay there, perhaps we will place it, between the hours of four in the afternoon and five-forty five, the time you left—I want to ask you if you didn't talk to Mr. Riley, this same Mr. Riley whom you have mentioned.

A. I talked with Mr. Riley in the office at the time I was phoning; that is the only time I talked with him.

Q. That is the only time you talked to him?

A. That afternoon, yes.

Q. Now at that time and place did Mr. Riley say to you in substance—I am not trying to quote the exact words—but didn't he say to you in substance: "I sent Captain Abel down to the boat Seminole to get some fishing tackle for Mr. Phipps."

A. No, not in my presence.

Q. He did not say that?

A. No, sir.

Q. Now at whatever hour your conversation was with Mr. Riley, Mr. Cody, didn't you, either in the house or near the house of Captain Pilkington there, say to Mr. Garry Miller in substance as follows: "Mr. Riley told me that he (referring to Mr. Riley) sent Captain Abel down to the boat Seminole to get some fishing tackle for Mr. Phipps".

A. I did not; no, sir.

Q. Do you mean to say that you didn't or that you don't recall?

A. That I did not.

Q. You did not?
A. That is right.

Re-Direct Examination.

By Mr. Underwood:
Q. Do you know any of the members of the Phipps family?
A. No.
Q. Do you have any connection with them whatsoever?
A. None whatsoever.

Mr. Underwood:
That is all.

(Witness excused.)

1360 Thereupon: W. L. WEBBER was produced as a witness in behalf of the Respondent Phipps, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Underwood:
Q. What is your name?
A. W. L. Webber.
Q. Where do you live?
A. Six five one North West Forty Second Street.
Q. By whom are you employed?
A. Bessemer Properties, Inc.
Q. By whom were you employed in the summer of 1935?
A. Bessemer Properties, Inc.
Q. Their office is at 1317 Biscayne Boulevard?
A. That is right.

Q. In April, 1935 did you have anything to do with the houseboat Seminole?

A. Yes.

Q. Did you go aboard her?

A. Yes.

Q. Do you remember what date you went aboard her?

A. Yes.

Q. What date?

A. April 19, 1935.

Q. Did you have a conversation with anybody before you went?

A. Yes.

Q. Did you have a conversation with Mr. J. S. Phipps before you went?

A. No.

Q. Did you have a conversation with Mr. Roy Hawkins before you went?

A. Yes.

Q. Did you have a conversation with anybody else before you went?

A. No.

Mr. Matteson:

I don't think, if your Honor please, that the conversations this witness had with these people has any bearing on this matter.

Mr. Underwood:

I am not asking him what the conversations were, or what his instructions were—

The Court:

I think the question as propounded is proper.

Q. After your conversation with Mr. Hawkins what did you do?

A. I left the office with Mr. James Davis and rode up to Fort Lauderdale.

Q. Did you have a paper with you at that time?

A. Mr. Hawkins gave me a written order to present to Captain Pilkington, showing my authority to go on the boat.

Q. I show you Libelants' Exhibit 52, and ask you whether or not that is the letter which you had and presented to Captain Pilkington.

A. It is.

Q. Did you have anything else with you at that time?

A. I had a set of keys.

Q. Where did you get the keys?

A. They were given to me by Mr. Hawkins.

Q. How many were there?

A. There was a group of keys.

Q. Do you remember exactly how many?

A. No.

Q. What is your best recollection as to how many?

A. Probably six or seven.

Q. When you reached Fort Lauderdale what did you and Mr. Davis do?

A. After giving our letter to Captain Pilkington we boarded the boat and went inside and removed trophies, silverware and linens, and put them in the car and took them back to Miami.

Q. How much material did you remove from the boat?

A. Seven or eight large packages of linens, some thirty or forty pieces of silverware, including trays, pitchers, and so forth.

Q. How many trips did you make from the boat to your conveyance with those bundles?

A. I don't recall, however, it would necessitate several trips apiece.

Q. Several trips for you yourself and several for Mr. Davis, Jim Davis?

A. Yes.

Q. Where did you go in the boat?

A. In the various cabin rooms, as well as the corridor, and looked in the drawers to see that all of the linens and equipment was removed.

Q. Did you go any place else?

A. In the corridor on the starboard side of the boat; Mr. Davis was interested in seeing the mechanics, and we looked in the window which leads into the engineroom.

Q. Did either of you go in the engineroom?

A. No.

Q. How was the window when you arrived at that point?

A. Open.

Q. How was it when you left?

A. Open.

Q. Did you observe the windows in the corridor on the outside of the boat?

A. No, sir.

Q. Did you smell anything while you were at or near the inside of that window?

A. No.

Q. Did you smell any gasoline?

A. No.

Q. Did you observe any gasoline in the engineroom?

A. No.

Q. Did you have a conversation with Captain Pilkington about the times you left?

A. After we left the boat and were about ready to get in the car and go back to Miami, Captain Pilkington requested that he would like to have some keys to the boat to have access to the boat.

Q. What did you do about the keys?

A. I told him I did not have authority to turn the keys over to him.

Q. When you left the boat did you leave it locked or unlocked?

A. Locked.

Q. Was there anything more said between you and Captain Pilkington about keys at that time?

A. I told him that when I returned to Miami I would give the keys to Mr. Hawkins, and if he felt that Captain Pilkington should have them we would send the keys back.

Q. When you came back to Miami did you have a conversation with Mr. Hawkins?

A. Yes.

Q. Following that conversation did you do anything with the keys?

A. I sent them to Captain Pilkington.

Q. I show you Libelants' Exhibit Number 54; do you recognize that document, Mr. Webber?

A. Yes.

Q. Is that a letter you wrote to Captain Pilkington?

A. Yes.

Q. What keys did you send with that letter?

A. The keys with which we opened the door, with which we opened the boat when we were up there.

Q. How many were there?

A. A group of keys, possibly six or seven.

Q. Did you get any response from Captain Pilkington?

A. We received a letter acknowledging receipt of the keys.

Q. I show you Libelants' Exhibit 61, dated April 23, 1935; is that the letter of which you speak?

A. Yes, it is.

Q. From the time you sent that letter to Captain Pilkington with the keys up to the time of the fire, did you have any further message of any nature from Captain Pilkington?

A. No.

Q. Did he make any further request of you for any keys?

A. No.

Q. On the day of the fire did you go to Pilkington's yard?

A. Yes.

Q. Were you alone or accompanied by somebody else?

A. I was accompanied by Mr. Roy Hawkins.

Q. Did you have a conversation with Captain Pilkington or participate in a conversation in which he had?

A. I was present at the time of a conversation.

Q. Where was the conversation that you have in mind, and about what time of the day?

A. It was in a little room in his house; I believe it was in a little building there anyway; Mr. Hawkins was talking to Captain Pilkington.

Q. Will you tell us what Captain Pilkington said?

Mr. Matteson:

I object to that on the ground that it is not binding or admissible against the respondents.

Mr. Underwood:

I am offering it for the double purpose, if your Honor please, as an admission of Captain Pilkington against interest, and also I intend to impeach him.

The Court:

The objection on behalf of the libelants is sustained. It is admitted as against the respondent Pilkington.

Q. Will you tell us now the substance of the conversation?

A. We walked in the room in the presence of Captain Pilkington, and Mr. Hawkins asked him how it could have happened, and Captain Pilkington said that he didn't know, that he could not understand it; that he had been in the engineroom of the Seminole prior to the fire and had attempted to start the generators and could not do so because there was no gasoline in the tanks.

Q. Is it the fact, Mr. Webber, that on the afternoon of the fire, at or near Captain Pilkington's house, he said in your presence in substance: "I cannot account for the fire, I know there was no gasoline in the boat because I had been in the engineroom and attempted to run the generator within the month and could not do so for lack of gasoline?"

Mr. Matteson:

I understand this is merely offered for the purpose of impeaching the witness Pilkington.

The Court:

That is the way I understand it.

A. Yes, sir.

Q. He said that at that time and place?

A. Yes, sir.

Mr. Underwood:

You may cross examine.

Cross Examination.

By Mr. Botts:

Q. Mr. Webber, where did that conversation take place; do you remember?

A. Just inside of the little house in the room there.

Q. Who was present?

A. Mr. Hawkins, Mr. Riley, Captain Pilkington and the fireman and myself.

Q. Now, Mr. Webber how did you gain access to this room?

A. I went in with Mr. Hawkins.

Q. Now the front of the house is towards the yacht basin, a little diagonally towards the yacht basin; do you

remember whether you went in one of those front doors or not?

A. I believe it wasn't on the front of the house.

Q. Now do you remember what part of the house this little office occupies; I am not sure whether you said awhile ago that it was in the office. Was it in the office?

A. I think it was in the office.

Q. What part of the house was this little office in?

A. I don't remember.

Q. You don't remember anything about that?

A. No. I know that the door lead directly out on perhaps a little porch.

Q. Now then Mr. Webber, I am just going to ask you to assume a general situation here, which is not at all technically accurate, but assuming that this line that I have drawn along here (indicating) is approximately the water's-edge along there at the basin, and that this rectangular place, with little notched place out on the side is Captain Pilkington's house, and this (indicating) is the porch—I will ask you if you recall whether or not you came in the house from towards the yacht basin or from the point opposite the yacht basin?

A. Is this (pointing) the house?

Q. That is supposed to be a rough representation of the house.

A. And this (indicating) is the porch?

Q. That is supposed to be an open porch. I will ask you if you came in through this place that I have marked "porch".

A. Mr. Botts, I don't remember the geography of it now, to tell you the truth.

Q. Do you count the front of the house as towards the street where you drive up in a car; is that what you call the front?

A. Yes.

Q. When you said you went into the back of the house you had reference to coming into that part of the house

opposite the side which you approached when you drove up in the car, is that correct?

A. Yes.

Q. You came in on a little porch, is that your recollection?

A. That is my recollection.

Q. Now then do you recall whether or not when coming up on this porch you went forward into a room, through a door into a room, or whether you turned to your right as you—

A. I don't remember definitely, but I don't believe that we went straight ahead to a little room.

Q. What was the fireman doing in this house?

A. He was there when I got in there.

Q. He was in there when all of you gentlemen walked in?

A. He was there when I went in; I went in after Mr. Hawkins and Mr. Riley.

Q. How long after they went in did you go in?

A. Just a few seconds.

Q. You followed them in almost immediately?

A. Yes.

Q. When you got in the room the fireman was in there?

A. As I recall.

Q. What was he doing?

A. I don't know.

Q. Was he engaged in a conversation with Mr. Riley and Mr. Hawkins and Captain Pilkington, do you recall?

A. I don't recall.

Q. You don't recall a thing about that?

A. No.

Mr. Botts:

I think that is all.

Cross Examination.

By Mr. Matteson:

Q. You are employed by the Bessemer Properties, Inc.; is that the name?

A. Yes.

Q. Is that the full name of the corporation?

A. Bessemer Properties, Inc.

Q. What is your position with that company?

A. I am employed as assistant property manager.

Q. Is that the only capacity in which you serve there?

A. That is the only capacity at the present time, yes.

Q. Was it during June, 1935?

A. Yes. I do some purchasing for the company.

Q. What is that?

A. I do some purchasing for the company.

Q. You receive your salary from that company, do you?

A. Yes.

Q. You receive it entirely from that company?

A. Yes.

Q. Is it a fact that the Bessemer Properties, Inc. is a corporation in which Mr. John S. Phipps holds a substantial interest?

A. I don't know definitely that he does.

Q. You believe that he does, do you not?

Mr. Underwood:

I object to what the witness believes.

Mr. Matteson:

Is there any objection to admitting that?

Mr. Underwood:

We will give you the facts. That is not the fact. I am informed that John S. Phipps owns no stock in the Bessemer Properties, Inc.

Mr. Botts:
Directly, you mean?

Mr. Underwood:
Or indirectly.

Mr. Botts:
We will show you the entire corporate structure, but there is the right way to prove it.

Mr. Matteson:
I will withdraw the question.

Q. Who is Mr. Roy Hawkins that you speak of?
A. He is the manager of our company.
Q. Manager of Bessemer Properties, Inc.?
A. Yes.
Q. Is that the only position that he holds as far as you know?
A. As far as I know.
Q. It is a fact, is it not, that in addition to your duties for Bessemer Properties, Inc. you do take care of matters of various kinds for Mr. John S. Phipps, for other members of the Phipps family?
A. If Mr. Hawkins tells me so, yes.
Q. You were not employed by the Seminole Boat Company, of course?
A. No.
Q. You had no official or other connection with them?
A. No.
Q. This letter that you sent on April 20, 1935, Libelants' Exhibit 54, was signed "Seminole Boat Company", was it not?
A. Yes.
Q. How did you happen to sign "Seminole Boat Company" to that letter?
A. I don't remember that.

Q. You have an office with the Bessemer Properties Company; I mean a room of your own?

A. Yes.

Q. And you have a secretary?

A. Partially.

Q. Who takes care of your correspondence, I assume?

A. Yes, sir.

Q. Does the Biscayne Boulevard Company occupy the same offices with Bessemer Properties, Inc.?

A. It is my understanding that there is no more Biscayne Boulevard Company.

Q. There was at one time?

A. Yes.

Q. And that was so in 1935, was it not?

A. Yes.

Q. At that time they occupied the same offices that Bessemer Properties, Inc. occupied?

A. Yes.

Q. Is that also true of the Boulevard Mortgage Company?

A. Well, I don't know about that; the Boulevard Mortgage Company had books in the office which were kept there.

Q. Were they kept by the same personnel who kept the books for the Bessemer Properties, Inc.?

A. Yes.

Q. Was there a corporation known as Winslow Corporation that had its ofifces with Bessemer Properties, Inc.?

A. I have heard that name called, but that was prior to my time there.

Q. Did the Third Avenue Company have an office there?

A. That is something else—

Q. Did the Third Avenue Company have offices with Bessemer Properties, Inc.?

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A. I have heard the name there, but I have had nothing to do with that company.

Q. Did they have books that were kept there?

A. I think so.

Q. How many companies did occupy those offices; could you tell us that?

A. No.

Q. When you wrote this letter up April 20, 1935—I see that it has initials down here in the corner "WLW:DC"; I suppose the "DC" are the initials of your secretary.

A. They are the initials of Mrs. Coffey.

Q. She is the one who actually wrote this letter?

A. She is Mr. Hawkins' secretary.

Q. I suppose that when you signed this letter you turned it over to someone else to mail.

A. Yes.

Q. And did you turn the keys over to someone else to be enclosed?

A. Yes.

Q. So that you personally did not mail the letter.

A. No.

Q. Then personally you have no knowledge of what keys were enclosed with the letters, except that you turned some keys over to be enclosed, is that right?

A. Yes.

Q. You didn't count the number of keys, you say?

A. No.

Q. Were the keys loose or were they fastened together?

A. They were fastened together; there was a group of them.

Q. Can you remember in what manner they were fastened together?

A. No.

Q. Did they have any tag on them?

A. They may have had, but I am not sure.

Q. Your recollection is not clear as to that?

A. No.

Q. Then you really don't know what keys were included in that bunch, do you?

A. Except that they were the keys that I used for gaining admission to the boat.

Q. Who was Mr. James Davis?

A. He was an employee of our company.

Q. A young man; a younger man than yourself?

A. A little, yes.

Q. A white man or colored man?

A. Yes.

The Court:

White man or colored?

A. White man.

Q. I understand that you did not enter the engineroom of the Seminole when you were there?

A. We did not.

Q. You made no attempt to enter it?

A. No.

Q. You did not attempt to open the hatch leading into the Seminole engineroom?

A. No.

Q. What keys did you use out of this bunch; what doors did they fit; one for the stern door of the Seminole?

A. I remember we went in the stern door.

Q. And you opened that door?

A. Yes.

Q. Did you use the keys for opening any other door?

A. I don't remember if that was necessary.

Q. You only have recollection with respect to opening the stern door with a key?

A. Yes, sir.

Q. What did Mr. James Davis do at that time?

A. At that time he was employed as a gardener.

Q. Your job was to obtain linen and silverware, as I understand it?

A. Yes.

Q. Where was the linen and silver?

A. Stored in closets and so forth; we found it in several places.

Q. Did you have to go through the different rooms to collect it?

A. We went through the different staterooms in the upstairs living portion.

Q. All of the bedrooms?

A. I think there were three of them; I think that is right.

Q. How many bedrooms were on the Seminole?

A. I don't know for sure.

Q. Quite a number of them?

A. There were several staterooms.

Q. And several cabins?

A. Yes.

Q. You had to go through them to collect the silverware and trophies located there?

A. Yes.

Q. Where did you remove all of these things?

A. Brought them down as we gathered them up.

Q. I assume that you picked out some spot and gathered them all there before you started to take them out to the car?

A. I don't remember that; we may have taken it all out directly to the automobile; we may have carried it all direct to the car as we gathered them up.

Q. How many bundles did you say you had altogether?

A. I would say six or seven or eight bundles of linens and thirty or forty pieces of silverware.

Q. How big were the bundles of linen?

A. Some of them were about that size (indicating).

Mr. Underwood:

Indicating about 3 feet by a foot and a half.

Q. How long were you there altogether?

A. About half an hour or three quarters of an hour.

Q. Did you have any lights as you went through the rooms of the Seminole; were you able to turn on the electric lights?

A. No.

Q. You worked entirely by daylight?

A. It was daylight.

Q. Did you attempt to turn on any of the lights?

A. No.

Q. Do you remember whether or not it was a hot day when you were there?

A. I don't remember that it was anything unusual.

Q. It would be fairly hot in April, wouldn't it?

A. Probably would.

Q. Well, I gather that you had quite a bit of work to do in that half or three-quarters of an hour you were there, going into the rooms and gathering up all of this material and putting it in the car?

A. Yes.

Q. You must have been pretty busy and worked pretty hard during that period, is that right?

A. We didn't waste any time.

Q. I assume you did not waste any time at the engine-room window there.

A. We looked.

Q. You had no reason for looking there?

A. No.

Q. You think now, as you look back, that you have a distinct recollection looking in there?

A. Yes.

Q. What kind of a window was this. Will you describe it to us?

A. As I recall it was a fair sized window that worked on a hinge; I could not be definite about that.

Q. How did it open?

A. As I remember, it opened inside the engineroom.

Q. Did it swing at the top or bottom or side?

A. As I remember, I believe it swung at the side.

Q. You say it was already open when you were there?

A. Yes.

Q. What shape was the window?

A. Well it was somewheres close to square; it may have been a little bit rectangular.

Q. What size would you say it was?

A. About 20 inches by about the same—

Q. About 20 by 20?

A. Yes.

Q. Where was this window located?

A. There was a corridor on the starboard side of the boat—

Q. And this window opened from the engineroom into the corridor?

A. Yes.

Q. About where in the corridor was the window located?

A. Somewheres near the center.

Q. What height is that corridor as you walk through it; how much clearance do you have above your head?

A. I don't remember; it was high enough for a tall fellow.

Q. How tall are you?

A. Five feet eight inches.

Q. You had a foot or more above your head, did you?

A. Possibly.

Q. Now on the bulkhead between the corridor and the engineroom, how was this window located with respect to its distance from the floor or the deck above?

A. It was such that you could see in it.

Q. Where would the sill or the bottom part of the window come on you as you stood and looked into it?

A. I can't remember that.

Q. Don't you remember whether it came up to your chin or around your waist, or whether you had to stand tiptoe or lean down to look through it?

A. No.

Q. You have no recollection of that?

A. I am sure we didn't have to lean down. I don't remember the height of it.

Mr. Matteson:

I think that is all.

Re-Cross Examination.

By Mr. Botts:

Q. Mr. Webber, referring again to this conversation with Captain Pilkington which you have detailed as having taken place in what you characterize as the office, I will ask you what was Captain Pilkington's condition at that time; I mean, Mr. Webber, was he calm or was he excited or what was his condition?

A. I don't remember that he was excited; I would say that he was rather sorrowful about having the fire.

(Witness excused.)

United States District Court Southern District of Florida, Miami Division.

Charles Coryell, et al., Libelants,
against
George J. Pilkington and John S. Phipps, Respondents.

In Admiralty No. 122-M-Adm.

Deposition taken on behalf of the libelants, at the office of Messrs. Bigham, Englar, Jones & Houston, 99 John Street, New York City, March 7, 1939.

Appearances:
Messrs. Batchelor & Dyer,
Messrs. Bigham, Englar, Jones & Houston, (Mr. Matteson) for the libelants.

Messrs. Loftin, Stokes & Calkins, Ray C. Alley, Esq.
Messrs. Burlingham, Veeder, Clark & Hupper, (Mr. Underwood) for John S. Phipps.

It is stipulated that the testimony may be taken by a stenographer, signing, filing and certification being waived, stenographer's fees to be taxable.

1383 E. D. WRIGHT, being duly sworn and examined as a witness for the libelants, testified as follows:

By Mr. Matteson:

Q. Mr. Wright, what is your business?

A. Stopping explosions on gasoline boats in 1929—and that is all I do today.

Q. That is what you specialize in?

A. That is what I specialize in.

Q. But what is your general occupation?

A. Marine surveyor, specializing on yachts.

Q. Specializing on yachts?

A. Yes.

Q. How long have you been in the business of marine surveyor?

A. About twenty-five years.

Q. What was your business before that?

A. Engineering—Pennsylvania tunnels and dredging.

Q. How long have you been specializing in yachts?

A. Oh, fully twenty years.

Q. How much experience have you had with gasoline yachts?

A. I have had ten.

Q. You said something about your specialty being stopping explosions. Will you explain to us what your experience along that line has been.

A. Well, naturally I was sent out by the companies on the various losses, and also to inspect boats to make them safe. I was much interested—in 1923, I got up a pipe leading from the intake—air intake—to the carburetor up above the explosive gases, 4 feet high, to lead backfire up above the explosive gases. That pipe was unofficially approved by the National Board of Fire Underwriters. They made some experiments with me, so much so that Mr. Booth tried to have it broadcast—that was in the first days of broadcast. Mr. S. D. McComb thought so much of it that he tried to get the insurance companies to adopt it, so to speak, but was unable to, but the Elco adopted it on their engines. In 1929, the explosions were so frequent that I took up the matter again and got Mr. Hutson to go up with me to the American Car & Foundry showroom here and examnie boats that were there—stock boats. We found them in bad shape for explosion, and Mr. Hutson asked me to draw up some rules, which I did, and which he edited and added

some technical points and signed as Assistant Chief Engineer of the National Board of Fire Underwriters.

Q. Who was Mr. Hutson?

A. Chief engineer of the National Board of Fire Underwriters. (Continuing) Armed with those, I went out among the boat builders and we gradually had those adopted on all the better boats, and the outcome has been that where boats were equipped and run under these rules, insurance companies told me they rarely have trouble except through gross carelessness.

Mr. Underwood:

I move to strike out what the insurance companies told him.

Q. What connection have you with the insurance companies, relating to these rules?

A. Twelve of the insurance companies are my clients.

Q. And for what purpose?

A. Well this, they use the rules and they pay me for doing everything that I can to prevent explosions, by making inspections when explosions happen, and make the reports on them, and—well, the work has grown so that it would be a long long story, but I think that covers it.

Q. What publicity has been given to these rules?

A. Oh, probably about 80,000 of them have gone out all through the United States and Canada, in fact throughout the world pretty well.

Q. To whom have these rules gone out?

A. To everybody that we can possibly get interested. We circularize Lloyd's every year—all the new boat owners—

Q. When you say Lloyd's, what do you mean?

A. Lloyd's Register of American yachts.

Q. When you say you circularize them, just what do you mean?

A. We send out copies like this (producing paper).

Q. Like this one that you hand me?

A. Yes.

Q. You mean you send this to the boat owners who are listed in Lloyd's Register of American yachts?

A. Yes, and boat builders. We have gotten many newspapers throughout the United States to publish them in whole or in part. E. J. Willis put out 50,000 editions of his catalog, in which he incorporated those—or in short form.

Q. Can you tell us, in your circularization of boat owners listed in Lloyd's Register of American yachts, whether these rules were sent to Mr. John S. Phipps?

A. They were sent to Mr. John S. Phipps, yes.

Q. When was that?

A. September 1933, as near as I can get at it—September 23, 1933—that is what our records show.

Q. How did you come to send one to Mr. Phipps?

A. As owner of the Iolanthe, and listed in Lloyd's.

Mr. Matteson:

I offer the rules in evidence.

They are marked Libelants' Exhibit 24.

A. (Continuing) Beyond that—to go on: I have also been, for some years, a member of the Committee on Fire Protection Regulations for motor craft of the National Fire Protection Association, one of the committees which drew up the 1937 rules.

Q. Were there also some rules gotten up by that Committee and published prior to 1937?

A. Yes.

Q. What is this that I hand you?

A. This is the 1930 edition, and I think there was an edition back of this again.

Q. Then the edition of these rules, which was in effect in 1935, would be this edition of 1930, is that right?

A. That is right.

Q. And this document you hand me is the set of regulations covering marine fire hazards for internal combustion engines, issued by the National Fire Protection Association in 1930?

A. Right.

Mr. Matteson:

I offer it in evidence.

Mr. Underwood:

I object to this document on two grounds: In the first place, it is not the original 1930 rules but is a re-print and is not complete. I also object to this document, as well as Exhibit 24, on the ground that they have no force of law and are merely the thought of certain unofficial individuals, gratuitously published without any binding effect.

It is marked as Libelants' Exhibit 25.

Q. I take it, Mr. Wright, that these two sets of rules, Libelants' Exhibits 24 and 25, are issued by different authorities, is that right?

Mr. Underwood:

I object to the question as leading. I don't like to object to the form of the question, but inasmuch as it contains the word "authorities", I object to it on that ground.

Mr. Matteson:

By different organizations—I will put it.

A. Yes. The National Board adopted, in many cases, the suggestions or rules, or whatever it is, that are gotten up by the National Fire Protection Association—they go into oil-burners and all sorts of stuff—and as far as of-

ficial is concerned, there is no better authority in the world than Hutson or Willis or Booth as Chief Engineer.

Q. Who is Mr. Booth connected with?

A. He is Chief Engineer of the National Board of Fire Underwriters.

Q. Can you tell us to what extent these rules that you referred to first (Libelants' Exhibit 24) are recognized by various people?

A. Why, that is the basis—those rules are the basis of all my work, and they are subscribed to by—twelve of the leading insurance companies, my clients, push that work under those rules.

Q. Is compliance with these rules required by those companies, do you know?

Mr. Underwood:

I object to that.

A. It is required wherever they can get it—a great many boats are turned down when they won't comply with them.

Q. These rules (Libelant's Exhibit 24) and the statements made in the cover letter, and the letter of July 28, 1931, which are attached—what is your opinion of those rules with respect to their necessity?

A. The very fact that boats equipped and run under those rules, except in cases of gross carelessness, don't have accidents, gives my opinion.

Mr. Underwood:

I move to strike out that answer on two grounds: In the first place it is not responsive, and in the second place there is no foundation for the witness's assertion of fact.

Q. What I am getting at, Mr. Wright, is this: Do the statements contained in this Libelants' Exhibit 24 repre-

sent your opinion with respect to the requirements of safety on gasoline yachts?

Mr. Underwood:

I object to that on the ground that it is not the proper way to elicit any witness's opinion, and on the ground that, as a hypothetical question, no facts are given the witness.

A. Absolutely. As I drew the original rules up, Mr. Hutson added some technical points and edited and signed them, I think it is pretty good evidence of my opinion, based on years of experience with loss cases and inspections for a number of insurance companies.

Q. I don't want, necessarily, to make you repeat on the record all that you have said in this document, Libelants' Exhibit 24, but I would like to ask you a few questions about the statements in this document, so that you can explain to us about them. I Notice that one statement here is that "Only 3 percent of gasoline fumes mixed with air make a moisture that may be exploded." Is that a fact, do you know?

A. I can bring you the tables of inflammable liquids, gotten up, I think, by the National Board or the National Fire Protection Association, which is an official register which will back that.

Q. What can you tell us about the explosive character of gasoline?

A. Gasoline is heavier than air and sinks to the bilges of the boats.

Mr. Underwood:

I object to this on the ground that the witness has not been qualified.

Q. You are referring to gasoline fumes now?

A. Yes.

Q. How much explosive power is there in gasoline?

Mr. Underwood:

Same objection all the way through.

A. Well, based on information obtained from the National Board—

Mr. Underwood:

I object to it on the ground that it is hearsay.

A. (Continuing) a pint of gasoline has a potential explosive power of about ten pounds of dynamite, or, as I put it in some of my previous circulars: A teacupful—half a pint—has a potential explosive power of five pounds of dynamite.

Q. If you have a quantity of liquid gasoline, which is turned into gasoline fumes, can you tell us whether or not there is a considerable increase in volume?

A. Yes.

Q. And if 3 per cent of gasoline fumes mixed with air will make an explosive mixture, is it a fact that only a very small quantity of gasoline will create a serious explosion hazard?

A. Absolutely.

Q. I notice that you say in these regulations that "Not a drop of gasoline or a gasoline vapor should be allowed to get into the engine compartment". What is the importance of that?

A. To prevent explosion.

Q. And secondly, I notice that you say that "No spark or flame should be allowed in the engineroom that can be avoided"—what is the importance of that?

A. To prevent explosion.

Q. And I notice that your third point in these rules is that "All engine compartments should be so ventilated that all vapors or gases which may have gathered there may be quickly removed". What is the importance of that?

A. To prevent explosions. The methods used on a tanker will illustrate that.

Q. What do you mean by the methods employed on a tanker?

A. Ventilation by various methods. We simply, in those rules—we simply try to illustrate a method to bring circulation through the bilges of a boat to remove whatever gasoline fumes may lie there.

Q. I notice that you say here that "Filling pipes to gasoline tanks must be on the outer deck", and that "Vent pipes to gasoline tanks should lead outside the hull". Why is that?

A. Because, previous to those rules, a great many installations had a deck plate on deck or in the cockpit, and the tank was below that with another plate. They took off first the top plate—the deck plate—and then removed the plate in the top of the tank, inserted a funnel and started to fill your tank. The outcome was that not being able to check carefully the amount of gas that went into the tank, the tanks overflowed, the gasoline went into the bilges and the insurance companies paid the losses.

Q. Aside from the spillage of gasoline—leakage of gasoline—would there be a danger in that practice?

A. Also a danger in that practice from the fumes from the tank. As the gasoline went into the tank, the fumes would flow out around the funnel and into the boat, and eventually down into the bilges.

Q. You spoke of gasoline being heavier than air. What happens when the gasoline vapors are pushed out into the hull of a vessel in that fashion?

A. They lie there unless removed.

Q. Do such vapors remain in the bilges, or are they apt to be carried through the boat?

Mr. Underwood:

Objected to, as a hypothetical question the facts are not given, and without the facts the answer is of no value in this case.

A. In regard to that, it is thoroughly well established that vapors do go through the boat, and float astern, if they have a chance, through the bilges—there is no question about that.

Q. Is there or is there not a tendency of such gases to disseminate through the air?

A. No, they are heavier than air.

Q. Do they mix with air?

A. Sure they mix with air, that is what makes the explosion.

Q. I notice here that you say that "Indicating devices on tanks shall not consist of glass gauges"—what is the reason for that?

A. On account of the liability to be broken and the leak from the joints.

Q. I notice that the next thing you have down here is that "All outlets for drawing gasoline for any purpose whatsoever be prohibited in the engineroom"—what is the importance of that?

A. The minute you pour gasoline in a confined space, it is liable to bring on trouble.

Q. Why is that?

A. Because it can't get out, it generates vapors which are explosive.

Q. The pouring of gas does that?

A. The pouring of gas, sure, I have had case after case of that.

Q. What importance do you attribute to this particular regulation?

A. The utmost importance. We do everything we can to prevent any pouring of gasoline below deck—any filling of tanks—auxiliary tanks—the pouring of gasoline below decks is absolutely dangerous.

Q. I notice here that another paragraph says that "All switches and fuses be placed outside the engine compartment, and on large boats where it is desirable to have all equipment in the engineroom, switches and fuses and every spark-emitting device should be enclosed and located at least four feet above the floor"—what is the importance of that?

A. Well, as the gasoline fumes fill up in the bilge, they rise, and we endeavor to have no possible spark that can ignite them.

Q. Are open switches—that is switches that are not enclosed—a hazard in that respect?

A. Absolutely.

Q. And why is that?

A. It will produce a spark which may ignite the gas fumes.

Q. I notice here that you say that "Drip collectors should be well fastened in all carburetors"—why is that?

A. To prevent the leakage from carburetors getting into the bilges.

Q. How much of a hazard is that?

A. Any gasoline that gets into the bilge is a potential hazard.

Q. I meant how likely is it that there will be any leakage from a carburetor?

Mr. Underwood:

I object to that on the ground that, as a hypothetical question, the facts are not given.

A. Various causes. If it happens to be a gravity feed, and the float feed in the carburetor has a little sand or grit or something underneath the valve, that will leak

down through the carburetor, and the carburetor will fill, and we want something to catch it.

Q. I notice that in that connection you say, "Openings should be properly screened with 40-mesh brass"—that relates to the drip collectors?

A. Yes, the same as the old Davy safety lamp.

Q. Just explain that to us—what is that—I mean what is the effect of the mesh?

A. It keeps the gas from getting into the flame.

Q. Or keeps the flame from getting into the gas?

A. Yes.

Q. The Davy safety lamp that you speak of—that is the sort of thing that miners wear in the mines, is that it?

A. Yes, that is a good many years old.

Q. What is the principle of that—of having the mesh over it—will flame pass through it?

A. Flame will not pass through it.

Q. I notice that you say here that "There should be a cut-off valve at each tank and at each carburetor"—what is the importance of that?

A. To cut off the gas quickly in case of necessity.

Q. What effect does that have on possible leakage?

A. Well, to explain more carefully: Your tank and carburetor may be at some distance from each other. Now, if the carburetor is leaking or needs quick repairs, you naturally want a valve close to it which can be turned off quickly.

Q. What is the importance of that when a boat is laid up?

A. When a boat is laid up, both valves ought to be turned off—everything ought to be turned right off at the tanks, as close as you can get, but that ought to be done in every case. I never stop for any length of time—my own boat—that I don't cut the gas right off at the tank. I have had cases—to bring that out—I have had cases using a certain type of carburetor, which has a check valve on

the air intake, and backfire has occurred and blown the end of the carburetor right off, and through being unable to get at the valves, burned and sunk. I know of two cases of that.

Q. Passing to the next point: I notice that you say that "Three-inch or larger ventilating pipes running all the way to the bilges should be placed in all four corners of the engineroom"—what is the importance of that?

A. That is to give a scoring effect to remove the heavy gasoline vapors which may lie in the bilges.

Q. I notice that you also say, "No ventilation above, either at deck or sides, will remove these vapors"?

A. Correct.

Q. Why is that?

A. Because they don't have that scouring effect, gases being heavier than air, they lie in the bilges and these ventilators that go to the deck or ports in the boat's side do not have that scouring effect.

Q. In other words, they don't ventilate the bilges?

A. They don't remove the gases that lie down in the bilges.

Q. In connection with your business, have you accumulated any data with respect to gasoline explosions?

A. Take everything that we can possibly get from the newspapers, reports from our companies, and where we can get hold of the facts of cases of explosions, investigate them and try to determine the cause.

Q. What is this document that you have handed me?

A. Oh, this was taken from all the stuff that we have—newspapers and all our reports—and put into a short concise record, just to show the danger of carelessness in using gasoline.

Q. This appears to be a summary of a series of incidents of gasoline explosions, is that right?

A. I think those are all gasoline explosions, possibly may be a stove explosion, but I am not sure.

Q. This is a summary of data on that subject that you have collected?

A. Right.

Mr. Matteson:

I offer it in evidence.

Mr. Underwood:

I object to that on the ground that it is incompetent, irrelevant and immaterial, the facts not shown to be within the witness's knowledge.

It is marked Libelants' Exhibit 26.

A. (Continuing) Some of them are, if I remember correctly—some of them I investigated.

Q. What use have you made of this data sheet (Libelants' Exhibit 26)?

Mr. Underwood:

Objected to as irrelevant and immaterial.

A. Why, we give it out to show the danger of explosions, and make people more careful. We sent a copy to Mr. Ira Hand of the National Association of Engine and Boat Manufacturers—he is Secretary—but does not like the word "explosion", and shortly after he ordered seventy-five copies.

Q. How much of your time is now devoted to this matter of preventing gasoline explosions?

A. All my time.

Q. And for how long has that been?

A. Oh, for five or six years, probably more. In 1929 I was still surveying—of course, while I was surveying I was working on stopping explosions too—we all are, all the engineers of the companies.

Q. One other question I want to ask you: In connection with the lay-out of gasoline conveying pipes in a ves-

sel, is there any point to be made with respect to the number of connections that are incorporated?

A. Absolutely. Each connection is a potential source of leakage, and consequently as few connections as possible should be made on any line running from tank to carburetor. Recently I got up a schematic photograph showing the lay-out of a line from a tank to carburetor, including the drip pan—the drip pan having a pick-up pipe to the intake manifold. I submitted this to Mr. Henry B. Nevins, yacht builder, and his criticism on it was that it showed too many connections.

Q. Is this the plan (indicating photograph)?

A. Yes. Of course that was a schematic model.

Mr. Matteson:

I offer it in evidence.

Mr. Underwood:

I object to this on the ground it is incompetent, irrelevant and immaterial, and subsequent to the fire in question.

It is marked as Libelants' Exhibit 27.

Q. Does this show a typical drip pan under the carburetor?

A. That shows a drip pan that has just been gotten out in the last year—a covered drip pan which does away with the screen.

Q. This has a solid cover instead of the screen that is recommended in your rules?

A. Yes, that was something I schemed out about a year ago.

Q. Does gasoline have any characteristic that makes this matter of connections important?

A. Absolutely, leaky gasoline is liable to lead to trouble.

Q. I mean, is gasoline any more apt to leak than water, for instance?

A. Yes.

Q. Why is that?

A. Well, that is a technical question which I cannot answer.

Q. As a practical matter, can you tell us whether that is so?

A. As I have had about twelve years experience, I know it to be a fact, and we try to do everything we can to prevent the least seepage.

Cross Examination.

By Mr. Underwood:

Q. You didn't send this Libelants' Exhibit 27 out and give it any publicity until February 21, 1939, isn't that right?

A. That is about right, it does not apply—

Q. This was just taken off a copy of your circular, wasn't it?

A. No, I made the model up in my house.

Q. I mean the photograph?

A. Yes.

Q. Have you that circular that you sent out this photograph with?

A. Yes.

Q. Look at the date of it—isn't it February 21, 1939?

A. Yes—it may have gone out under some other date.

Mr. Matteson:

There is no suggestion that this applies to the Seminole, it is merely illustrative of the witness's testimony as to connections.

Q. I noticed that Mr. Matteson has called you captain two or three times—is there any significance to that?

A. That is simply a title of courtesy.

Q. You are now employed by twelve underwriters, you say?

A. Yes.

Q. Anybody else?

A. No, except private cases, going to Court and that sort of thing.

Q. Your work for the underwriters is to examine the hazards of gasoline-propelled vessels, and make suggestions for their elimination, is that right?

A. Right.

Q. How long have you been in the employ of the underwriters in that connection?

A. Well, I began this work in September, 1929.

Q. That was when your employment with the underwriters began in this connection?

A. Oh no, in this particular line. For twenty or twenty-five years I have been surveying and inspecting.

Q. Perhaps I didn't make my question clear: When did your employment with the underwriters in this anti-explosion work begin—1929?

A. 1929, as a specialty.

Q. It had gone on previous to that as part of your other duties?

A. Sure—as a surveyor of gasoline boats.

Q. A great deal of this work of yours is prospective in its nature, is it not—so far as the remedial suggestions that you make?

A. What do you mean by prospective?

Q. Having in mind future construction.

A. Well, future construction and alterations.

Q. You circularize the boat builders?

A. Yes.

Q. And your purpose is to show them how to build safer boats?

A. Yes.

Q. A great many of the things you recommend, I suppose you don't expect existing boats to follow, is that right?

A. No.

Q. Well, how about the construction of gas—

A. Just as our suveyors for our twelve companies can push it, they do it.

Q. I take it you mean that a great many boat owners refuse, because of the expense, to make the changes—all the changes that you recommend, isn't that so?

A. No, not a great many.

Q. Many of them do, don't they?

A. Many what—refuse to make changes?

Q. Yes.

A. I am just trying to think how many of our surveyors—they are the men that have to force this work.

Q. You don't know of your own knowledge then, is that right?

A. No, I don't see every installation, you know.

Q. How often do you get out on a boat yourself to make a survey?

A. You mean for inspection purposes?

Q. Yes.

A. Not very often nowadays, I used to do a lot of it.

Q. Lloyd's Register of American yachts is a pretty thick book, isn't it?

A. Yes.

Q. Have you any idea how many gasoline-driven yachts there are in there?

A. No, I think there were 1160 we circularized last year, if I remember, that were not in the previous Register the year before. But what I do do—

Q. Just answer my questions. There are some several thousand boats in Lloyd's Register of American yachts, aren't there?

A. Yes.

Q. You don't know, do you, of your own knowledge, how many of them have adopted those suggestions that you make from time to time?

A. No.

Q. Getting back to the nature of your work: These insurance companies for whom you have worked, insure against fire on yachts, don't they?

A. Yes.

Q. And they are paid a premium for that?

A. Yes.

Q. And they have to pay losses occasionally?

A. Yes.

Q. And the nature of your work is to minimize their losses so they will make a greater profit in their business, isn't it?

A. Yes.

Q. How big an office staff do you have?

A. Myself and a secretary now, but I can call on any of the surveyors of our Company.

Q. Who actually sent out this Exhibit 24 in 1933?

A. I would have to look back at my books and see who my secretary was. I have had my present secretary for about three or four years.

Q. You don't say you yourself addressed the envelope to Mr. John S. Phipps and put it in the mail box, do you?

A. No.

Q. Of course, you don't know whether he ever got it, do you?

A. No.

Q. As a matter of fact, you don't even know whether it was actually even mailed, do you?

A. Our records show it was.

Q. You didn't see it mailed, did you?

A. Probably not.

Q. This little booklet that has been marked Libelants' Exhibit 25—that is merely appendix D of the regulations, is it not?

A. Yes.

Q. You know, as a matter of fact, don't you, that these regulations put out in 1930 were specifically not retroactive, isn't that correct?

A. No, I wouldn't say so, because boats that were—that were changed on account of it—that had been built previous to those regulations—were changed on account of it.

Q. Isn't it a fact that the regulations on their own terms were specifically not retroactive?

A. If by retroactive you mean only on boats that were to be built—

Q. Isn't it a fact that these regulations of 1930, by the M F P A were not intended to apply as regards matters of construction to boats already in existence?

A. They were made to apply so that boats could be altered and made safe.

Q. You recognize that this is merely Appendix D of the regulations?

A. Yes.

Q. Are you familiar with the regulations themselves?

A. Surely.

Q. Isn't it a fact that on page 3 of the regulations at the very beginning, this provision is made—and I quote, "No provision in these regulations is to be retroactive as regards construction"?

A. I don't think you have interpreted it the right way.

Q. Isn't it a fact—isn't that what the regulations say?

A. It so reads that way.

Mr. Underwood:

I ask to have the regulations marked for identification.

They are marked as Respondent Phipps Exhibit 3 for identification.

A. I know it is not so understood.

Q. I show you Respondent Phipps Exhibit 3 for identification, and I will ask you to read out loud that provision.

A. (Reading) No provision in these regulations is to be retroactive as regards construction."

Q. Now, that think from which you have read, you will concede, will you not, is a copy of the 1930 regulations governing marine hazards by the National Fire Protection Association—isn't that right—isn't that what you have read from?

A. Yes. That interpretation was never intended that way.

Mr. Underwood:

I move to strike that out as not responsive to any question of mine.

Q. In answer to one of Mr. Matteson's questions, you said, in reference to Libelants' Exhibit 24, your rules, that the insurance companies required compliance whenever they could get the owners to comply?

A. Yes.

Q. I take it that you mean by that, that owners do not always comply with your rules, isn't that so?

A. Well, the absolute facts are, where they won't comply, generally companies don't want the boat.

Q. You don't mean to say companies refuse to insure boats unless they comply with these rules?

A. In many cases, yes.

Q. But not universally?

A. No.

Q. It is quite possible for a boat owner to get insurance, notwithstanding he doesn't comply with your rules, isn't that so?

A. It is possible in some cases.

Q. How many cases there are of gasoline-propelled boats that are insured, although they hadn't complied with your rules, I don't suppose you know, do you?

A. No, nobody knows—they force that as far as possible.

Q. That means as far as the boat owner is willing to go to the expense of adopting your suggestions, isn't that what you mean?

A. No. As I said before, there are many cases where they refuse to take the boat if certain things aren't done.

Q. But they don't refuse insurance in all cases, do they, just because your rules are not complied with?

A. Not in all cases.

Q. And how many of one class and how many of the other you don't know, do you?

A. No, no one does.

Q. You have told us something about the explosive qualities of gasoline fumes. Just what do you mean by gasoline fumes—I think that was the word that was used.

A. Well, the gases that come from gasoline.

Q. Do you mean by gasoline fumes, the same thing as gasoline vapor?

A. Yes.

Q. How can that be exploded, Mr. Wright?

A. Spark.

Q. Anything else?

A. Fire.

Q. Your pipe, I suppose?

A. Yes.

Q. A match?

A. Yes.

Q. Any fire?

A. Any fire.

Q. In this Libelants' Exhibit 24, there isn't anything which forbids the use of knife switches in the engineroom, is there?

A. Yes, there is.

Q. All right, suppose you read the provisions that covers that.

A. (Reading) "All switches and fuses be placed outside of engine compartment".

Mr. Matteson:

Go ahead, read the rest of it.

A. (Continuing) "On all large boats, where desired to have all equipment in engineroom, switches and fuses and other spark-emitting devices should be enclosed and located at least four feet above the floor".

Q. That is all you find in there on that subject?

A. I think that is all in here—yes.

Q. Now, that does say, does it, that knife switches shall not be used?

A. No.

Q. It does not say they shall not be used in the engineroom, does it?

A. No, but if they are they should be enclosed.

Q. And it does not say that they shall be enclosed or must be enclosed, does it?

A. No.

Q. Don't you know as a matter of fact, that there are a great many boats—gasoline-driven boats— that have open knife switches in their enginerooms today?

A. Not so many today.

Q. Don't you know as a matter of fact, Mr. Wright, that it is only the Coast Guard and the Navy Department that uses explosion-proof switches in the enginerooms?

A. No, I do not—I know to the contrary.

Q. Isn't it a fact that the 1930 regulations of the National Fire Protection Association do not forbid the use of open knife switches in the engineroom of gasoline-driven boats?

A. (Referring to Libelants' Exhibit 25) I haven't looked at this book for a long while—that is the old regulations—(reading) "Accessories such as switches, sockets, etc., shall be standard types for current to be carried. Circuits shall be protected by National Electrical Code fuses of suitable capacity for wire used. A manual master cut-out switch

shall be installed as close to the battery as practicable." (Note: This will be found on page 56 of Respondent Phipps Exhibit 3 for identification, and on page 13 of Libelants' Exhibit 25). And here is something that may cover that, on page 12, Section 11, paragraph (a): "Electrical installations operating at potential of over 32 volts shall be in accordance with Appendix B (A. I. E. E. Marine Rules). Those carrying 32 volts or lower shall conform to following."

Q. Do you know whether the Appendix B of the A. I. E. E. Marine Rules forbids the use of open knife switches in the engineroom?

A. No, I do not.

Q. Don't you know, as a matter of fact, they do not?

A. I don't know.

Q. How many of the several thousand gasoline-driven boats that are named in Lloyd's Register of American yachts have you been on in the last five years?

A. Oh, I couldn't tell you.

Q. Give me your best estimate.

A. I couldn't tell you, really, because some years I am on a lot of them, and some years I don't get away from the office. The last year or two I have hardly been away from the office, only on special occasions.

Q. Have you been on as many as twenty-five in the last five years?

A. Oh yes.

Q. Fifty?

A. I should estimate fifty at least.

Q. What is the maximum number that you fairly think you have been on in the last five years?

A. I couldn't give you any—because as I go through the shipyards—

Q. All I want is your best estimate of the number of those vessels you have been on in the last five years.

A. Oh, maybe three or four hundred.

Q. How many of those had explosive-proof switches in the engineroom?

A. I couldn't tell you offhand.

Q. How many had open knife switches in the engineroom?

A. I couldn't tell you offhand.

Q. And of course, what the others had that you weren't aboard of, you don't know?

A. No.

Q. According to my notes, you said that the presence of an outlet in the engineroom, for the drawing off of gasoline, is a thing you need to have, because when you are drawing off gasoline into a can or something of that sort, it generates a vapor, is that correct?

A. That is correct.

Q. Is that your reason for that rule?

A. Absolutely.

Q. That rule is aimed at the practice of pouring off gasoline in the engineroom—free gasoline?

A. Absolutely.

Q. That is the purpose of it?

A. Yes.

Q. How many hundred boats, did you say you were on in the last four years?

A. Three or four hundred.

Q. How many of them had their switches in the engineroom, and how many some place else?

A. I couldn't tell you offhand.

Q. You don't know what proportion?

A. No.

Q. You don't know whether it is general—of your knowledge—whether it is general to have switches outside the engineroom or not?

A. More and more.

Q. It is increasing?

A. Yes.

Q. You don't know even today whether the majority of the boats have the switches outside of the engineroom?

A. They probably have.

Q. You don't know, do you?

A. No.

Q. Five years ago, it was not at all customary to have the switches outside of the engineroom, was it?

A. I think it was.

Q. Five years ago?

A. Yes, five years ago.

Q. That practice was just beginning in 1935, wasn't it?

A. No—1929.

Q. What practice do you say began in 1929?

A. Having switches outside of the engineroom—that is when we first began to push it.

Q. You first began in 1929?

A. That is when we first took it up.

Q. And on new constructions after that, you did your best to get them to put switches outside of the engineroom?

A. On old construction where our surveyors took the risk.

Q. How many boats can you name that between 1929 and 1935, took out their switchboard from the engineroom and located it some place else?

A. I am not a surveyor.

Q. How many can you name?

A. Not many offhand, because that is outside of my jurisdiction.

Q. You don't know whether it was done on old construction or not, do you?

A. Yes, I do, because I know our surveyors are having it done.

Q. On what boats was it done between 1929 and 1935?

A. I don't know.

Q. On how many boats was it done?

A. Old boats, you mean?

Q. Yes.

A. I couldn't say.

Q. On what percentage of the boats was it done between 1929 and 1935?

A. Well, wherever the—

Q. Do you know?

A. No, personally I don't know, I didn't make the survey.

Q. Are you an electrician?

A. No.

Q. You are really an investigator of explosions, aren't you?

A. Yes.

Q. You try to ascertain the cause?

A. Yes, sir.

Q. And every time you do ascertain the cause, you suggest something that will stop that particular kind of explosion?

A. Yes.

Q. And nothing short of perfection will satisfy you, is that right?

A. Absolutely.

Q. You have told us about drip collectors—I am speaking about drip collectors in the carburetors.

A. Yes.

Q. If the carburetor does not leak, they perform no function, do they?

A. No.

Q. Their purpose is to take care of the situation where a carburetor leaks, isn't that right?

A. Yes.

Q. And if a carburetor does not leak, you don't need a drip collector, do you?

A. We do not—no, I will withdraw that answer—we need a drip collector in every case.

Q. Because the carburetor might leak?

A. Because even the engineers of the biggest manufacturers of carburetors allow that in some cases any carburetor may leak.

Q. For the purpose of this discussion, Mr. Wright, I want you to assume that the carburetor that we are talking about does not leak. If it does not leak, a drip collector serves no purpose, does it?

A. At that particular time, no.

Q. In answering Mr. Matteson's questions about the purpose of the shut-off valve in the gasoline line, I think you said that you felt there ought to be one at the tanks and close to the carburetor?

A. From my experience.

Q. Is that right?

A. Yes, from my own experience.

Q. And that is based on one or more instances where the carburetor has leaked and there has been need to shut off the flow of gasoline quickly without taking the time to go the distance to the tank and shut it off at the tank valve, is that correct?

A. Yes.

Q. If that situation does not arise, that valve does not come into play, does it?

A. That is likely to arise in any case.

Q. You mean a leaky carburetor?

A. Yes.

Q. But apart from a leaky carburetor, that need does not arise, does it?

A. If your carburetor wasn't working properly and you wanted to take it apart, even if it didn't leak, it has to be there.

Q. Those are the two reasons, is that right?

A. There may be other reasons, I am trying to think.

Q. Do you think of any now?

A. No, not offhand. There was one that occurred recently that I was trying to locate.

Q. You mean something else happened recently that might give you a third reason?

A. Yes.

Q. But you can't now think what it was?

A. No.

Q. You have told us all the reasons you can now think of?

A. Yes.

Q. Do you say that it is customary today for gasoline? driven vessels to have ventilators that lead down into the bilges?

A. Yes.

Q. What percentage, if you know, of the yachts listed in Lloyd's American Register have such ventilators?

A. Well, I couldn't say, but I can answer it a different way.

Q. Go ahead, give me your answer.

A. Since 1929, all the larger Chris Craft and the Matthews, Acker, A. C. F., Consolidated, Dawn, Elco—I can't think offhand—but the majority of the big boat builders all ventilate their bilges today and have for years back.

Q. In their new construction?

A. Since 1929.

Q. In their new construction?

A. Yes.

Q. Can you name one boat that was in existence in 1929 that has extended its venilators down to the bilges when they didn't extend there before?

A. In 1929 there were a few of them that had any bilge ventilation.

Q. Can you name one boat that was in existence in 1929, that has extended its venilators from the deck-head down to the bilges?

A. I know there are a number of them have, but to give you the names—I used to know the name of every boat that I have been on, but nowadays I am out of the inspection service—but I know there are a lot of them .

Q. You are brought here, Mr. Wright, to testify, presumably, as an expert in this case, and I want to find out what you know of your own knowledge. Now, can you name one?

A. Back to 1929?

Q. Yes.

A. No, I can't, but I know they were done, I have seen them, of my own knowledge I have seen them.

Q. How many have you seen?

A. Oh, dozens of them.

Q. How many?

A. I couldn't say offhand, but dozens of them.

Q. What percentage of the boats that were in existence in 1929 have been so altered?

A. Oh, I suppose—

Q. Do you know?

A. As I say, I have not seen them.

Q. I want to know what you know—not what you heard or what somebody has told you—but what you have seen.

A. Well, beginning in 1929, there were very few that had bilge ventilation, beginning at that time. I have been yachting ever since—I have gone around to see this side deck ventilation—I didn't go on board a lot of them, but where they had those side deck ventilators, that they didn't have in 1929 when we first began this propaganda, we could pretty well assume that the majority of those boats it extended to the bilge.

Q. That is your assumption?

A. Yes.

Q. I want to know what you know.

A. That is all I know about it.

Q. You don't know how many cases it has been done, do you?

A. No, I know ventilators has been put on.

Q. You don't know whether it has been done generally or not, do you?

A. Not by being on board the boat, no.

Q. If you have cross ventilation in an engineroom—that is an engineroom with a window on either side of it—do you say that the air that moves through that engineroom will not bring up the gasoline vapor in the bilges?

A. So it has been proved.

Q. You mean it will not bring out any of it—leave it down there undisturbed?

A. I won't say undisturbed, because there might be something to deflect that air, but as a rule that side ventilation don't work.

Q. Don't you mean this: That the kind of ventilation you suggest is better than cross ventilation?

A. No, I don't mean that.

Q. It is your testimony that this gasoline vapor will stay down there in the bilges in spite of cross ventilation through the windows?

A. So it has been proved by our loss cases.

Q. You base that testimony upon the fact that in some instances there has been a gasoline vapor where there has been cross ventilation, but not the kind you recommend?

A. Exactly.

Q. That is the sole basis?

A. What is the sole basis?

Q. Is that the sole basis of your testimony?

A. The basis of my testimony is that we have had explosions under those circumstances.

Q. Now, take the converse of that situation: Do you know how many times there has been gasoline vapor in the bilges that has been dispelled by cross ventilation through the windows?

A. I have never come across a case.

Q. Because there hasn't been any explosion in such a case, isn't that the reason?

A. You have got to get—

Q. Isn't that the reason?

A. You have got to get a certain mixture of air and gasoline—the proper proportions—and a spark to make an explosion.

Q. And unless those two things happen, you haven't bothered about it much, have you?

A. Unless what?

Q. Unless you get that combination of circumstances, resulting in an explosion, you haven't bothered about it much?

A. Sure I have bothered about it, because I tried to prevent that very thing—we don't know when that thing will occur.

Q. Do you know how many times there has been an explosive mixture of gasoline vapor in the bilges that has been dispelled by a current moving in the engineroom from one window on one side and a window on the other side being open?

A. I don't believe such a thing can occur.

Q. Did you ever conduct any experiments to see?

A. No, but we have had explosions that did occur under those circumstances.

Q. But how many times the explosive mixture of vapor has been there and has been dispelled by such ventilation before any spark occurred, you don't know, do you?

A. I don't believe it can be dispelled, and I have—

Q. Tell me this then: Isn't it a fact that the sole basis for your belief is the fact that such explosions have occurred?

A. Naturally, before I went into this work—

Q. Just answer my question, please.

A. Put your question

Q. (Repeated) Isn't it a fact that the sole basis for your belief is the fact that such explosions have occurred?

A. No, it is not the sole basis by a long shot.

Q. Have you conducted any experiments to see what happens?

A. With gasoline down there, yes.

Q. When you have cross ventilation?

A. Yes, I have been down there and found it out.

Q. Tell us what you have done.

A. I have gone down there and smelled it—you can smell gasoline.

Q. Under what circumstances?

A. When the windows were open both sides, and the National Board backed me on that sort of thing.

Q. Was it an explosive mixture?

A. If it had been an explosive mixture, and any spark around there, it would have gone off, you can't tell by smelling whether it is an explosive mixture or not, but the very fact that gasoline vapors are there brings a hazard right away, and the data from the National Board of Fire Underwriters—

Q. Don't tell us what their data shows, I am not interested in that, I haven't got their data here to cross-examine, I just want what you know. What the effect will be on gasoline vapor in the bilges, where you have windows on either side, will depend very largely, will it not, on the strength of the wind that will blow through and how it is deflected down towards the floor?

A. I don't think you will get anything from that cross ventilation.

Q. You don't think you will get a thing?

A. Very little.

Q. Then you think you will get some?

A. I don't.

Q. Then what made you say very little?

A. Well, you can put it the other way then.

Q. You say that in cross ventilation you don't get any of the vapor up out of the bilges?

A. I don't say any.

Q. What is your testimony?

A. I say the cross ventilation, for practical purposes, is no use in trying to prevent an explosion.

Q. Do you mean by that, that you don't, with cross ventilation, get any of that vapor out of there?

A. As I said before, the cross ventilation is of no practical use in trying to remove those vapors from the bilges.

Q. I would like you to answer my question.

A. Whether it removes any or not, I don't know.

Q. You said something about the fewer connections you have in a gasoline line, the better it is—your reason for that, I take it, is the more connections you have the more chance of leakage there is?

A. Absolutely.

Q. Of course, if you don't have any leaks it does not make any difference, does it?

A. No, because the connection is always a potential cause of danger.

Q. We are talking here about a particular fire. If there wasn't any leakage in the gasoline lines on this particular boat, then it does not make any difference how many connections they had, does it?

A. Well, I wouldn't say that, because I know a connection is always a potential cause of danger—I have had too many boats of my own.

Q. Our inquiry here today is not directed so much towards the potential dangers, as it is towards the cause of this particular event. Don't you agree with me that if there was no leak in the gasoline line from any connection, then the fact—if it is the fact—that she had more connections than your rule book recommends, didn't have anything to do with the case?

A. No, I don't agree with you, because while it might show no leak, vibration would bring a leak which might stop afterwards.

Q. Your answer leads me to believe that you have refused to adopt my assumption—the one that I asked you to make. I have asked you to assume that there was not, in fact, any leak from any connection. Now, if that be

the fact, then the mere fact that she had more connections than you might recommend, didn't have any causal relation to this explosion and fire, isn't that so?

A. Well, if it didn't leak, naturally it wouldn't have any connection with your fire.

Re-Direct Examination.

By Mr. Matteson:

Q. Mr. Wright, you have referred, particularly, of course, to your campaign since 1929 for safety in gasoline vessels. Do you want us to understand that prior to 1929 none of these precautions that you have suggested were taken by anybody?

A. I don't want you to understand anything of the sort, because in 1923 I got up a pipe leading from the air intake of the carburetors up above the engine to prevent the ignition of explosive gases by backfire, and I carried on that campaign right along.

Q. Aside from your campaign, do you want us to understand that careful owners didn't take some of these precautions before that time?

A. No, I do not want you to understand anything of the sort, because there have always been men who have had common sense in using gasoline.

Q. Another thing you said was that you wouldn't be satisfied with anything less than perfection on a gasoline boat. Why is that?

A. Because I have seen too many poor devils who have been burned, I know what happened, and I have examined too many wrecks, and I have carried it out on my own boat for years—I had one of the first gasoline engines that was made.

Q. In other words, you are dealing with a very serious hazard?

Mr. Underwood:

I object to that as leading. Let the witness testify.

A. Yes, I knew nothing about gasoline engines when I started. I bought a little one and it took the gas off the top of the tank with no precaution against explosion except some little bits of wire gauze shoved in the pipe from the tank to the engine.

Re-Cross Examination.

By Mr. Underwood:

Q. Have you ever been aboard the Seminole?

A. I don't know, because you can's—for years I could keep those names in my mind, but when it gets into the thousands and thousands—I don't know—the name sounds familiar to me—she was a big—as I remember—I have seen her, I think—big sort of a houseboat, but beyond that I couldn't say.

Q. At the present time, you don't remember whether you were ever aboard of her or not?

A. No.

United States District Court Southern District of Florida. Miami Division.

Charles Coryell, et al., Libelants,
against
George J. Pilkington and John S. Phipps, Respondents.

In Admiralty No. 122-M-Adm.

Further depositions taken on behalf of the Libelants, at the office of Messrs. Bigham, Englar, Jones & Houston, 99 John Street, New York City, March 14, 1939.

Appearances:

Messrs. Batchelor & Dyer,
Messrs. Bigham, Englar, Jones & Houston, (Mr. Shaw) for the libelants.

Messrs. Loftin, Stokes & Calkins,
Ray C. Alley, Esq.,
Messrs. Burlingham, Veeder, Clark & Hupper, (Mr. Clark) for John S. Phipps.

It is stipulated that the testimony may be taken by a stenographer, signing, filing and certification being waived, stenographer's fees to be taxable.

1431 RUTH E. LaBAR, being duly sworn and examined as a witness for the libelants, testified as follows:

By Mr. Shaw:

Q. What is your address?

A. 35 East 30th Street, Manhattan.

Q. Miss LaBar, are you now employed by Mr. E. D. Wright of 90 West Street?

A. No, sir.

Q. Were you ever in Mr. Wright's employ?

A. Yes, sir.

Q. Can you state when?

A. I worked for Mr. Wright temporarily, for approximately a week and a half, during the period from September 16th to September 25, 1933.

Q. And in what capacity?

A. As a stenographer, during his secretary's vacation.

Q. What, generally, did your duties consist of?

A. Taking dictation from Mr. Wright, general routine, sending out circular letters and so forth.

Q. I show you Libelants' Exhibit 24, and ask you if you can identify that.

A. Yes, sir.

Q. What is it?

A. A circular letter that was sent out to the yacht owners whose names were taken from the Lloyd's of London Yacht Owners, I believe for the year 1933.

Q. And did you yourself send these circulars out?

A. Yes, sir.

Q. Can you state to whom you sent these circulars, in a general way?

A. Before Mr. Wright's secretary left, she identified a part in the book where I was to start.

Q. Is this the book—the one that I now hand you?

A. Yes, sir.

Q. Can you identify in this book where you started on the names?

A. Yes, sir.

Q. Where does it start?

A. Under the name of "Patton, J. L".

Q. On what page?

A. Page 571.

Q. Can you state how far down the list you went in sending out circulars?

A. Well, approximately—I would say before and including the alphabet—or the letter "R".

Q. Would that include all the names listed under "P"?

A. Yes, sir.

Q. And more specifically, does that include John S. Phipps?

Mr. Clark:

I wish you would allow the witness to do the testifying.

Q. State whether or not it does include that name?

A. The list includes the name of John S. Phipps.

Q. Can you state whether or not you sent a copy of this Libelants' Exhibit 24 to John S. Phipps at the address stated in this register?

A. To the best of my knowledge I did, as indicated by my check.

Q. You recognize your check mark, do you?

A. Yes, sir

Mr. Shaw:

I would like to offer this particular book that we have been referring to for identification, and I would like to confine it, if it meet with your approval, to this particular page.

Mr. Clark:

No, that does not meet with my approval, as I propose to look through the book and compare the checks in the book on cross examination.

Mr. Shaw:

Well, I will offer the entire book for identification.

It is marked as Libelants' Exhibit 28 for identification.

Q. Will you tell us, Miss LaBar, what the mechanics were in sending out these circulars similar to Libelants' Exhibit 2?

A. Yes. On the first sheet I inserted the date and the name of the person to whom the series of letters were to go—name and address—and made an envelope for them, and there would be quite a number at a time, and I would give them to Mr. Wright for his signature, and they were signed by Mr. Wright, sealed and mailed by me personally.

Q. Where did you mail them?

A. In the chute in the building in which Mr. Wright was at that time—90 West Street.

Q. Will you state whether or not you stamped the envelopes.

A. Yes, I stamped them.

Q. Did the envelopes contain a return address?

A. Yes, sir.

Cross Examination.

By Mr. Clark:

Q. How many times have you worked for Mr. Wright?

A. Just during the period that I specified, temporarily.

Q. From September 15th to September 25, 1933?

A. Yes, sir.

Q. That was the only time?

A. Yes, sir.

Q. How did you get the position?

A. Through an agency.

Q. Did you know his secretary?

A. No, sir. I met her just before she left for her vacation.

Q. Did she relieve you when she came back—did you then terminate your position there?

A. Yes. I didn't see her after she returned. I left, and I presume she came in the next Monday—that I don't know.

Q. You only saw her on the one occasion?

A. That is right.

Q. September 15, 1933—what day of the week was that?

A. I am afraid I don't recall that far back.

Q. You seem to recall the day that you left, don't you?

A. You mean the day?

Q. You referred to the fact that his secretary came back on Monday and you didn't see her.

A. I am only assuming that the vacations are a period of—I know that I went to relieve Mr. Wright's secretary during her vacation—but I couldn't definitely say when

she left and when she got back. However, I never saw the girl but once in my life, and I met her just before she left.

Q. You said you assumed she came back on Monday, is that right?

A. I am assuming that that was vacation time.

Q. Then your last day was what—Friday or Saturday?

A. Apparently.

Q. What was your first day?

A. Back in 1933 I wouldn't be able to say. I know I was sent there, and during that period I was there, but the day of the week I am not able to give you.

Q. You couldn't remember what day of the week it was?

A. No, sir.

Q. Could you remember the day of the week you ended your arrangement?

A. No, sir.

Q. What was the first thing you did when you arrived there in the office to take over this temporary job?

A. I went about my duties as any secretary would—I just don't recall my very movements.

Q. What was the first time that your attention was called to this work you did in 1933, concerning which you are now testifying?

A. Just before the girl left on her vacation, she apparently had been working on the book, and she told me about where to begin, and to send the letters out as I found the time.

Q. But now I am asking you: When was your attention first called to this work that you did then—I mean now—to come here and testify. When were you asked to come here and testify, and your attention was called to this work you did back in 1933—when were you interviewed about it?

A. Today is what—

Q. Today is Tuesday, the 14th.

A. Friday.

Q. Last Friday?

A. Last Friday, that is right.

Q. Who interviewed you?

A. Mr. Starkey.

Q. And then from 1933—September 1933 until last week, Friday, March 10th—during that period from 1933—September until last Friday of this year—you had not had this in mind at all?

A. No, sir.

Q. This book which has been marked Libelants' Exhibit 28 for identification, Lloyd's Register of American Yachts, is for 1933, and this was the book that was in Mr. Wright's office at the time?

A. Yes, sir.

Q. Sometime between September 15th and September 25, 1933, is that right?

A. Yes, sir.

Q. Whose handwriting is this " Beg here" in the upper lefthand corner of page 571, if you know?

A. It is not my writing.

Q. You don't know?

A. It is the previous girl's writing.

Q. Whose handwriting is this "Acknowledged 10/-19/33" on the first column of page 571, if you know?

A. I don't know.

Q. It is not yours?

A. No, sir.

Q. Whose handwriting is it here on page 571—the lower righthand corner marked "RFD—unclaimed"?

A. I don't know.

Q. It is not yours?

A. No, sir.

Q. There are some other handwritings in this book—are any of them yours?

A. No, sir.

Q. None whatever?

A. No, sir.

Q. Did I understand you to say that you went through the Rs in this book?

A. Well, that is pretty hard to say how far I went, I can't be definite on that point. I know that I sent a great number of them out and just where I stopped that I would be unable to say.

Q. By looking at this book, you can't tell where you stopped?

A. Not definitely, no sir.

Q. The checks don't show you?

A. No, sir—not too definitely.

Q. How did you happen to fall upon this name "Patton" —"J. L. Patton" at the upper lefthand corner of page 571, as the name that you started with?

A. There is where it was my instructions to start, where it says "Begin here" at the top of the page, and I started from there.

Q. How do you know that was the place you began—you don't remember back all these years?

A. That part I remember, that she marked in the book where I was to start.

Q. There is another "Begin here" in the book. I find one "Begin here" on page 567. Do you know that?

A. I remember there was a "Begin here" at the top of the page where I was to start.

Q. Well, there is a "Begin here" at the top of the page 567 also. So we have two "Begin heres" at the top of the page—one page 567 and one page 571. Are you able now to go back over these years and tell us which is your "Begin here"?

A. May I see it?

Q. Certainly. Here is one and here is another (indicating).

A. That appears to be the one that I started at.

Q. Referring to the one on page 571?

A. Yes, sir.

Q. Now, will you please tell me why that one appears to be the one that you started at.

A. Well, I don't know just what to say about that—I think there are things that can be recalled to you, particularly when you see them in writing. I am definite that she marked it at the time and it sort of shows up in my mind that I saw that and was instructed to start there.

Q. What day was it after you started with Mr. Wright—the first day was September 15th—what day was it that you sent off your first circular?

A. I am afraid I wouldn't be able to say just what day.

Q. Well, could you say whether it was very soon or a long time?

A. I can't answer that question.

Q. Doesn't it strike you as rather strange that the fifth name after "Patton", which is the one you say or that you think that you began with "Mr. A. J. Drexel Paul", the acknowledgment came on October 19, 1933?

A. An acknowledgment could come at any time afterwards, could it not?

Q. Yes, but it is a long time, is it not?

A. Why, not for a circular letter, I wouldn't say, myself having had experience with circular letters—right now I am doing that work—and we are getting replies way back, months.

Q. Would it strike you as being in accordance with what you would expect then to find that Mr. Walter E. Pitcher, on page 573, acknowledged on October 13th, and that Mr. Plumley, on the same page of this list of yacht owners on page 573, was acknowledged on October 13th?

A. The same answer applies.

Q. Isn't it rather singular that these letters, which you say that you sent out—it is fair to say that you sent some of them out during the week of September 15th, isn't it—that the acknowledgments are October 19, 1933—and I am now referring to those that are acknowledged— Octo-

ber 13, 1933, October 13, 1933—those are the ones that I have come to—you don't see any significance in the fact that the acknowledgments, where the date is given, are October 13th and 19th?

A. I still contend that an acknowledgment can come forth at any time for that type of letter.

Q. Let's take it that you are absolutely correct that it can—what would you reasonably expect?

A. I am afraid I don't understand your question.

Q. I am making a distinction as to what can be, what is possible and what is probable—it can be that an acknowledgment wouldn't come for six years—that is possible?

A. Yes.

Q. It is not probable, is it?

A. No, sir.

Q. Now, I am calling your attention to the fact that these circulars, which you say were sent out in September—between September 15th and September 25th—that the acknowledgments, as noted here, are October 13th and October 19th, and ask you if that isn't a long while for those acknowledgments to come in?

Mr. Shaw:

I object to this line of questioning as argumentative and speculative.

Mr. Clark:

There is going to be a lot more of it. Do you want to instruct the witness not to answer the questions, because there is going to be plenty more of it?

Mr. Shaw:

I have made my objection.

(No answer.)

Q. What does this check mark mean, Miss LaBar—what does that check mark mean in this book, Libelants' Exhibit 28 for identification?

A. A letter had been sent to that person.

Q. Did you put these checks on here—or some checks anyway you put in the book?

A. Yes.

Q. When did you put the checks in the book?

A. As I went along.

Q. Well now, just what does "As I went along" mean—does it mean when you first took up this Libelants' Exhibit 24 (referring to a form letter which I hold in my hand, the original having been testified to by Mr. Wright, and the original being somewhere in the mail between Florida and New York, and we are using this copy because the original is not here)—you have the book before you and you have the circular. Now, when do you put the check in—is it when you fill in the name?

A. Usually. I might deviate if I wrote a few and knew I had gotten to a certain point and was interrupted, I might go back and make a check mark, or might mark it as I went—that I can't be definite about.

Q. The check does not refer to the mailing—the check refers to the fact that you have filled in a certain person's name on the top of this—

A. Oh, no, that means they were mailed.

Q. That is not what you have just testified to.

A. For instance, I mean during the day I would know what ones I made out and mailed out on this certain day—I wouldn't come back the next day and make the check.

Q. You have testified you put the check in when you filled this name in on the circular letter.

A. Before it is mailed, naturally.

Q. Well, when?

A. During the course of making out the letters—addressing them.

Q. Yes, while you are addressing the letters you put that name down on this letter (Libelant's Exhibit 24)—you put the name down and then do you check it?

A. Usually.

Q. That was your practice, is that right?

A. Yes, sir.

Q. Then it was not your practice to wait and check when you mailed?

A. Not when the letter went out. It went out—if I made out ten in one day, they were checked and they were all mailed that day.

Q. But when you once filled it out and checked it, you assumed that that letter had been mailed—the checking—

A. Quite definitely that it has been mailed.

Q. The checking referred to the filling out and not to the mailing, isn't that right?

A. Yes, that is right.

Q. Did you ever check any twice?

A. Possibly.

Q. What would two checks mean?

A. I am afraid I couldn't say now what it might mean.

Q. Could it be that one check is that you are filling out a circular, and the other check is that you are mailing it?

A. No, that wasn't the procedure.

Q. What is the meaning of these names that you have two checks against?

A. It is possible that the book has been used since 1933, and I have no knowledge of what any checks might be—any other checks.

Q. And on no occasion did you put more than one check on a name, is that right?

A. I couldn't say to that.

Q. You have done other work like this, Miss LaBar?

A. I sent out circular letters, yes, sir.

Q. And it is not unusual for you, when you send out a circular, to make a check mark?

A. I don't always use a check mark—it all depends. If making anything out from a card system, I would check the card—it all depends.

Q. Do you make about the same check mark as you are going along, usually?

A. Not necessarily. I am afraid I wouldn't make the same ones all the time.

Q. Check marks are more or less characteristic though, aren't they?

A. Yes.

Q. Do you see any check mark on page 600 like yours (referring to Libelants' Exhibit 28 for identification)?

A. No, sir.

Q. Or on the next page, 601?

A. No, sir.

Q. You don't make check marks like that, do you?

A. No, sir.

Q. Turning back a couple of pages—because the other check marks are the same—go back to 596: You don't find any check marks like yours, do you?

A. No, sir.

Q. Going back further, to 592, other pages apparently the same—no check marks like yours?

A. No, sir.

Q. Now, we are way back to 584—you don't find any there like yours, do you?

A. No, sir.

Q. Would you mind making a check mark for me?

(Witness does as requested.)

Mr. Clark:

I will offer that in evidence.

It is marked Respondents' Exhibit 4.

Q. On page 583—I don't suppose you would own those, would you?

A. No, sir, definitely not.

Q. Are there any on page 583 that you would own?

A. No, sir.

Q. How about page 582, referring to the same exhibit, Libelants' Exhibit 28 for identification?

A. I couldn't swear to that.

Q. You couldn't swear to any on page 582?

A. I mean a check is a check, and sometimes you make one one way and sometimes you make one another. I would say that looks more like mine (referring to the check mark opposite "Seebeck" on page 582).

Q. You would say that is yours?

A. That is a kind of a check I would make.

Q. Any others on page 582?

A. Well, I can't be definite.

Q. You might make any one like that?

A. Yes.

Q. In other words, you take these pages 581 and 580—page 581 is "Ss", and page 580 is "Rs". How about the "Rs" on 580 and the "Ss" on 581—are those check marks generally by the same individual?

A. Well, they are not all alike, that is certain.

Q. They are not all alike?

A. No.

Q. Would you own any of them?

A. I couldn't say definitely. I mean, some of them are like mine and others are not. I would say some of them were, yes.

Q. Well now, here are the "Rs"—here is page 578 and page 579—they are all "Rs"—do you own any of those?

A. Some of them look like mine, yes, sir.

Q. Some look like yours?

A. Yes, sir.

Q. But you couldn't say all?

A. Well, it is pretty hard to say. If you make a check in a hurry, or just don't always make it the same way, why—

Q. Here are "Ps" and "Rs"—how about those two pages—574 and 575?

A. They are mine, I would say.

Q. You think those are all yours?

A. I would say—I don't know—yes, I would.

Q. You say all of those on pages 574 and 575 are yours?

A. I wouldn't say all of them, I can't be sure about every one of them.

Q. But some of them?

A. Yes, sir.

Q. Does that also apply to pages 572 and 573?

A. Yes, sir.

Q. You couldn't say all, but some?

A. I would say they belong to me.

Q. All of them or some of them?

A. It is awful hard to say now. Now that (indicating) you can definitely say was made in a hurry—that one—so I don't know what to say about that—they look like my checks.

Q. Are you willing to testify that all of the checks on pages 572 and 573 are yours?

A. To the best of my knowledge they are.

Q. You think they all are?

A. Well, I can't say every one of them—that I couldn't say. I don't know whose hands the book might have been in since I had it.

Q. But pages 574 and 575—do you feel the same about those two pages as you do about pages 572 and 573?

A. Yes, sir.

Q. You think they are all yours but you don't know, is that right?

A. As I say, I don't know who might have had the book since I had it. They might have made a check—a check mark is a check mark, it is hard to distinguish.

Q. Who else was in the office working on this book while you were there?

A. No one.

Q. That is you alone were the one that was working on this book during the time you were there from September 15th to September 25, 1933?

A. That is right.

Q. Well then, if you started somewhere in the "P"—"Patton", as you say, and you went through the "Rs", there wouldn't be anyone else make a check mark in the book?

A. When I made the remark about where I ended, I can't be definite about that. I know that those marks further on are not my marks. That one that is similar to an "N"—that definitely is not my mark, so I can't say where I ended.

Q. And that begins—that check mark that is similar to an "N"—as I look at the book it begins on page 583 with the name "Sennett", is that right?

A. It appears to be.

Q. Can you be any more definite about the name John S. Phipps in this book than anyone else in the book?

A. No, sir.

Q. You couldn't recognize your check—whether the check on Phipps's name was yours, any more than you could the others, could you?

A. My checks are definite—I mean where I started they are more uniform than they are later, and those checks I identify as mine, there is any number of them there, and for that reason I can't determine where I left off, and as I say it is possible to make a check differently at one time than another.

Q. What we are interested in at the moment is the check that appears in this book on page 572 against the name "John S. Phipps". Now, what I want to know is, whether you can be any more definite about the check

in the book against the name "John S. Phipps" than any of the others in the book?

A. I can be definite about those only where I began, before John S. Phipps, and including those, and some beyond that, but how far I can't determine.

Q. Well, of course, you are the person who is testifying with reference to certain work being done and certain checks in this book.

A. That is true.

Q. And we will have to rely upon your testimony as to what checks are yours. Now, I ask you again if you can be any more certain about the check in pencil against the name "John S. Phipps", which appears on page 572 of this book, Libelants' Exhibit 28 for identification, than you can any others in the book?

A. Well, I don't believe I understand the question. I thought I answered that in the previous question. I mean all of those I can identify as my definite checks are before and beyond that.

Q. Yes, but you have said that you started in this book at a certain place.

A. That is true.

Q. And you said that you went, you thought, through the "Rs"?

A. That is indefinite—I haven't any way of telling where I ended in the book.

Q. I ask you again if you can identify the check against the name "John S. Phipps" better than you can any other of the checks which you made in this book?

A. Not better than any of the others.

Q. Can you go through this book, from the time you first started, and go through all that you made and identify the checks?

A. No, sir.

Q. And there was no one else in the office at the time doing this work?

A. Not during the time I was there, no, sir.

Q. Let me get the mechanics right: As I understand you, you filled out a certain name on this circular letter (Libelants' Exhibit 24)—you filled in a date, and then whatever you filled out—the circulars which you filled out—were sent to Mr. Wright, is that right—or did you take them to him?

A. They were put on Mr. Wright's desk. He, in turn, signed them and I put them in the envelopes, stamped them and mailed them personally.

Q. When you got those back from him, you put them in the envelopes and mailed them, is that right?

A. Yes, sir.

Q. You mailed all you got back from him?

A. Yes, sir.

Q. Did you go over the book after you got them back and check up and see whether you received back from him all that you gave him?

A. No, sir.

Q. You did not?

A. No, sir.

Mr. Clark:

I want to have the record show that at page 572 of Libelants' Exhibit 28 for identification, under the name "John S. Phipps", appears the address "465 East 57th Street, New York City".

Re-Direct Examination.

By Mr. Shaw:

Q. Miss LeBar, are you able to identify the check marks on page 567 as yours?

A. No, sir.

Q. At what point are you able to identify your check marks in Libelants' Exhibit 28 for identification?

A. Beginning on page 571.

Re-Cross Examination.

By Mr. Clark:

Q. You refer now to "Beginning on page 571" to the check marks on page 571?

A. I don't know where I stopped.

Q. Well, you see, Miss LeBar, Mr. Shaw, according to one of the things that lawyers sometimes do—he asked you a question as to where you—if I remember the question correctly—where you can begin to identify your check marks. Now, I don't know whether he is going to argue from that later on—or someone else—that if you begin there that means everything that goes thereafter—and I want the record clear about it, because certainly that is not according to your former testimony, and I don't want to have any misunderstanding about it.

Mr. Shaw:

I object to that statement, it is consistent with her previous testimony.

Mr. Clark:

All right, I just want to know what you are about. We will go right after it now and we will see whether it is or not. We will take these, name for name, and we will have the record straight so there will be no misunderstanding about it at all.

Q. Take the name "Patton" on page 571. Can you identify that check mark as yours?

A. Yes.

Q. Take the next name "Patzowsky"—can you identify that check mark as yours?

A. Yes, sir.

Q. We will skip "Paugh"—there doesn't seem to be any check mark against it, does there?

A. Wouldn't this apply (indicating)?

Q. You are referring to this check mark in the following column?

A. Yes—isn't that a check mark?

Q. Is that check mark in the second column made for the first column?

A. I would say so.

Q. Is that your check?

A. I would say so.

Q. And you also say that the check is for "Paugh", is that right?

A. I can't be definite on that.

Q. You mean you cannot be definite as to whether the check mark is for "Paugh"?

A. That is true.

Q. Take the next one "A. E. Paul"—is that your check mark?

A. I would say so.

Q. Take the next one "A. J. Drexel Paul"—is that check mark yours?

A. I would say so.

Q. Take the next "Dwight C. Paul", is that yours?

A. The same applies—I mean I would say these check marks are all mine.

Q. Take the next one "Paxson"—is that yours?

A. Yes, sir.

Q. Take the next one "Payn"—is that one yours?

A. Yes, sir.

Q. Take the next one "Payson"—is that yours?

A. Yes.

Q. And the next?

A. Yes.

Q. The next is under "Payson"—"Herbert Payson" and "Samuel C. Payson"—are those yours?

A. Yes.

Q. And "W. Rodman Peabody"—that is yours?

A. Yes.

Q. "Sifford Peare"?
A. Yes.
Q. "Pearsall"—"A. A. Pearsall"—is that yours?
A. Yes.
Q. "Horace B. Pearson"—is that yours?
A. Yes, sir.
Q. "Philip C. Pearson"—is that yours?
A. Yes, sir.
Q. "Benjamin T. Peck"?
A. Yes.
Q. "W. W. Pedder Estate"—is that yours?
A. Yes, sir.
Q. "K. Pederson"—is that yours?
A. Yes, sir.
Q. I see the name at the bottom of page 571, "Dr. Armando Alvarez Pedroso" has no check on that—how do you account for that?
A. It is in Havana, Cuba, Mr. Wright (addressing Mr. Wright).
Q. How do you account for that?
A. My memory wouldn't serve me that well.
Q. "Helen V. Pees"—is that yours?
A. I would say so.
Q. "Albert E. Peirce"—is that yours?
A. Yes, sir.
Q. And "William H. Peirce"?
A. Yes.
Q. And "Dr. Ivy Pelzman"—is that yours?
A. Yes, sir.
Q. There is no check on the next one, unless it is the check in the next column "W. P. Pembroke"?
A. Yes, sir, that is mine, I would say, it looks like a check to me.
Q. Is it your check—do you identify it as your check?
A. Yes, sir.
Q. "E. S. Pendleton"—is that yours?

A. Is that the one you were talking about?

Q. No "Pembroke" I asked you about, where there was some kind of a mark—and I asked you if it was your check, and I think you identified it as your check.

A. Yes, that is right.

Q. "E. S. Pendleton"—is that your check?

A. Yes.

Q. "William S. Penick"?

A. Yes.

Q. Now, that check is in the next column—but is that check in the next column meant for that?

A. Yes, I would say so.

Q. That is your check, is it?

A. I would say so.

Q. "Peninsular Investment & Holding Company"?

A. Yes.

Q. And "E. S. Penn"—is that your check?

A. Yes, sir.

Q. "Charles P. Penney"—is that your check?

A. Yes.

Q. "Willis O. Penney"—that also has a check in the column to the right?

A. Yes.

Q. But that check goes to "William O. Penney", does it?

A. Yes.

Q. And you identify that as your check, do you?

A. Yes, sir.

Q. "Charles E. Penney"?

A. Yes.

Q. You identify that as your check?

A. Yes.

Q. "David C. Percival"—do you identify that as your check?

A. That check is here (indicating)—I don't know whether it applies to that—apparently it does.

Q. Well, is it your check?

A. Apparently.

Q. Do you identify it as your check?

A. Yes.

Q. "Alphonse Pericot"—that also has the check in the other column—does that go with "Alphonse Pericot"?

A. Yes, sir.

Q. Do you identify it as your check?

A. Yes.

Q. Now "Mrs. B. C. Perkins"?

A. Yes.

Q. You identify that as your check?

A. Yes, sir.

Q. "Charles Perkins"?

A. Yes, sir.

Q. You identify that as your check?

A. Yes.

Q. "Douglas Perkins"?

A. Yes.

Q. You identify that as your check?

A. Yes, sir.

Q. "James H. Perkins"—do you identify that as your check?

A. Yes, sir.

Q. "S. A. Perkins"—do you identify that as your check?

A. That is doubtful.

Q. You think that is doubtful whether it is yours?

A. It is more like a cross—I don't know whether it is a check or not—that is doubtful.

Q. That is the first doubtful one we have had on this page, isn't it—"F. E. Pernot"—there is no check on it at all. "Edward S. Perot"—do you identify that as your check?

A. Yes, sir.

Q. "Arthur Perry Est."—I suppose that means Estate?

A. Yes.

Q. Do you identify that as your check?

A. Yes, sir.

Q. "Bertrand H. Perry"—do you identify that as your check?

A. Yes, sir.

Q. "E. D. Perry"—do you identify that as your check?

A. Yes, sir.

Q. "Howard E. Perry"—do you identify that as your check?

A. Yes, sir.

Q. "Marsden J. Perry"—do you identify that as your check?

A. Yes, sir.

Q. "Norman A. Perry"—do you identify that as your check?

A. Yes, sir.

Q. "Dr. G. A. Persson"—do you identify that as your check?

A. Apparently.

Q. Well, what does "apparently" mean—the other answers have been "Yes, sir".

A. Well, make it yes, sir, then.

Q. "Andrew J. Peters"—is that your check?

A. Yes.

Q. "C. O. Peters"?

A. Yes, sir.

Q. That is yours—the check is yours?

A. I had better make that one doubtful—I mean I can't—

Q. Just what is there doubtful about that check, will you tell me, please?

A. Well, I am not certain about it, I mean as far as that goes, as I said before, some of the checks at the beginning here I know I sent these out, but there might be some reason that I didn't make that check.

Q. Let's take that page 571. If I remember your answers, on the first page 571, I think you have two doubt-

fuls, and one you said "apparently", and I asked you why you said "apparently" when you answered others "Yes, sir", and you said "Make that one yes, sir"—is that right?

A. Yes.

Q. That covers the page, is that right?

A. Yes.

Q. That covers the resume of that page, is that right?

A. Yes, sir.

Q. Let's take this page over here—page 576—we will skip from page 571 to 576. This is in the "Rs": Are these checks all yours, or are some of those doubtful—just look over them generally and perhaps we won't have to go over the whole page individual by individual.

A. A lot of these are doubtful.

Q. A lot of them are doubtful?

A. Yes, sir.

Q. As many as half or a third?

A. A lot of them.

Q. A lot of them on page 576 are doubtful, is that right?

A. Yes, sir.

Q. How about page 575?

A. Well, I can't pick every one of them out, as I say my checks are not always the same, and where I ended I don't know. I know that I—

Q. Are a lot of those doubtful on page 575?

A. The majority of them look like mine.

Q. Which ones are doubtful?

A. For instance, something like this (indicating).

Q. That is on page 574, Miss LaBar.

A. You want 575?

Q. Yes, for the moment.

A. They more or less all look like mine.

Q. What do you mean more or less?

A. As a matter of fact, I remember John S. Raskob.

Q. That name more or less caught your eye, did it?

A. Yes, sir.

Q. Do you mean you remember sending one to John S. Raskob?

A. Yes, I remember that.

Q. Has he got a check—is he checked?

A. Yes (indicating).

Q. Where is the check for "Jonathan S. Raymond"?

A. Some of these are on the right and some on the left—there is two on that one (indicating).

Q. It looks as if that bottom row there, on page 575, were short a check. You checked on "James H. Rand, Sr."—that is the bottom of the first column on page 575—then there is a check on "Raymond" right next to "Raskob", then a check on "Reckford", then there is another check there on the same column that might do for "Reese", but isn't it true that you have got five names there on the bottom, and only four checks—isn't that right?

A. There are two here too—I would say this check (indicating) applied to John S. Raskob because they are checked on this side.

Q. You point out there are two here, but there are two names too?

A. Oh, I see.

Q. It looks to me as if you got so excited on seeing Johnnie Raskob's name there, you didn't check them?

A. Well, I was sort of affiliated with him.

Q. It is short a check, isn't it—don't you think so—isn't that right?

A. One of them is.

Q. You wouldn't think of covering "John" by sending one to "Mrs.", would you? Now, let's see how about page 574?

A. They look like my checks.

Q. Do you notice that some of these checks here haven't got that sharp end on them, have they, like yours (indicating Respondents' Exhibit 4)?

A. That is why I said it is hard to determine where I ended, but the majority of these look like my checks, but you don't always make the same check.

Q. You wouldn't say definitely they are yours?

A. I would say those are practically all mine (indicating pages 574 and 575).

Q. When you say "practically", what do you mean?

A. Well, as I say, I couldn't swear that every one of them was my check.

Q. Isn't it true, right from the very beginning through whatever you did, you can't swear they are all yours, can you?

A. Practically. Naturally I started at a certain place in this book and I know I sent them out. Where I ended, I don't know, but I know I sent any amount of them out, and my checks are, as you can see, definite in many places, and then again you make a check in a hurry, it is not a replica of the previous one.

1462 E. D. WRIGHT recalled.

Re-Direct Examination.

By Mr. Shaw:

Q. Mr. Wright, you have been present during Miss LaBar's testimony, have you not?

A. Yes, I have.

Q. And you have heard her testify that she would take these circulars and would type in the names and addresses of the persons to whom the circulars were to be sent, and then she would put these circulars upon your desk for your signature, after which she would take them up from your desk and mail them?

A. That is right.

Q. Now, do you recall whether or not you would take any of these circulars out of this pile that she put

upon your desk for your signature, for the reason that you did not want them mailed?

A. Why of course not. We circularized every owner here (indicating Libelants' Exhibit 28 for identification), and that is our regular way of doing things. Why should I take them out?

Q. And did you sign the circulars that were put upon your desk for your signature?

A. Yes, sir.

Q. Did you instruct Miss LeBar or anyone else in your office not to actually mail some of the circulars that were put upon your desk, or any of them?

A. No, I did not.

Q. So far as you know, all of the circulars that were put upon your desk and you signed were actually mailed?

A. Yes, sir.

Re-Cross Examination.

By Mr. Clark:

Q. You didn't do the mailing, did you, Mr. Wright?

A. No. If I saw a bunch on the desk I may have put them in the box, but it would be very seldom, to answer the question fully.

Q. How many were there in your office at this time, September 1933?

A. Just the two of us—myself and secretary.

Q. And you never had more than one secretary at a time?

A. They overlapped for a day or two, one instructing another, something like that—not more than that.

Q. Did the secretary that you had before Miss LaBar came in—the secretary that went away for a vacation—how long had she been with you before September 15, 1933?

A. I couldn't answer offhand—she was probably with me for some years.

Q. Do you remember her name?

A. Bertha Pavlinek.

Q. Is that in your former testimony?

A. I think it is.

Mr. Shaw:

I will give you her name and address and telephone number.

Q. Then am I correct—and I gather this from Miss LaBar's testimony—that there was only one person working on that book (Libelants' Exhibit 28 for identification) at a time?

A. Correct.

Q. And how many worked on it—can you tell me that—1933 is what I am interested in.

A. That year it would be just Miss Pavlinek and Miss LaBar.

Q. Were the only two?

A. Yes, only two, because I had no extra secretary.

Q. Do you have any favorites when you are sending this stuff out, Mr. Wright?

A. How do you mean favorites?

Q. Well this: That starts—it says "Begin here" on page 567—and it starts with a check on "Nagle". Here is a check on "Myer", but I don't see any checks previous to that—that is what I am curious about.

A. I don't know exactly. I will tell you how the thing is—do you want it off the record or on—I can explain the thing: Each year we take the new book, check off the ones that we checked the year before, and put in all the new ones and circularize all the new yacht owners, that is that went in the year previous—just how this thing was done I don't know. I left that all to my secretary, I have all I can do without it.

Q. You see here the book "List of yacht owners" addresses, starts here in this book (Libelants' Exhibit 28

for identification), page 503 "As", and the first check is on the name "Charles K. Myer" on page 567.

A. No, I couldn't explain that.

Q. Then you have checks here—various kinds of checks—from 567 through the book—603 through the word "Zubrigg". You see what I mean? I am curious to know why all these others aren't circularized. Has it any significance at all?

A. I don't think so, because we circularized them from way back, and we wouldn't circularize half the book and not the other.

Q. The book doesn't show it, does it?

A. No.

Re-Direct Examination.

By Mr. Shaw:

Q. Could there have been another book that the rest were circularized from, do you know?

A. I couldn't tell you offhand.

United States District Court, Southern District of Florida, Miami Division.

Charles Coryell, et al., Libelants,
against
George J. Pilkington and John S. Phipps, Respondents.

Further deposition taken on behalf of the libelants, at the office of Messrs. Bigham, Englar, Jones & Houston, 99 John Street, New York City, November 6, 1939.

Appearances:

Messrs. Batchelor & Dyer, Messrs. Bigham, Englar, Jones & Houston (Mr. Matteson) for the libelants.

Messrs. Loftin, Stokes & Calkins, Ray C. Alley, Esq., Messrs. Burlingham, Veeder, Clark & Hupper (Mr. Underwood) for John S. Phipps.

It is stipulated that the testimony may be taken by a stenographer, signing, filing and certification being waived, stenographer's fees to be taxable.

1469 ANDREW J. SMITH, being duly sworn and examined for the libelants, testified as follows:

By Mr. Matteson:

Q. What is your occupation?

A. Marine surveyor.

Q. How long have you been engaged in that work?

A. Twenty-two years.

Q. Tell us generally what your experience has been.

A. Primarily, the handling of losses in the field, as far as letting contracts for repair and the inspection and valuation of various types of vessels for insurance purposes.

Q. What organization are you connected with?

A. Marine office of America.

Q. How much of your work has had to do with yachts of various types and classes?

A. In percentage, you mean?

Q. Just give us a general idea. Have you had a good deal to do with yachts, or not?

A. Considerable. It is probably less than half my total work, but I have had a good deal of yacht work from the time I joined the Company.

Q. Your surveying has to do with all classes of vessels?

A. Yes.

Q. Have you any connection with the National Fire Protection Association?

A. I am Secretary of the Marine Section, which was formerly the Marine Committee of the National Fire Protection Association.

Q. How long have you been connected with the National Fire Protection Association?

A. Since 1921 that I first acted as Secretary.

Q. Will you describe for us the organization and functions of the National Fire Protection Association.

Mr. Underwood:

I object to that on the ground that the testimony is incompetent and immaterial in this litigation.

A. It is a non-profit organization, composed of two classes of membership, the full membership being various business and scientific associations, and the associate membership composed of corporations and individuals. The object is the promulgation of standards for fire protection, general education of the public in the principles of fire protection.

Q. What is this pamphlet that I show you (handing witness pamphlet)?

A. Well, it is just what it says on the cover, Story of the National Fire Protection Association's aims, activities and current publications.

Q. Does that contain a description of the organization and its methods of operation?

Mr. Underwood:

Objected to as incompetent and immaterial.

A. Yes.

Mr. Matteson:

I offer it in evidence.

Mr. Underwood:

Objected to on the ground that it has not been properly identified, not properly proved, incompetent, irrelevant and immaterial.

It is marked Libelants' Exhibit 133.

Mr. Underwood:

Was this published in 1939, Mr. Smith?

The Witness:

I think it is the same one they have had for several years—just a descriptive pamphlet.

Mr. Underwood:

I call your attention to the date in the lower lefthand corner of the first page "D47-5M-6-39". Does that mean it was published in June 1939?

The Witness:

I don't know what it is, it is just their printer's mark—they have their own press.

Mr. Underwood:

Do you know when it was published?

The Witness:

Originally?

Mr. Underwood:

No, that paper (Libelants' Exhibit 133).

The Witness:

I don't know when the particular pamphlet was published.

Q. Mr. Smith, as long as some point has been made of the date of publication of this document (Libelants' Exhibit 133) I have shown you, I show you this one (handing witness another pamphlet), and ask you if you can tell me the date of publiction of this one.

A. You can tell by this printer's mark on the corner.

Q. And that says what?

Mr. Underwood:

I object to what that says.

A. "D-2-M-3-31". I presume it means the date of the edition—that particular printing.

Q. This second one that I have shown you, does that contain a list of the members of the National Fire Protection Association?

Mr. Underwood:

I object to that, no foundation laid.

A. That is what it says—the members.

Q. Do you have an official connection with this Association?

A. Yes, as Secretary of the Marine Section.

Q. Well, can you or can you not identify this pamphlet I am showing you now as a publication of that Association, showing its list of members as of 1931?

A. Yes, there is the 1931—it is evidently the edition date—printer's mark—and I can identify it as such.

Mr. Matteson:

I would like to withdraw the other exhibit (Libelants' Exhibit 133) and substitute this one.

Mr. Underwood:

When did you first see this paper which I have in my hand—the second one that Mr. Matteson showed you?

The Witness:

Just now.

Mr. Underwood:

You don't know any more about where it was printed or when than appears on the paper itself, do you?

The Witness:

That particular sheet, no, only what it says on it.

Mr. Underwood:
You are not an officer of the National Fire Protection Association, are you?

The Witness:
No.

Mr. Underwood:
You are not a member of it?

The Witness:
Only a representative of it.

Mr. Underwood:
That is to say, you are not a member?

The Witness:
No.

Mr. Underwood:
Do you know who the members were in 1931?

The Witness:
Not the complete list.

Mr. Underwood:
You can't say of your own knowledge whether this list on the second page is a complete list or an accurate list, can you?

The Witness:
Not of my own knowledge.

Mr. Underwood:
I object to it on the ground that it has not been properly proved, incompetent, irrelevant and immaterial.

Mr. Matteson:

It seems to me that the objections of counsel are very captious. The document is very evidently authentic, it is perfectly possible to prove it by an officer of the Association if required. The witness is Secretary of one of the important committees of the Association. I ask to have it substituted for the previous Exhibit 133.

Mr. Underwood:

I have no objection to substituting the second one for the first one, but I stand on my objection as to its admissibility in evidence.

The second pamphlet is marked Libelants' Exhibit 133.

Q. Can you tell us, Mr. Smith, from your connection with this Association, whether the statements contained in the reading part of this pamphlet, as to the activities and service organization of the Association are correct?

Mr. Underwood:

Objected to as incompetent, irrelevant and immaterial, not the proper way to prove it. The qualifications of the witness to speak for the Association have not been established.

A. I can say that I am familiar with a great many of these publications that are mentioned in there; and I am satisfied that that is a list of the publications as of the date of this pamphlet (Libelants' Exhibit 133).

Q. How about the list of members?

Mr. Underwood:

Same objection.

A. I can answer in the same way: I am satisfied that is a list of the members as of the date of that publication.

Q. How about the statements contained in the pamphlet with respect to the activities of the Association?

Mr. Underwood:

Same objection.

A. I don't recall whether I have read that particular edition or not, but I am satisfied that that is a correct statement of the activities, as of the date of that pamphlet.

Q. Well, will you glance over this reading material, in view of the fact that questions have been raised?

A. I am satisfied that that is a correct statement of their activities.

Q. Can you tell us of your own knowledge whether or not it is a fact that the National Association of Engine and Boat Manufacturers is a member of the Association?

A. They are now.

Q. Do you know how long they have been?

A. No, sir.

Q. Can you tell us whether they were in 1931?

A. I don't know from my own knowledge exactly what year they came in—whether 1931—but they are on the list of members of 1931, and that satisfies me.

Mr. Underwood:

I object to the latter part of that answer and move to strike it out.

Q. How about the American Institute of Architects?

A. I don't know.

Mr. Underwood:

I object to showing the witness the document and asking him to read what the document says.

A. I am satisfied that they were members at the time this pamphlet was published.

Q. In 1931?

A. That is what it says on there.

Q. The American Petroleum Institute?

A. They are members.

Q. The Bureau of Explosives?

A. They are members.

Q. The Diesel Engine Manufacturers Association?

A. They are members.

Q. International Association of Electrical Inspectors?

A. I don't know about that.

Q. Well, can you (handing witness Exhibit 133)—

A. I can verify it by this (referring to Exhibit 133). I don't see the International Association of Electrical Inspectors' name there.

Q. The International Association of Fire Fighters?

A. I don't know. (Referring to Exhibit 133.) I am satisfied that they are members.

Q. Underwriters' Laboratories, Inc.?

A. They are members.

Q. You know that of your own knowledge?

A. Yes.

Q. I show you Libelants' Exhibit 97 in this case, a publication entitled "Regulations governing Marine Fire Hazards", and ask you if you can tell me anything about the origin and publication of that pamphlet?

Mr. Underwood:

That question calls for a yes or no answer, does it not?

A. Yes.

Q. Will you tell us what you know of the origin and the circumstances of the publication of this pamphlet (Libelants' Exhibit 97)?

Mr. Underwood:

I object to that as incompetent, irrelevant and immaterial, not binding on the respondent Phipps.

A. About 1917 or 1918, a Marine Committee was formed in the National Fire Protection Association, that did not become active until about 1920, and in 1922 the first edition of the Regulations governing Marine Fire Hazards was submitted, approved and published. There was a second edition 1926, and 1930, which I have here (Libelants' Exhibit 97), is the third edition. That was approved by a committee representing the various marine interests, and the special subjects were handled by sub-committees, in which at least one or two members of the Marine Committee sat, and their work was compiled into these pamphlets.

Q. In this pamphlet, Libelants' Exhibit 97, there is one section headed "Appendix D. Internal Combustion Engines". Will you tell us what you know particularly about the origin of that set of regulations?

A. That was one of the sub-committees that were formed just prior to the second edition in 1926. Their work was submitted to the Marine Committee, which in turn submitted it, with some revision, to the National Fire Protection Association, and it was adopted as of 1926.

Q. You are referring now to the set of rules entitled "1926"?

A. 1926. That was further enlarged and amended in the 1930 edition by substantially the same sub-committee, it went through the same procedure.

Q. Is this book which I have in my hand a set of the 1926 regulations that you refer to?

A. Yes.

Mr. Matteson:

I offer it in evidence.

Mr. Underwood:

Objected to as incompetent, irrelevant and immaterial, not binding on the respondent Phipps.

It is marked Libelants' Exhibit 134.

Q. What is the most recent edition of these rules?

A. 1939.

Q. Is this pamphlet which I show you now, a copy of the most recent set?

A. Yes.

Mr. Matteson:

I offer it in evidence.

Mr. Underwood:

Objected to on the same grounds, and on the additional grounds it was not in force or effect at the time of this fire, and that it is not complete.

It is marked Libelants' Exhibit 135.

Q. You spoke of a set of 1922 rules. Did they have any separate rules with respect to motor craft?

A. No.

Q. Was this 1926 set the first set that had a subdivision relating to motor craft?

A. Yes, the Internal Combustion Engine rules.

Q. Did I understand you to say that somewhere along the line there was a change in the organization of the Marine Section?

A. Yes.

Q. When was that?

A. 1934, the Marine Committee became the Marine Section.

Q. So at the time these rules were drawn up, it was known as the Marine Committee, rather than the Marine Section, is it?

A. That is right.

Q. What was your connection with the Marine Committee?

A. Secretary.

Q. And did you occupy that position at the time all of these sets that have been referred to were published?

A. Yes.

Q. Under the Marine Committee, the sub-committee that prepared these rules, was known as what?

A. The Internal Combustion Engine Committee.

Q. Can you tell us what the membership of this committee is?

Mr. Underwood:

Let me make a general objection to this entire line of testimony—is that satisfactory?

Mr. Matteson:

Yes.

Mr. Underwood:

I object to the entire line of testimony sought to be elicited from this witness about the rules of the National Fire Protection Association, on the ground that the rules themselves have no binding force and effect on the respondent Phipps, and that their origin and history, the persons who considered them, and how they came to be published, is incompetent, irrelevant and immaterial, and I ask that that objection be taken to all the testimony of this witness along that line.

A. 1930, Mr. H. E. Newell, Chairman.

Q. And who was he?

A. He was one of the engineers of the National Board of Fire Underwriters. Mr. J. I. Banash.

Q. Who was he?

A. Consulting engineer, specializing in gases. Harte Cook, chief engineer of the McIntosh & Seymour Corporation.

Q. Who was the McIntosh & Seymour Corporation?

A. Diesel engine builders. George F. Crouch—

Mr. Underwood:

This is the sub-committee you are giving us?

The Witness:

This is the sub-committee, Internal Combustion Engines.

A. (Continuing.) He is the naval architect for Henry B. Nevin at City Island, also consulting yacht engineer and architect.

Q. And who are Henry B. Nevin?

A. Yacht builders. L. B. Jackson, chief engineer of Fairbanks Morse.

Q. And who are Fairbanks Morse?

A. Builders of gasoline and oil engines. They handle both service ignition and Diesels. J. L. Crone, he is the United States Supervising Inspector of the local New York district, I think it is No. 3, isn't it?

Q. Supervising Inspector of steam vessels?

A. Yes.

Q. That is his official title with the Government?

A. Yes. George A. Smith of the American Bureau of Shipping.

Q. Do you know what his connection with the American Bureau of Shipping was?

A. He is the man that had charge of any yacht work in the American Bureau. He is one of the engineers, he is not an outside surveyor—one of the engineers of the American Bureau of Shipping.

Q. What is the American Bureau of Shipping?

A. A classification society. A. E. Luders, he is the President of Luders Marine Construction Company, and on this committee represented the National Association of Engine and Boat Manufacturers.

Q. What is the National Association of Engine and Boat Manufacturers?

A. A trade association of boat and marine engine builders.

Q. What type of boats?

A. Mostly yachts—most of their work is primarily yachts.

Q. At the present time, who is chairman of the committee that has taken the place of the original committee?

A. Mr. Luders.

Q. He was a member at that time, and he is chairman now?

A. He is chairman now.

Q. What other members are there of the committee at the present time that were not on the committee at that time?

A. I think I can name them without looking, but I could certainly name several by checking back. Mr. F. T. Wright, who was an electrical engineer of the Underwriters' Laboratories, Mr. James Nelson, chief electrician of the Marine Basin Company.

Q. What is the Marine Basin Company?

A. A boat repair and service company.

Q. What kind of boats do they handle?

A. Commercial and yachts. Mr. E. D. Wright.

Q. Who is Mr. E. D. Wright?

A. Mr. Wright is the bureau for fire and explosion prevention on motorboats. He is engaged by a group of underwriters and the National Association of Engine and Boat Manufacturers. Mr. W. E. John—Mr. John is now with W. E. John Associates. They are a repair and service company for yachts at Hunts Point, Rye, New York. At the time of the selection to membership, he was representing the American Fireboat Association.

Q. Is Mr. Loeser—

A. Yes, Mr. John C. Loeser. He is a member of the firm of Gebauhr & Loeser of 66 Beaver Street—I think the address is. They are a firm of underwriters and marine surveyors, Mr. Loeser specializing on yachts.

Q. Now, going back to these 1930 rules, will you tell us what the gentlemen whom you name as being members of the committee at that time, had to do with the preparation of these rules contained in Appendix D, Libelants' Exhibit 97?

A. May I ask the question, to clarify my answer: Do you want the method of how these rules were drawn up?

Q. That is it exactly.

A. Mr. George A. Smith—there is another one I forgot—Captain A. B. Drisko—he is the surveyor for Chubb & Son, marine underwriters. Mr. George A. Smith, Captain A. B. Drisko and myself prepared a draft based on the 1926 edition, submitted that to the Motor Craft, or the Internal Combustion Engine Committee. They held several meetings, discussed all the details, agreed on changes or confirmed the draft, and in turn submitted that to the Marine Committee. Again it was discussed in the committee, and to my recollection very few changes were made, if any. That was submitted to the National Fire Protection Association and adopted to succeed the 1926 edition. I might add this: The procedure, in adopting by the National Fire Protection As-

sociation, requires the tentative submittal at one convention and the lapse of a year for the receipt of criticism or comment before it may be again put forward for final adoption. All these have gone through that procedure.

Q. And was the procedure similar with respect to the 1926 rules?

A. Yes.

Q. And also with respect to the 1939 rules?

A. No, because the 1939 rules, there were just a few amendments—it was with respect to the 1937. 1939 is almost a reprint of 1937, because the supply was exhausted and there were a few changes made but they were all submitted for final adoption specifically on the floor, and they did not require the year to lapse.

Q Otherwise the procedure was the same?

A. As in the case of the 1926, 1930 and 1937.

Q. And the consideration by the Committee—was that the same?

A. Yes.

Q. Going back to the 1930 rules, and speaking as of that date, they were published—

A. To be absolutely accurate on this: Since the Marine Committee became a Marine Section, the submittals are to the Marine Section as a body, and they are authorized by the NFPA, to approve their technical reports, but that is the same thing as the approval of the NFPA.

Q. When was this approval of the adoption by the Marine Section?

A. 1934.

Q. That was subsequent to the 1930?

A. Yes. 1937 never went before the convention, it was authorized by the convention—the Marine Section was authorized as a section to adopt its own promulgation.

Q. With respect to the 1930 rules, and speaking as of the date of the publication of these rules, what do these rules represent?

A. A standard of practice for the installation and operation of machinery and equipment for motor craft.

Q. In your opinion, Mr. Smith, based on your own experience with vessels of this type, do or do not the rules contained in Appendix D represent a standard of safe and proper practice on motor craft, as of that date?

Mr. Underwood:

Objected to as incompetent, not qualified.

A. I consider them so.

Q. In this publication of 1930, attention has been called to a provision that appears at the outset of the pamphlet on page 3, which reads, "No provision in these regulations is to be retroactive as regards construction." Will you tell me what the significance of that provision is?

Mr. Underwood:

Object to calling upon this witness to interpret the document. The question is incompetent, irrelevant and immaterial.

A. That clause was inserted on account of some objections that were raised on the part of builders principally, with the fear that it might involve serious difficulty in altering existing boats, if and when these rules were ever made mandatory by some enforcing organization, municipal or any other kind.

Mr. Underwood:

I move to strike out the answer on the ground that it is not responsive and purports to give the operations of the minds of other people.

Q. Does this provision mean that the rules under Appendix D are totally inapplicable to vessels constructed prior to 1930?

Mr. Underwood:
Objected to as incompetent, irrelevant and immaterial, calling for the construction of the written document, and I also object to the form of the question.

A. No, it does not.
Q. Well, in what respects are the applicability of the rules under Appendix D controlled by the provision to which I have called your attention?

Mr. Underwood:
Will it be satisfactory if I make a general objection to all these questions about the meaning of this clause, so that I won't have to interrupt the train of thought of both of you? Will that be all right?

Mr. Matteson:
Certainly.

Mr. Underwood:
I make the general objection then to the whole line of this testimony about the meaning of the retroactive clause.

A. Where they would involve unwarranted expense or impractical alterations to make an existing vessel comply. Where a piece of equipment or a fitting that can be changed without involving such difficulties, the rules would apply.
Q. What is the significance, in your opinion, of the words "as regards construction"—in what sense is "construction" used?

A. Any part of the vessel that is so built in that it would be impractical or unnecessarily expensive to take it out or change it, it would come under the change of construction which is exempted from retroactive application.

Q. Referring specifically to some of these regulations that appear here—I refer particularly to 1 (g), which reads: "Outlets on gas feed line for drawing loose gasoline for any purpose whatever are prohibited in the engine compartment." Is the applicability of that rule, in your opinion, affected by the preliminary provision?

Mr. Underwood:

I object to that on the same general grounds heretofore stated.

A. No.

Q. I refer specifically to provision 1 (i), which reads: "Shut-off valves or cocks of approved type, such as those having ground seats or plugs, shall be placed in the supply line from tank. One valve shall be placed as close to the tank as practicable, another as close to the carburetor as practicable." Would the applicability of that provision, in your opinion, be affected by the preliminary clause to which we referred?

A. No.

Q. Why do you say that, referring both to 1 (g) and 1 (i)?

A. Because neither is a difficult thing to alter to comply.

Q. I refer specifically to 1 (k), which reads: "Gauge glasses and try cocks shall not be used. Other methods of indicating the level of the liquid may be used, provided, however, that they are so arranged as not to expose the liquid or vapor." Would that, in your opinion, be affected by the preliminary clause?

A. No.

Q. I refer to Section 1 (m), which reads: "Auxiliary gasoline tanks shall be of a type permitting the same fill pipe and vent arrangement as required on main tanks in order to avoid handling of loose gasoline under deck. On existing installations, where tanks are mounted, or on integral with auxiliary power units, and it is impracticable to alter in compliance with the above, gasoline supply for such tanks shall be kept only in approved safety cans filled at a station, and particular care against spilling shall be exercised in the operation of filling the auxiliary tanks therefrom." Would that be affected, in your opinion, by the preliminary clause?

A. With the proviso, no.

Q. Now, referring to 2 (a): "All fuel piping shall be seamless drawn annealed copper tubing or I. P. S. copper pipe." Would that, in your opinion, be affected by the preliminary clause?

A. No.

Q. Why not?

A. It is not very difficult to change a feed line.

Q. Would the balance of the provisions with respect to fuel piping, (b), (c), (d) and (e), as recorded here, be affected by the preliminary clause, in your opinion?

A. No.

Q. Under 3 (a): "All carburetors shall have integral therewith or properly secured thereto an approved drip collector. This shall be drained by a device for effectively returning drip to engine intake or discharging it overboard." Would that be affected, in your opinion, by the preliminary clause?

A. No.

Q. I call your attention to Section 6 on ventilation, the first paragraph of which reads: "Any compartment or space in which a motor is located, particularly the lower portion and bilges, shall be provided with ventila-

tion effective to remove all accumulation of flammable or explosive vapor. Tank compartments should be similarly ventilated when practicable." Would that, in your opinion, be affected by the preliminary clause?

A. No.

Q. Why not?

A. Because almost any boat can be fitted with proper ventilation system without undue structural changes.

Q. There are certain provisions here under the heading of "Operation", the first paragraph of which reads: "Attention is called to the hazard involved in the handling of gasoline. An atmospheric concentration as low as 1-1/4 percent is practically odorless, but is sufficient to create a mixture which may be exploded by a slight spark. Such explosive vapor may travel a considerable distance from the point of leakage." Can you tell us, from your experience, whether or not those statements are correct?

Mr. Underwood:

Objected to as incompetent, irrelevant and immaterial, not qualified.

A. Not from my personal experience, because I am not a chemist and never tested it. I can tell you on very good authority that they are.

Mr. Underwood:

I move to strike out the latter sentence in the answer.

Q. When you refer to good authority, what do you have in mind?

Mr. Underwood:

I object to that as incompetent, irrelevant and immaterial, calling for hearsay.

A. The United States Bureau of Standards and the Underwriters' Laboratories.

Q. Some question is raised here of your qualifications, Mr. Smith. Will you tell us at this point how much experience you have had in connections with gasoline boats and explosions or fires occurring thereon?

A. I have been surveyor for the Marine Office of America since 1917. In that time, I have attended surveys on numerous fire and explosion cases, and have had a chance to observe firsthand the results and investigate the causes.

Q. Can you give us any idea how frequently your experience has been in that connection?

A. It is safe to say that there have been several every season.

Q. As surveyor, has it or has it not been part of your duty to investigate the causes of such explosions?

A. It has.

Q. In connection with work of this committee of the National Fire Protection Association with which you have been connected, has there been any investigation or consideration of the properties of gasoline and the causes of explosion?

Mr. Underwood:

Same objections.

A. Not of the properties of gasoline, because those have been taken from the authorities I have already mentioned. The investigation in connection with this committee work has been a recital of numerous instances from various members of the committee of their own experiences as well as my own individually, and the information obtained has been used in compiling these rules for prevention.

Q. I call your attention to the following statement, also under "Operation", immediately following that which

I read: "Gasoline vapors are heavier than air and do not readily escape from low-lying pockets such as bilges or tank bottoms." As a result of your experience and study of the subject, can you say whether or not that is a correct statement?

Mr. Underwood:

Objected to as incompetent, irrelevant and immaterial, and the witness not qualified.

A. From my observation of results, I am convinced that it is true.

Q. Now, in this book of rules—referring to Exhibit 97, 1930 edition—there is a section having to do with "Electrical Installations". Can you tell us the source of those rules?

A. There are a few paragraphs of a general character in that edition nothing some precautions against improper installations of sub-standard voltages, that is below 110, and refers to the then current rules of the American Institute of Electrical Engineers, entitled "Recommended Practice for Electrical Installation on Shipboard".

Q. You refer to this paragraph at the head of page 26?

A. These are all excerpts from the A I E E, 1927.

Q. What are excerpts—the rules themselves, you mean?

A. Yes, all these paragraphs are direct quotations.

Q. Paragraphs from 1 through 19?

A. Through and including 19.

Q. I notice after each one of the numbers, there is another number in parenthesis. Will you tell me what that is?

A. Those refer to the A I E E numbers.

Q. I notice that under Appendix D, paragraph 11 (a); there is a provision that "Electrical Installations operat-

ing at potential of over 32 volts shall be in accordance with Appendix B (A I E E Marine Rules)." Is the reference there to these rules under "Electrical Installations" to which we have just referred?

A. Yes.

Q. Now, with respect to these rules on "Electrical Installations", would they in your opinion be affected by the preliminary construction paragraph?

Mr. Underwood:

Same objection as previously noted.

A. That would depend somewhat on each individual case, they might not and they might.

Q. The factors to take into account would be what?

A. What would be involved in making the change.

Q. That is, when you say what would be involved—

A. The extent and cost of work involved in making the change to comply.

Q. By that, do you or do you not mean whether structural changes would be required?

A. They might be.

Q. How would that affect the situation?

Mr. Underwood:

I take it my objection runs to this whole line.

A. That clause might be cited as not requiring strict compliance with the A I E E.

Q. In what cases?

A. In changing the type and method of installation of the wiring, very often it would involve removal of a great deal of boat structure to make the changes. On the other hand it is possible the change would be made without materially affecting the construction.

Q. The yacht Seminole, which is involved in this litigation, was a vessel which was built in 1904 as a steam

vessel and converted about 1923 to gasoline motor power. She was approximately 110 feet long with steel hull and wooden superstructure of the houseboat type; was equipped with two 125 horsepower Winton engines; her supply of energy was derived from four cylindrical galvanized iron tanks of approximately 500 gallons each in capacity. This vessel was destroyed by an explosion and/or fire in June 1935. Please state your own opinion, in the light of your experience and study, as to whether or not the rules and recommendations set forth in Appendix D of Exhibit 97, constituted a proper standard of prudent and good practice for safety on a vessel of this type as of the years 1930 to 1935.

Mr. Underwood:

Objected to as incompetent, irrelevant and immaterial, the witness not qualified, and as a hypothetical question, sufficient facts are not stated.

A. Yes.

Q. Now, referring specifically to item 1 (g), which provides that "Outlets on gas feed line for drawing loose gasoline for any purpose whatever are prohibited in the engine compartment", what in your opinion is the reason or importance of that rule?

Mr. Underwood:

Same objection.

A. It involves the exposure of loose gasoline below decks, a draw-off connection with an open end, in case of any leakage or accidental derangement, would drip or flow into a closed compartment. The draw-off below decks is used for taking a supply in a container to be carried either to the auxiliaries or to the motors on deck, which again involves the loose handling of gasoline be-

low decks, and all of these are considered by the committee, which drew that rule, as potential hazards warranting the prohibiton of draw-off connections.

Mr. Underwood:

I move to strike out particularly the last two or three phrases.

Q. In your opinion, would the fact that gasoline was required for the priming of the engines make any difference?

A. No.

Q. Why not?

A. Because, if they must carry gasoline for priming the motors, it should be carried the same, or as it is recommended for the auxiliaries, in a safety can filled ashore.

Q. Anything impracticable about that?

A. No.

Q. Would it make any difference in your opinion as to the applicability of this provision, whether or not the yacht was in charge of a competent owner?

A. No, it is not a safe practice.

Q. I would like to ask you about this provision with respect to fuel piping. It says, "All fuel piping shall be seamless drawn annealed copper tubing or I P S copper pipe." What is the reason, in your opinion, for that provision?

Mr. Underwood:

Same objection.

A. Copper tubing lets itself to installation in one length with joints only at the ends, and can be more easily worked around obstructions in the leads, and the alternative I P S copper pipe is a superior quality to the commercial run of brass pipe.

Q. What is the advantage of being able to run the pipe with only connections at the ends?

A. Elimination of thread connections which form a nucleus for leaks, either due to vibration or improper setting up or to any accidental blow on the line.

Q. There has been some suggestion here, Mr. Smith, that there is a difference between conditions in Florida and conditions in the north, with respect to the importance of complying with rules such as these contained in Exhibit 97. What can you say as to that?

Mr. Underwood:

Objected to as incompetent, irrelevant and immaterial, the witness not qualified.

A. These rules were drawn to apply to the usual yacht season, which is north in summer or southern winter. They do not differ materially from each other.

Mr. Underwood:

I move to strike that out as not responsive, and purporting to give the operations of the minds of others.

Q. In your opinion, are they affected to any extent by the fact that in southern waters at times of operation of these vessels, it is quite usual to have the windows and other openings of a vessel open?

Mr. Underwood:

Same objection.

A. In the first place, I do not concede that it is any more likely to have them open than it is north in summer.

Q. And would the fact that the vessels can be operated ordinarily with windows open, make any difference in the applicability, for instance, of those provisions with respect to ventilation?

Mr. Underwood:

Same objection.

A. No.

Q. Why is that?

A. Because the portion of the hull to be ventilated is the portion below the water-line and any overhead ventilation has very little effect on the heavier than air gases which may accumulate in the bottom or bilges of the boat.

Q. In this yacht, the Seminole, her engineroom was amidships, and just forward of the engineroom there was a compartment in which there were placed on a platform, approximately two feet above the floor of the engineroom, four gasoline tanks which were galvanized iron tanks forty-two inches in diameter and approximately seven feet high. The width of the compartmeent forward and aft was only about forty-three or forty-four inches, the length of the compartment was approximately seventeen feet. The compartment was closed off from the engineroom by a steel bulkhead, and the tanks were not accessible for inspection. There was no ventilation in the compartment except four holes through which the filling lines ran, and four holes through which the outlet lines ran, approximately five inches in diameter. Below the level of the tanks there was an opening into the compartment approximately two feet high and twenty-four inches wide. The bilge was approximately seventeen inches below the floor of the engineroom. In your opinion, was or was not that a proper installation for gasoline tanks?

Mr. Underwood:

Objected to as incompetent, irrelevant and immaterial, the witness not qualified, and not sufficient facts stated.

A. I would not consider that a good installation.

Q. And why not?

A. A steel tank, even though galvanized, that is not accessible for inspection, is a potential hazard. The ventilation of that compartment, as you describe it, I would not consider adequate, there is every chance, in the case of any tank leakage, of a dangerous gas pocket forming.

Q. Why do you say that the tanks, not subject to inspection, are potential hazards?

A. Any ferrous metal tank in time becomes subject to corrosion, and more quickly than tanks of non-ferrous metals. Therefore, they do require more careful care in their upkeep, and it is recommended that such tanks should be galvanized after their construction—I don't know what these were. If there is any threads cut in the tanks after galvanizing, that is a serious hazard for a point of corrosion attack.

Q. Do tanks of that character require any treatment for their upkeep?

A. Not as long as the galvanizing is good. The only thing to do to galvanize a tank, is when corrosion sets in, to take it out, it is difficult to make any coating hold.

Q. Did you ever hear of painting such tanks?

A. Yes. It is difficult to make the paint stay on galvanizing.

Q. The engineroom which was just astern of this tank compartment I have referred to, extended the width of the boat, which is about twenty feet, and fore and aft it was approximately sixteen or seventeen feet, but on the starboard side of the engineroom, for a height of two or three feet above the floor, there was a passageway which projected into the engineroom, which was shut off from the engineroom by a steel bulkhead and floor. The ventilation in the engineroom consisted of a

skylight, two fourteen-inch funnel ventilators, one placed each side of the skylight but not extending more than a few inches into the engineroom; on each side of the engineroom there was a window, one on the port side leading outboard, one on the starboard side leading into this passageway. Will you state whether or not in your opinion such ventilation would be adequate for the removal of any gasoline vapors that might accumulate in the engineroom?

Mr. Underwood:

Objected to on the ground that the witness has not been adequately qualified, and on the ground that the hypothetical question fails to state sufficient facts.

A. I do not consider it adequate ventilation of the entire engineroom.

Q. And why not?

A. Because there is no current of air set up in the bilges or below the accommodation floors which would seep through the part of the engineroom most liable to accumulation of dangerous vapors.

Q. There has been a suggestion in the case that there were also in this engineroom, on each side, four two-inch pipes leading from the upper deck to the bilges. On the upper deck, the pipes projected about six or eight inches. They were finished off with goosenecks, which turned back so that they pointed outwards towards the deck about two or three inches clear of the deck. In your opinion, if those were present, in addition to the other ventilation I have mentioned, would the ventilation in that case, in your opinion, be adequate?

Mr. Underwood:

Same objection.

A. Such pipes as you describe form vents, not ventilation. In order to have ventilation, there must be a circulation of current of air traveling from an inlet to an outlet, or induced through an outlet with air coming into the inlet. The set-up you describe does not provide the injection of air to the danger spots—that is the lower part of the compartment. The two-inch pipes on either side will act as breathers for any ventilation under pressure, that is about all, and they would not induce the flow of air out of them except air be forced in at their approximate level of intake.

Q. What would be the effect of having windows on the upper parts of the sides of the engineroom, with respect to air coming in through the ventilators—these fourteen-inch ventilators that I have mentioned?

A. It would no doubt keep the upper part of the engineroom clear and fresh.

Q. And where would the circulation be with respect to any air coming in through the ventilator?

A. The path of least resistance; the upper part of the engineroom, in through the vent cowls and out through the windows or hatch.

Q. It has been suggested here that air coming in through the fourteen-inch ventilator pipes would build up a pressure which would force our bilge gases through the two-inch pipes that I have described. In your opinion would that be so?

A. It would not build up a pressure in an open compartment. The force of air is only a dynamic flow of air through the ventilators that will escape without building up a pressure throughout the compartment.

Q. One other thing I meant to ask you: Are you familiar with these regulations and cover letter of E. D. Wright, a copy of which has been marked Libelants' Exhibit 24?

A. Yes.

Q. Will you tell us what you know about those?

Mr. Underwood:

Objected to on the grounds previously stated with reference to the rules of the National Fire Protection Association.

A. These were originally drawn by Mr. Wright and Mr. Hudson of the National Board of Fire Underwriters, about the same time that the Internal Combustion Engine Committee was working on the 1930 edition of the rules. While neither Mr. Wright nor Mr. Hudson were members of that committee at that time, both were cognizant of what was going on, and information was freely exchanged between them and members of the committee. This was gotten out as a brief statement of fire and explosion hazards to be encountered on boats, and their means of prevention for popular and owner consumption, whereas the N F P A rules are more familiar standards of practice for size of anybody that chooses to read them. This (Exhibit 24) only recites the common causes of fires and explosions, but they are not contradictory to the N F P A in any material detail.

Q. In your opinion, do these regulations set forth in Exhibit 24 afford a reasonable and proper standard of practice for owners of gasoline vessels, as of the year they were published—1929?

Mr. Underwood:

Objected to on the same grounds as previously stated with reference to the rules of the National Fire Protection Association.

A. Yes, as far as they go. They do not take in all the phases that the N F P A rules do.

Q. I notice that these rules of 1930 also contain an Appendix A "Regulations for Freeing Oil Tanks, Bunkers, and Compartments of Dangerous Concentration of Flam-

mable, Explosive or Toxic Gases Previous to Entering for any Purpose or Making Repairs on Oil-burning or Oil Tank Vessels". Do you know what the origin of those rules is?

Mr. Underwood:
Same objections.

A. They were drafted by one of the sub-committees of the Marine Committee, primarily as a standard practice for repair yards.

Q. And in your opinion do they represent a proper standard of practice?

Mr. Underwood:
Same objection as to similar questions.

A. Yes.

Cross Examination.

By Mr. Underwood:

Q. Mr. Smith, this Appendix A has to do primarily with the gas-freeing of compartments for the making of repairs?

A. Yes.

Q. Does it ever happen that an explosion occurs after a vessel was declared gas-free by a chemist?

A. Yes. There is a human element in there.

Q. How long have you been employed by the Marine Office, Mr. Smith?

A. Since 1919, when the Marine Office started.

Q. What is the Marine Office of America?

A. It is a trade name.

Q. For what?

A. Under which a group of insurance companies do their marine business.

Q. What insurance companies are those?

A. The original seven I can name—there are a number of other specialty companies that have come in since, but I couldn't give you the whole list without getting a letterhead. The original seven are Continental, the Fidelity-Phoenix, the Hanover, the Firemen's and the American and the Glen Falls and the American Eagle.

Q. Can you remember the others that are now a part of the Marine Office, that you haven't named?

A. No, I couldn't remember the whole list of them; I think there are sixteen all told.

Q. Will you give Mr. Matteson a complete list of those now included in the Marine Office, so he can give them to the stenographer to add to your question?

A. Yes, I will get that.

Q. Will you do that?

A. Yes.

Q. There are sixteen altogether now?

A. I think there are sixteen—I am not quite sure.

Q. About sixteen?

A. About sixteen.

Q. And those insurance companies are your employer?

A. Yes.

Q. And your business is working for them?

A. Yes.

Q. How many of the boats damaged or destroyed in this Seminole fire were insured with those companies?

A. None.

Q. Are you sure about that?

A. So they told me, we had no interest in it.

Q. Do you know that of your own knowledge?

A. Know it of my own—

Q. You say they told you?

A. The office told me we had no interest. I asked them, they said we had no interest in any boats that were destroyed.

Q. And your business is that of a surveyor?

A. Yes.

Q. Primarily damage surveys?

A. Damage surveys have first call on my time, I drop everything else and go on such cases when I have them.

Q. I am thinking about volume. Is that the larger volume or not?

A. No, it is the lesser volume.

Q. And what is the other part of the volume?

A. Inspection preliminary to the underwriting, inspection of the risks on which we have application.

Q. That is, the boat owner wants insurance and he makes an application to one of your companies, and part of your duties consists, on occasion, of examining the vessels that are sought to be insured, is that right?

A. Yes.

Q. Do you fix the rate?

A. No.

Q. Do you look them over to see whether they comply with certain rules?

A. I do.

Q. Are these rules of the National Fire Protection Association one of the rules that you use to see if they comply with them?

A. I do.

Q. And I take it you never insure a boat unless she complies with all these rules?

A. You are mistaken there.

Q. You mean you do insure vessels that don't comply with the rules?

A. There are some minor particulars in there that we have to waive, for one reason or another—in other words, we do not insist on absolute compliance with everything that is in there, in order, in our business, to accept a boat. Minor—

Q. Let's get away from major and minor, because you and I may get into a discussion of what is major and

what is minor. I take it from what you say then that you do insure boats that do not in all particulars comply with those rules?

A. We have such boats on our books.

Q. Do you use the rules of the Bureau for the prevention of explosion and fire on motorboats, in checking over the boats for applicants?

A. Yes.

Q. And I take it you insure some boats that don't comply in all respects with those rules too?

A. Not to every last detail, possibly.

Q. It is a matter of using your own judgment, is it?

A. Well now, there again you bring in the major and minor—there are certain things which we absolutely will not take on a boat.

Q. And whether or not a particular boat's deficiencies, judged by these standards, are sufficient to cause you to recommend against insurance, is a matter of your own judgment, is that right?

A. It is. I would say—

Q. I think you have answered my question, thank you. Do you have any other jobs besides the one you have mentioned—I mean do you work for anybody else besides the Marine Office?

A. No.

Q. That is your only employer ordinarily?

A. My only employer. I wouldn't say I have never done an outside job?

Q. They are your only regular employer?

A. Only regular employer.

Q. Your principal source of livelihood?

A. Yes.

Q. Who is the head of the Marine Section now?

A. Mr. S. D. McComb, Chairman.

Q. And he is President of what insurance company?

A. None—manager of the Marine Office of America.

Q. And he has been head of that committee or section for how long?

A. Since 1920, the same time I came on as Secretary.

Q. Do you own a boat?

A. Not now.

Q. How long since you owned one?

A. The last boat I owned was before the Marine Office of America—before I came with the Marine Office of America.

Q. Was that a power boat?

A. A small one.

Q. How big?

A. Eighteen feet.

Q. Pretty near twenty years ago?

A. About that.

Q. Do you operate a boat?

A. I can.

Q. Do you?

A. No.

Q. Have you operated one since you got rid of your own?

A. Yes.

Q. How many times?

A. Oh, I guess a dozen or some times, maybe more—boats of friends.

Q. Various types of boats?

A. Both power and sail. I have done a good deal of sailing—also power boats.

Q. You don't know of any compulsion exerted on the owners of the power boats to make them comply with the rules of the N F P A or Wright's bureau, do you?

A. Legal, you mean?

Q. Any compulsion, I said.

A. The only compulsion there is, it is difficult to get insurance unless they comply in the major respects.

That is hardly compulsion, because they don't have to insure.

Q. I think you said that these rules might or might not apply insofar as the electrical installation is concerned to a boat existing prior to the 1930 rules, depending upon the extent of the work that would have to be done to bring them up to compliance with the rules?

A. Yes.

Q. And in any specific case, it is the job of the underwriter's surveyor, who is surveying the applicant's boat, to determine whether the condition is such that it would be too extensive or not, is that correct?

A. So far as our office is concerned, it is.

Q. And I take it that applies generally to all the requirements of Appendix D, is that correct?

A. Not so far as our office is concerned. I can cite you some there that we will not take—some conditions—

Q. That is, so far as your office is concerned, no matter how extensive the alterations might be, still you wouldn't take them?

A. No, I don't say that.

Q. Perhaps I didn't put my question properly. Let's see if I can try it again: So far as your office practice is concerned, there are some boats you wouldn't take unless they made changes, no matter how extensive those changes might be, is that what you mean?

A. Yes, but it is hardly from a fire protection standpoint.

Q. Well, this case has been pretty much confined to fire prevention. Let's limit my question to fire prevention. Considering the 1930 rules, insofar as they cover the fire hazard, is it the fact that there are some vessels you won't take unless they make changes, no matter how deeply structural and expensive they may be?

A. Yes.

Q. And I take it there are other situations involving boats that you will pass, although they don't meet the

specific requirements of the 1930 rules, because in your judgment, to bring them up to full compliance, would be too extensive and too expensive, is that correct?

A. No. If they do not meet those requirements in my judgment, we tell them we feel our recommendations are prohibitive, we will go back and do nothing, or we will tell them what we want done. Sometimes it involves a good deal. Sometimes an owner will go ahead and carry out, we help him all we can, and in some details the possibility is that we can reasonably waive letter compliance with some of the requirements.

Q. I don't quite understand your answer, and I would like to get a categorical answer from you if I can. Are there situations where the boat does not comply literally with all the requirements of the 1930 rules, which you will nevertheless pass because the rules are not retroactive and because the changes that would have to be made to bring them up to all the detailed requirements would be too extensive?

A. No. Those are the kind of boats we turn down.

Q. Then are you telling me that you will not pass any boat that does not live up to all the rules?

A. No, there may be some—

Q. Has there ever been a situation where you gave effect to the paragraph that says "No provision in these regulations is to be retroactive as regards construction" by accepting and passing a boat, although she didn't live up, letter perfect, to these rules, because to make her do so would involve too extensive an alteration job?

A. We have done that.

Q. Whether the repairs required or the changes required to bring the vessel up to literal requirement with the rules are too great, is a matter, in the first instance, of your judgment when you are surveyor on the job?

A. Yes. May I add a statement that has a material bearing on that?

Q. Sure, you can add anything you like.

A. Knowledge of the operating personnel and ownership has very considerable weight on how close they are held to the letter compliance with those rules. That is a factor that hasn't been brought out, but a material one.

Q. You mean that you give that weight?

A. We certainly do, where we know an owner and a record, or know a master and engineer—we have acquaintance with a good many.

Q. What is I P S copper pipe?

A. Iron pipe size—standard pipe size.

Q. Well, a feed made up of copper pipe is made up with connections of the same general type as brass pipe, isn't it?

A. That is true. What edition have you there?

Q. 1930.

A. Does it go on and say anything further about how those junctions should be made up?

Q. Of course I am not the witness, Mr. Smith.

A. That is not complete then. Whether it is in that edition or not, I do not recall.

Q. Do you want to look?

A. If I may.

Q. Certainly.

A. (Referring to Libelants' Exhibit 97.) No, it is not in this edition.

Mr. Matteson:

Is this what you are looking for (indicating in Libelants' Exhibit 97)?

A. (Continuing.) Yes, it is too, it is under "(b)", as they approve the material under "(a)", "Fittings and connections for tube shall be at least equal to the solderless pipe of the S. A. E. Standard Practice Code and

for pipe, with the exceptions of ground unions, shall be standard pipe threaded and soldered." It calls for soldering of those threaded connections.

Q. Why do you add that?

A. For the same reason I explained, the general objection to the screwed pipe, as a reenforcement for tightness of the screwed joints in pipe and fittings.

Q. Why do you mention that in answer to my question about whether or not brass pipe is made up the same way as copper pipe?

A. It really wasn't in answer to that question.

Q. Then I want to know why you mentioned it?

A. Because the first question was only as to the approval of tube or I P S copper pipe.

Q. Have you been told that the Seminole's feed line wasn't soldered?

A. No.

Q. You haven't been told that?

A. No.

Q. You just volunteered that because you thought it might be helpful to somebody, is that right?

A. I volunteered it because the copper pipe is specified in there to have soldered joints.

Q. You realize I asked you as to whether the pipe should be made up in one way or another, do you?

A. Yes. It is made up with fittings.

Q. That is all I asked you, isn't it?

A. Yes.

Q. Why did you search out this provision about soldering, and volunteer that?

A. As I remember it, the copper pipe was recommended to be soldered—soldered joints.

Q. You don't know that that might have any application to this case at all?

A. No.

Q. Is there anything else you want to volunteer now?

A. No.

Q. Did I understand you to say, with reference to Paragraph 6 of Appendix D—and suppose you look at it—that none of those requirements are affected by the proviso at the beginning "No provision in these regulations is to be retroactive as regards construction"?

A. Yes.

Q. That is to say, your testimony is that no matter what the boat—how her construction is—these rules apply to her as to ventilation, no matter how difficult it might be to make her line up to those rules letter perfect or how much other ventilation she has, is that correct?

A. Not entirely. My answer to that was—

Q. Just a minute, please. You mean to say then that there might be a boat that would have adequate ventilation although she didn't live up to those rules?

A. No.

Q. You can't conceive of a boat having adequate ventilation without living up to that rule, is that correct?

A. Without living up to the recommendation in here for bilge or bottom ventilation.

Q. She has got to have that, no matter how difficult the changes of construction might be in order to live up to the rules, is that right?

A. Yes.

Q. So that unless she has bilge ventilation, no boat complies with these rules, notwithstanding the proviso about the rules not being retroactive as regards construction?

A. Yes.

Q. That is your opinion?

A. That is my opinion.

Q. That is a little broader opinion than you expressed in answer to Mr. Matteson's questions, isn't it, Mr. Smith?

A. If I recall correctly, I answered Mr. Matteson's somewhat similar question to the effect that the installa-

tion of ventilation to the bilges is not a prohibitively expensive or difficult job, in some way or other, it is not prohibitively an expensive or difficult job, though no two boats are the same—it must be fitted to the individual existing job.

Q. According to my notes, you said almost any boat can be fitted with proper ventilation system without undue structural change. Do you want to strike out the "almost", and say that any boat can?

A. No, I will let the "almost" stand.

Q. Have you had any experience with an explosion on a boat resulting from kerosene in the cooking supply?

A. Not an explosion.

Q. A flash, fire or what?

A. Yes, have had fire.

Q. Do you know what kerosene vapor does with respect to air—is it heavier than air or lighter than air?

A. I don't know about kerosene vapor.

Q. Do you know whether it is heavier or lighter than vapor?

A. Kerosene is certainly heavier than air, but I don't know the formula.

Q. I wouldn't ask you for the specific gravity of it. What is the biggest boat you have operated, Mr. Smith—power boat?

A. 36 footer.

Q. What type of motors did she have?

A. Gasoline motor.

Q. What type—what motor?

A. A Gray, I believe.

Q. One motor?

A. Yes.

Q. Did she have a self-starter?

A. Yes.

Q. Did you have a choke on the carburetor?

A. I don't recall.

Q. Did you ever operate a boat with two 6-cylinder Winton engines in it?

A. No.

Q. Did you ever operate a boat with one 6-cylinder Winton engine in it?

A. No.

Q. Has your operation of power boats been confined to the vicinity of New York?

A. Yes.

Q. In the harbor and in the Sound?

A. Yes.

Q. How far east have you gone—what is the farthest?

A. Port Jefferson.

Q. You have never been aboard the Seminole, I take it?

A. No.

Q. Have you ever made any tests to determine the flow of air through a cowl ventilator in an engineroom?

A. Model—model tests.

Q. Never did it on a life-sized boat?

A. Only by using a little dust shaken from a piece of waste.

Q. To see which way it goes?

A. Yes, to see whether it travels.

Q. How many times have you done that?

A. Several times when trying out just for that purpose.

Q. What type of boat have you done that in?

A. It was on a rather small cruiser, as I recall, some time ago.

Q. Do you remember how big her engineroom was?

A. A small engineroom—about, I suppose, seven or eight feet beam.

Q. And how tight?

A. Four or four and a half feet.

Q. A man couldn't stand erect in it?

A. No.

Q. In operation of the boat, was the engineroom closed?

A. Yes.

Q. A great many boats are built like that, aren't they?

A. Yes.

Q. Where the engine is operated from the pilothouse or some point on deck?

A. Yes.

Q. Where was the gasoline supply tank in that boat?

A. I don't recall that.

Q. Was it in a space that a man could enter?

A. I say I don't recall just where it was.

Q. As a matter of fact, you have seen a great many boats in recent years that have their gasoline tanks entirely surrounded by joiner work, haven't you?

A. Yes.

Q. Where a man can't enter to see them at all, is that right?

A. Yes.

Q. You pass a great many of those, don't you?

A. Copper tanks.

Q. You pass them?

A. Pass them with copper tanks.

Q. The tanks are not subject to visual inspection, is that right?

A. They are copper tanks—yes.

Q. You don't even look to see the gauge of the copper?

A. Can't tell if you did.

Q. Copper too is subject to corrosion, isn't it?

A. To some extent.

Q. A great many of those stock boats are built that way, aren't they?

A. What way?

Q. With tanks in a space where no human being could get for a visual inspection, isn't that so?

A. Yes.

Q. Did you ever make any tests for the effect of ventilation through cowl ventilators in an engineroom the size of the Seminole?

A. No.

Q. Or anywhere near that size?

A. No.

Q. Do you know the word convection?

A. Yes.

Q. What does it mean to you?

A. Transfer of heat. I wouldn't undertake the definition of it. I answered correctly when I say I know the word, but I wouldn't undertake to define it.

Q. Do you know how the law of convection operates?

A. No. I have read it, but I don't remember it.

Q. I take it that your reason for saying that in your opinion the installation of the Seminole tanks was not good installation from the ventilation standpoint, was because you felt that any vapor or gasoline coming from the tanks would drop down into the bilge, from which it couldn't get out, is that correct?

A. As I understand the construction of the Seminole, there was a tight flat under the tanks.

Q. Tell us what you understand by a flat.

A. It is just a deck in that compartment on which the tanks were resting—it was down below.

Q. How far below the tanks do you understand that was?

A. The tanks were on it.

Q. Didn't you say that you thought those tanks ought to be situated so they could be easily inspected?

A. Not those tanks, because they couldn't be. I said that was one reason why I didn't consider it a good installation, to have those large tanks as closely enclosed—large iron tanks or steel tanks whatever they were—as closely enclosed as described in that compartment.

Q. Because of the flat beneath them, and because they couldn't be visually inspected?

A. Not the flat particularly, not because of the flat, that would retain any escaping vapor rather than letting it get into the bilge. The flat was not a particular objection as such, but the fact of their being inaccessible I did consider it objectionable.

Q. That is an objection in your opinion because if they were subject to inspection one could see them and inspect them and perhaps discover any leak, is that right?

A. Yes.

Q. If there is another method of discovering leakage, I don't suppose that objection stands, does it?

A. Well, I think that depends on what your other method is.

Q. Can you tell much about whether a tank leaks by visual inspection?

A. You can tell very well with gasoline.

Q. What are the signs—does it show up readily?

A. Moisture around the rivets.

Q. You can smell it too, can't you?

A. And you can smell it.

Re-Direct Examination.

By Mr. Matteson:

Q. I think, Mr. Smith, you were making an answer when you were cut off, on the question of how closely you follow these N F P A rules in your inspection of vessels?

A. I use those as a standard of practice, and on an existing boat, with other considerations, appraise a risk, get as close compliance as possible where recommendations can be carried out, or if they are too far off the recommended practice, why we just say we would rather not be interested.

Q. Of course the matter of insuring a vessel is in any event a matter of taking a risk, isn't it?

A. It is.

Q. And is it or is it not a fact that rates for insurance are determined by the extent of the risk involved?

A. Yes, they are—at least they try to make them so.

Q. And if in some event one of the insurance companies that you act for was willing to write insurance on the vessel, where the risk was more than ordinary, would or would not that be reflected in the rate?

A. I wouldn't want to answer that question, that is an underwriter's question and one in which I prefer not to express an opinion.

Q. In other words, you don't have anything to do with the underwriting end?

A. They ask me a good many questions on the pros and cons of it, but I do not set the rates.

Q. Those are set by the underwriters?

A. Yes.

Q. Is a yacht of the type of the Seminole, such as we have described here to you, subject to regulation by governmental authority?

Mr. Underwood:

I object to that as calling for a conclusion of law.

Q. Do you know?

A. A documented vessel, if sixteen tons or over, she is under Government inspection.

Q. Do you know of any set of Government rules applicable to a vessel of this type?

A. No.

Q. I take it from what you say, that these rules, of which the 1930 is one, have no force other than moral persuasion?

A. That is right.

Q. I would like you to look at the question for a moment, not from the point of view of an owner that wants to get insurance, but from the point of view of an owner who wants to take reasonable precautions to protect his life and property and the property of others from disaster. From that point of view, in your opinion, are or are not these 1930 rules a proper standard for his conduct?

Mr. Underwood:

I object to that on the ground that the witness has not been qualified, incompetent, irrelevant and immaterial, and improper re-direct examination, not covering anything brought out on cross.

A. Yes, as of 1930.

Q. What is the difference between copper tanks and steel or iron tanks for gasoline, with respect to the question as to whether they should be installed in an accessible place or not?

A. Copper tank is less subject to corrosion from salt air and contact with salt water—salt dampness—seldom you get actual water on them except in an accident.

Q. Is that difference a substantial difference?

A. Yes.

Q. In the question that I asked you about the tank compartment, I didn't intend to convey that the flat, as has been referred to under the tanks, was tight so that there could be no circulation of air or gas between that and the bilge space underneath. As a matter of fact, I would like to incorporate in the question, that there is some evidence in the case that around the edges of the flat there was a little space large enough for a man's hand to be inserted. With that addition, would that make any difference in your answer with respect to the ventilation of the tank compartment?

Mr. Underwood:
Same objection to the question as originally put.

A. No, because then the space has access to the bilge.
Q. Does that make it more or less dangerous?
A. Possibly a little less for the actual tank compartment, and in my opinion more for the bilges under the machinery space.
Q. One more question that I intended to put to you before: The testimony in this case is that a man went into the engineroom of the Seminole after she had been laid up for a period of about two months, and went to the switchboard and lit a match at about the height of his elbows, and held it up to the switchboard to look at some switches on the upper part of the switchboard, and the match went out and nothing occurred. Thereafter, he threw a switch in the lower lefthand corner of the switchboard, at which time there were some sparks noted at about the level of that switch, followed by an immediate explosion. From your experience and investigations of gasoline fires, can you account for that sequence of events?

Mr. Underwood:
Objected to as incompetent, irrelevant and immaterial, entirely speculative.

A. Yes.
Q. How would you account for it?

Mr. Underwood:
Same objection.

A. The gas would be air with a high enough concentration of gasoline vapor which did not extend as high as the level on which he struck the match. It did reach—

or a trail from such a concentration—reached the level on which the switch was thrown.

Q. You speak of a trail of gasoline vapor. What do you mean by that?

A. I mean it does not lie in absolutely level strata, but there may be a pocket—there may be a—I can't describe it otherwise than a streak of air containing a dangerous concentration of gasoline vapor that is irregular in shape and direction, caused by some movement at sometime, possibly not moving at the time, that could carry a flash back to a dangerous concentration in some locality quite distinctly removed.

Q. Would walking through a closed compartment that contained inflammable vapor in the lower parts have any tendency with respect to such matter?

A. I can't answer that, I don't know. Personally I don't think it is know whether walking through would do it or not.

Q. I show you this pamphlet which bears the stamp of the National Fire Protection Association. Can you tell me what that is?

A. It is a list of the fire-hazard properties of certain flammable liquids, gases and volatile solids.

Q. And what is contained in it?

Mr. Underwood:

Objected to.

A. A tabulation of various flammable liquids, gases and volatile solids with their properties as to flash point, ignition temperature, explosive limits and vapor densities.

Q. Is that a publication which you would regard as authentic?

A. Yes.

Mr. Matteson:

I offer it in evidence.

Mr. Underwood:

I object to the pamphlet on the ground that it is not proof of any of the facts stated therein, and on the ground that it is not properly proved.

It is marked Libelants' Exhibit 136.

Re-Cross Examination.

By Mr. Underwood:

Q. Have you ever been employed by an owner to survey a boat and advise him?

A. Yes, I have a few times.

Q. How long ago?

A. I wouldn't say employed, I just did it as a favor.

Q. That is not part of your regular business?

A. No, I did it as a favor for owners.

Q. Two or three times in twenty years?

A. Well, more than that.

Q. Five or six?

A. I suppose a dozen times I have gone on a boat for an owner and told him what I thought of her.

Q. You considered a great many other things than fire hazards, of course?

A. Yes.

Q. This matter of the underwriter insuring being the taking of a risk—that is a risk he takes when he does take it, for a money consideration, isn't it?

A. Yes.

Q. And the marine underwriters are in business for the purpose of making profits on the risks they take, isn't that so?

A. Yes.

Miami, Florida, May 9, 1939, 9:50 A. M.

Reconvened pursuant to adjournment.

Appearances same as heretofore noted.

Morning Session.

Mr. Underwood:

When we suspended the last time Mr. Webber was on the stand, and I do not think his cross examination was quite concluded.

The Court:

All right; we will continue with him.

Mr. Underwood:

If your Honor please, I have with me in Court this morning Mr. Paul Scott, a member of the Bar, who will be a witness. He is associated in the trial of this case with us, and I assume there is no objection to him being in the Courtroom.

The Court:

That is correct.

1531 Thereupon W. L. WEBBER, previously produced as a witness in behalf of the Respondent Phipps, resumed the stand and was examined and testified further as follows:

Cross Examination (Cont'd.)

By Mr. Matteson:

Q. Mr. Webber, there are just two or three things we want to clear up a little further. In your testimony

you said that you went up to the Seminole to get some trophies and silverware, linens and so forth, off the boat. Will you tell us more particularly what those trophies and silverware were?

A. The silver consisted mostly of silver trays, pitchers, ice tongs, ice buckets and various silverware.

Q. Table silverware, you mean?

A. Table silverware, and the linens consisted of sheets and pillow cases.

Q. What was it you referred to as "trophies"?

A. There were one or two cups there; I don't remember what they were; I didn't look at them closely, but there were one or two cups on the boat.

Q. What did you do with all of those things after you took them away from Ft. Lauderdale?

A. Brought them to Miami and they were stored on the third floor of our office.

Q. Whose were these things that were on the boat that you took off at this time, this silverware and trophies?

A. They were just on the boat; whose they were I don't know.

Q. Did the trophies have names inscribed on them?

A. They might have; I don't remember. I don't know, except that there were some trophies there.

Q. What was the nature of the trophies?

A. That I don't remember, sir.

Q. They were such things as prizes in fishing tournaments, things of that type?

A. Might have been; I don't know.

Q. Had you ever been on such an errand on the Seminole before?

A. No, sir.

Q. Had you ever been on the Seminole before?

A. Yes, sir.

Q. More than once?

A. Probably several times.

Q. What occasions did you have to go on it before?

A. I don't remember any specific occasions; I might have delivered a message there that came to the office, delivered a message to the Captain; that is probably about the only thing I can recall.

Q. These things that you removed from the Seminole had they ever been stored in your office before, to your knowledge?

A. Not to my knowledge.

Q. The Seminole was for sale, was she not?

A. I don't know.

Q. Do you know whether there was any intention to use the Seminole again?

A. No, sir; I don't know.

Q. Or that she was to be sold?

A. I don't know.

Q. Now this fellow that was with you, this Jim Davis, you said he was a gardener?

A. Yes, sir.

Q. Where was he a gardener?

A. He works on our properties along the boulevard, cutting grass and trimming shrubbery.

Q. What do you mean by "your properties on the boulevard"?

A. Properties that are owned by the Bessemer Properties which are rented and maintained through our office.

Q. Is that all that he does?

A. That was his job at that time, yes.

Q. Did he ever work in Palm Beach?

A. Not to my knowledge.

Q. How long has he worked as a gardener?

A. Mr. Davis has been with us, I would say, between eight and ten years.

Q. Always a gardener?

A. Yes, sir.

Q. What was his interest in seeing the engines in the Seminole?

A. I would say it was a matter of curiosity more than anything else.

Q. Was there anything curious about the engines of the Seminole?

A. I wouldn't say it was anything curious; he said that he was interested in the mechanism and we were walking along the corridor and it was easy to see the engines, so he just looked through the window for a few minutes.

Q. He spoke about wanting to see the engines, did he?

A. Yes, sir.

Q. So, I take it, you went out of your way to get to see them?

A. No, it wasn't necessary—

Q. At least it took time out from the work you were doing?

A. Yes, sir.

Q. Did he speak of that prior to your going over to look at them?

A. I don't recall; I don't imagine he did.

Q. Did you take him and show him where they were?

A. We were going by that window on several trips with things, with the things we were removing, and they were right in plain sight.

Q. I gather that he expressed himself as wanting to see the engines; is that correct?

A. I imagine so; it is rather hazy right now.

Q. I take it that most of the details of what you did up there at this particular time are somewhat hazy in your mind except possibly this one particular incident of looking in the window, is that right?

A. I can't say that I remember every detail of the work we accomplished there.

Q. For some reason the matter of stopping at this window and looking in stuck in your mind?

A. I know that we did look in the window, just as I know that we did remove the silverware and the linens.

Q. Another thing that I want a little information on is: This letter that you took there, or the letter which you wrote up there and signed "Seminole Boat Company" with your name, I think you said that you did not remember how you came to sign "Seminole Boat Company" on that letter; is that right?

A. As I recall, I believe that Mr. Hawkins dictated that letter to his stenographer, to his secretary, and I signed it.

Q. I see. You have refreshed your recollection on that since the last time you testified?

A. Yes, sir.

Q. Was Mr. Hawkins an officer of the Seminole Boat Company?

A. I think so.

Q. You mentioned a number of corporations that had their headquarters at this office where you worked; was the Seminole Boat Company one of those?

A. To my knowledge, yes.

Q. Well, what do you know about that?

A. I know very little about it.

Q. What other officers of the Seminole Boat Company —were there any other officers of the Seminole Boat Company there?

A. I don't know.

Q. Were the books of the company kept there?

A. I think so.

Q. Were they kept by the same staff of bookkeepers that kept these other books which you have spoken of?

A. I think so.

Q. Who were these bookkeepers, do you remember; tell us the names.

A. At that time Mr. Handley was the head of the accounting department.

Q. That was in 1935?

A. Yes, sir.

Q. How long had he been head of that department, do you know?

A. For quite some time; probably eight or ten years.

Q. Who were the bookkeepers that worked under him?

A. Mr. Wilson and Mr. Kelly and there may have been others that have since left the company. I don't recall—

Q. Mr. Wilson and Mr. Kelly are still there?

A. Yes, sir.

Q. Is Mr. Handley still there?

A. No, sir.

Q. Where is he now, do you know?

A. He is in New York.

Q. Do you know where in the office the books of the Seminole Boat Company were kept?

A. Where they were stored?

Q. Yes.

A. In the boat, if we have them.

Q. Do you recall seeing them?

A. No, I had nothing to do with the books.

Mr. Matteson:

That is all.

Re-Direct Examination.

By Mr. Underwood:

Q. Mr. Webber, you have read over your testimony since the last hearing?

A. Yes, sir.

Q. Did you find any errors in it?

A. Yes, sir.

Q. On page 1134 you were asked this question: "Did you have a conversation with Mr. Roy Hawkins before you went?"

A. (That is, before you went to the Seminole on April 19th.) And the answer, according to the minutes, is "No." Is that a correct answer?

A. No, it is not.

Q. Did you have a conversation with Mr. Hawkins before you went on April 19th on the Seminole?

A. Yes, sir.

Q. On page 1141, the fourth line from the bottom, will you look at that and tell me whether you have any correction to make?

A. The answer relative to this question: "Now then do you recall whether or not when coming up on this porch you went forward into a room, through a door into a room, or whether you turned to your right as you—" My answer recorded here says, "I don't remember definitely, but I don't believe that we went straight ahead to a little room." My recollection on that, I believe, is that we went straight ahead to a little room.

Q. And to correct that you would strike out the "don't"; is that right?

A. Yes, sir.

Q. Just one further thing: When you were on the Seminole on that day, were there any cots or mattress or springs or parts of a bed, or parts of more than one bed, in the alleyway between the engineroom and the after end of the boat?

A. I don't recall if there were any.

Mr. Underwood:

That is all.

(Witness excused.)

1540 Thereupon JAMES BENJAMIN DAVIS was called as a witness in behalf of the Respondent Phipps, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Underwood:

Q. What is your full name?

A. James Benjamin Davis.

Q. Mr. Davis, by whom are you employed?

A. Bessemer Properties.

Q. They are located at 1317 Biscaine Boulevard?

A. Yes.

Q. How long have you been employed in that business?

A. I guess between eleven and twelve years.

Q. What has been the nature of your work there?

A. Gardener.

Q. Were you employed there as a gardener in 1935?

A. Yes, sir.

Q. Do you remember going to the Seminole with Mr. Webber, in April, 1935?

A. Yes.

Q. How did you happen to go to the Seminole on that day?

A. Well, Mr. Webber came by the shop and says, "Let's take a ride."

Q. What shop?

A. 38th Street and the Boulevard, I think.

Q. You were out working on some property?

A. Yes.

Q. Do you remember what date it was?

A. I think it was April 19th.

Q. Did Mr. Webber have a car?

A. Yes.

Q. What did you do?

A. Well, we went to the Seminole at Ft. Lauderdale.

Q. Had you had any discussion about going to the Seminole at Ft. Lauderdale before Mr. Webber came to you that day?

A. No.

Q. Had you received any instructions from anybody else?

A. No.

Q. You went to Ft. Lauderdale—you went on the Seminole at Ft. Lauderdale?

A. Yes, sir.

Q. Did you know Captain Pilkington?

A. No.

Q. Did you see Mr. Webber meet anybody there?

A. I saw him talking to someone there.

Q. What did you do after that?

A. We went on the Seminole and gathered up the linens and silverware.

Q. How did you get in the Seminole?

A. We went from the stern of the boat.

Q. Was there a door that was locked?

A. Yes.

Q. How did you get through that door?

A. Mr. Webber had the keys and unlocked the door.

Q. On which deck was that?

A. I couldn't be sure just which deck that was; we went in the stern of the boat; I remember that.

Q. Could you indicate on the blueprint; I show you Respondents' Exhibit "A" which is a blueprint of the Seminole and ask you if you can indicate where you entered the boat.

A. Well, I think we entered it from back in here from where.

Mr. Underwood:

Indicating the after end of the lower deck.

Q. What did you do while you were on the Seminole?

A. Well, we went from room to room and got all the linens and silverware.

Q. What did you do with the linens and silverware?

A. Brought it back to the office.

Q. You carried it off the Seminole?

A. Yes.

Q. Can you give us some idea about how many trips you made from the Seminole to the car with the bundles?

A. I guess about eight or ten trips were made.

Q. How big were the bundles you carried?

A. Oh, just a good size armful.

Mr. Underwood:

Indicating about two feet square.

Mr. Matteson:

I think so.

(By Mr. Underwood):

Q. Did you go in the staterooms in the forward part of the boat, forward of the engineroom?

A. Yes, went all over.

Q. Do you remember passing through the alleyway that leads alongside the engine-room?

A. Yes.

Q. Did you notice anything about any window there?

A. Yes, I do.

Q. Will you tell us what you noticed about that window?

A. Well, the window in the engineroom is only—

The Court:

I cannot hear you. You will have to speak louder.

A. (Continuing.) The window at the engineroom, I noticed that window very well, because I stopped and looked in the engineroom.

Q. Do you remember whether that window was open or closed when you got there?

A. Open.

Q. How long did you stay there and look in?

A. Oh, just long enough to take a look at the motors; not over a minute, if that long.

Q. When you left there how did you leave the window?

A. Left it open.

Q. Did you observe any window on the opposite side of the engineroom?

A. No, sir.

Q. Do you know whether there was a window there?

A. I don't.

Q. Did you smell any gasoline while you were standing at the engineroom window?

A. No.

Q. Or at any other time that day?

A. No.

Q. Did you see any gasoline or hear any dripping?

A. No.

Q. Tell us how it happened that you stopped and looked at that window.

A. Well, I always was interested in motors, see, and in passing by I just stopped and took a glance, looked at the motors just when I stopped. I always was interested in motors.

Q. Did you observe any cots or bed springs or mattresses in the alleyways on the Seminole that day?

A. I don't remember.

Q. You don't remember whether you did or didn't, or you don't remember seeing any?

A. We didn't bring any out, and I don't remember seeing any.

The Court:

Mr. Underwood, I just do not recall the relative dates of this visit and the date of the conflagration.

Mr. Underwood:

This was on April 19, your Honor, and the fire was on the 24th day of June; approximately two months.

The Court:

All right.

Mr. Underwood:

That is all.

Cross Examination.

By Mr. Matteson:

Q. You work for Bessemer Properties?

A. Yes, sir.

Q. Do you still work for them?

A. Yes, sir.

Q. And you worked for them at this time in 1935?

A. No; I was with the Biscayne Boulevard—

Q. Biscayne Boulevard?

A. Yes.

Q. Who employed you?

A. Mr. Webber.

Q. He is the man that hired you?

A. Yes.

Q. How did you get your pay?

A. Got it from the Biscayne Boulevard.

Q. Did you get it in cash or by check?

A. Well, it seems to me that we signed a check and got the money right there at the office at the time.

Q. You signed something at the office and got the money; is that it?

A. Yes.

Q. How were you paid, were you paid by the day, week or month?

A. By the week.

Q. Did you get your pay Friday night?

A. Friday night.

Q. Was there any difference in the way you got your pay this week that this happened, when you went to Fort Lauderdale, than any other week, or was it just the same?

A. No; my salary was just the same; straight time.

Q. All paid in one sum?

A. Yes.

Q. What were you doing when Mr. Webber called for you, do you recall?

A. Yes; I was working the yard.

Q. In what yard was that?

A. I am pretty sure it was on 38th Street and the Boulevard; it was the Katy Apartments at that time; it is the Magnolia Apartments now.

Q. That was the Biscayne Boulevard property at that time, was it?

A. Yes, I suppose so; I was working for them, but I couldn't say for sure about that.

Q. Did Mr. Webber tell you each day where you were to go to work that day?

A. No. You see, we had so many places up the Boulevard to keep up, and we knew all the places. If there was anything extra that turned up, he would tell us, like somebody would move out or something like that.

Q. If any special orders were received you got them from Mr. Webber?

A. Yes.

Q. He was your boss?

A. Yes.

Q. Do you know how many packages of linens you got out of the Seminole?

A. Well, I don't know just how many packages we taken out.

Q. When you took them out did you pile them on the deck or on the shore or did you take them to the car; just what did you do?

A. I don't know just how he handled that, but I think we taken them to the car.

Q. You don't remember about that?

A. No.

Q. Which rooms did you get the linens out of; do you remember that?

A. No, I don't remember that; I do remember that we went all over the boat; we went all over the places in the boat and got the stuff.

Q. Did you see any of these trophies that have been spoken of?

A. What?

Q. Trophies—something that has been described as trophies or cups that were taken off the Seminole.

A. You mean silverware?

Q. Yes; prize cups, or something like that.

A. I am not sure about that. I know we taken off quite a bit of silverware.

Q. Did you notice how it was marked?

A. No.

Q. How was the silverware taken off?

A. We carried it off.

Q. Did you carry it off in loose pieces or in your hands or how?

A. No, it seems to me that we just got an armful and taken it off; I am not sure about that.

Q. An armful of loose pieces, you mean?

A. I can't say whether it was loose pieces, or whether we had them in a box.

Q. You don't remember whether you had a box to put them in or not?

A. No.

Q. Did you get anything out of the after cabin, the crew's quarters, on the Seminole?

A. Yes.

Q. What did you get out of there?

A. I think we got sheets and pillow cases, and something like that.

Q. Did you get anything out of the Captain's quarters?

A. Well, I guess we did; I couldn't say, because we was all over the boat, we got everything that we could find, all linens and blankets, and such as that.

Q. Do you know what time you got there?

A. I am sure it was getting pretty close to quitting time when we got back to Miami; it was probably around quitting time. We must have gone up there about three o'clock, or maybe a little later.

Q. How long were you there?

A. I guess between forty-five minutes and an hour.

Q. What sort of a car did you have?

A. We had a Ford sedan.

Q. Ford sedan?

A. Yes.

Q. You piled this stuff all in the back of the sedan?

A. Yes.

Q. When you got to Miami you say it was about quitting time?

A. Yes.

Q. Did you unpack the car that night or the next day, or how was that?

A. I don't think I helped with that; I am pretty sure that the colored boy or the porter there done that.

Q. Well, the one detail about this entire trip that stands out in your mind is that you remember stopping at the engineroom window; is that right?

A. Yes, I remember that very well, because I was always interested in motors; it didn't make any difference where I was; if I was going out of here and I saw a motor, I would stop and look at it, and that is how I know them so well.

Q. How long did you stay at the window, do you recall?

A. I don't think we stayed but just a minute, long enough to take a glance and go on; of course we had armsful of this stuff.

Q. What kind of motors were they; do you know?

A. I don't.

Q. Do you know how many of them were there?

A. I couldn't say; it seems to me there was three, but I couldn't say for sure about that.

Q. Did you notice this window in the engineroom—did you notice how it was made?

A. No, I didn't.

Q. Whether it had a wood frame or what kind of glass there was in it at that time?

A. No.

Mr. Matteson:

That is all.

Cross Examination.

By Mr. Botts:

Q. Mr. Davis, was this linen and silverware that you got,—was it assembled in packages when you got there, or did you have to put it in packages?

A. We put it in packages, I am pretty sure?

Q. You are pretty sure?

A. Yes.

Q. Some of it could not have been in packages?

A. I couldn't say for certain about that.

Q. It has been quite some time ago?

A. Yes.

Q. You don't remember a great many of the details of what transpired there, is that true?

A. That is true.

Q. The trip was of no particular importance to you?

A. Not at all.

Q. Had you ever made trips like that before?

A. No.

Q. You just recall that you went up there and got some linens and silver and came back, and that's about all you recall about it?

A. Yes.

Q. Do you remember whether the shades were pulled on the windows or not?

A. No, I don't.

Q. Now in this alleyway that you went up through, do you remember whether there was a window open through the outside of the boat from that alleyway or not?

A. No.

Q. You don't remember that?

A. No, I don't remember that.

Q. Now then this engineroom—do you remember whether there was a window on the opposite side of the engineroom to the one that you looked in?

A. No.

Q. You don't remember that?

A. No.

Q. Now you say that your best recollection is that there were three motors in the engineroom?

A. Yes, but I couldn't say for sure about that, because it was just only a glance at the motors.

Q. You just glanced at them?

A. Yes.

Q. Do you know anything particular about motors?

A. Well, I am not exactly called a mechanic, but I do like to fool with them.

Q. Well, now, Mr. Davis, were those large motors or small motors that you saw in there?

A. They looked pretty large to me.

Q. All three of them were the same size?

A. I coudn't say.

Q. You didn't pay that much attention to them?

A. No.

Q. Do you remember how the motors were placed in relation to each other?

A. No, I don't.

Q. You don't know whether they were in line, one motor ahead of the other, or all three of them parallel to each other?

A. No.

Q. You don't remember that at all?

A. No.

Q. Now then, Mr. Davis, what else did you see in that room, the engineroom?

A. Well, that is about all that I looked at; I was just interested in glancing at the motors.

Q. Now this window that you saw, was that a glass window or was it just an opening; do you recall—

A. I am pretty sure it was a window; I know there was an opening there.

Q. You know there was an opening there?

A. Yes.

Q. You don't know whether it was glass or not?

A. I am not sure.

Q. You are not sure?

A. No.

Q. You did not enter the engineroom, did you?

A. No.

Q. You just stood there in front of this opening for a few seconds, or perhaps a minute,or something like that, and you glanced into the engineroom, is that right?

A. Yes.

Q. Now then when was the first time after this trip that you discussed this trip with anyone?

A. I don't recall just the first time.

Q. Well, now I believe you came up here to testify some six or seven or eight weeks ago?

A. Yes.

Q. Was your first discussion of this matter just relatively a short time before you came up here to testify?

A. Yes.

Q. Just a short time before that?

A. Yes. No, not the first—

Q. The first occasion when you discussed this trip, Mr. Davis, was just a short time before you came up here on the previous occasion to testify, is that right?

A. No.

Q. When did you first discuss this trip with anyone?

A. I don't know. It seems to me that it was about a month afterwards, after the boat "went up."

Mr. Underwood:

You mean after the fire?

The Witness:

After the fire.

(By Mr. Botts):

Q. Who did you discuss it with then?

A. I don't recall his name.

Q. Where did you discuss it?

A. Discussed it at the Bessemer office.

Q. What was the subject of the discussion?

A. Well, I was just asked the questions that I knew about it.

Q. You told them about getting the linen and silverware off the boat?

A. Yes.

Q. Did you tell them anything else?

A. I told them all I knew about the—

Q. I would like for you to tell me—you told them the things that you thought were important?

A. No; I didn't; I told them just the things I knew about the matter.

Q. Just what did you tell them?

A. Well, it was very little I knew; I knew Mr. Webber came by and got me and carried me up there, and we got the silverware and linens off, and also knew that the engineroom window was open, because I glanced in there, taken a look, and that's about all I knew about it.

Q. When did you next discuss this matter?

A. Just a few weeks ago.

Q. With whom did you discuss it at that time; with Mr. Underwood?

A. That's right.

Q. You have not discussed it in the meantime?

A. Since then?

Q. I say, you have not discussed it between these two occasions?

A. No.

Q. On the first occasion when you discussed it did you make a written memorandum; was a written memorandum made of that discussion?

A. I think so.

Q. When you discussed it with Mr. Underwood did he have a written memorandum of your previous testimony?

A. Yes.

Q. Mr. Underwood had a written memorandum of your previous testimony, did he, when you discussed it with him a few weeks ago?

A. Yes.

Q. Did he show you that written memorandum?

A. Yes.

Q. You read it over?

A. Yes.

Q. Your testimony then is based largely on that written memorandum, isn't it?

A. Well, not exactly.

Q. You say your recollection it quite hazy about many of the details up there. As a matter of fact, didn't you rely, is discussing it with Mr. Underwood—didn't you rely to a considerable extent on this memorandum which had been made previously when you memory was naturally fresher?

A. Oh, yes.

Q. Now, Mr. Underwood showed you that memorandum at the time you discussed it with him?

A. As a matter of fact your testimoy now is based more on the refreshment of your memory from that written memorandum than it is from your actual memory of the event, is that true?

A. No. what I actually know about it I remember.

Q. Now do you know who prepared that memorandum?

A. I don't.

Q. Did you sign it?

A. I did.

Q. Now then did anybody impress you with the idea that it was particularly important for you to remember about looking in that engineroom?

A. No.

Q. Didn't tell you that that was particularly important at all?

A. No.

Q. Did they tell you that the fire started in the engineroom?

A. No.

Q. They didn't tell you that?

A. No.

Q. Did you know that the fire started in the engineroom?

A. I don't know how it started.

Q. Now, Mr. Davis, just what is it, if that was a glass window and you just stopped casually and looking in the window—just what is it that impresses you that the window was open when, if it was closed and was a glass window, you could have looked in just the same anyway?

A. Well, what impresses me was—I leaned over—it seems to me that struck me along here—I leaned over and looked in the engineroom, and that's why I am sure about that.

Q. A few moments ago you just told us that you stood looking in the window.

A. Yes.

Q. And I asked you if you went in through the window and you said you did not.

A. That is right.

Q. You didn't recall then that you leaned through the window, did you?

A. No.

Q. While you were stopped and was looking at this window, looking at the engines, what was Mr. Webber doing?

A. He was behind me and he stopped a minute or two.

Q. What makes you think it was the 19th of April that you went up there?

A. I know it was in April.

Q. All right; what makes you think it was the 19th?

A. I am pretty sure that is the date.

Q. Why?

A. It seems to me that is what the affidavit I gave, or whatever you call it, says.

Q. You do not have any independent recollection of that date now, do you?

A. I don't.

Q. Your sole impression in that respect at this time is gathered from what is supposed to have been in that memorandum, is that right?

A. Just a few items, yes.

Q. Your recollection as to the date—your testimony now as to the date when you think you went up there,—your testimony is not based upon any independent recollection but is based upon that written memorandum?

A. Yes.

Q. Is that right?

A. Yes.

Q. Now how was that window operated; can you tell us that?

A. No,

Q. You have been on boats, haven't you?

A. Oh, a couple of times; I know a very little bit about boats.

Q. You have been on boats and have seen these windows that you lift up and drop down in the side of the hull of the boat, haven't you?

A. I never noticed.

Q. Do you know, Mr. Davis, whether this window was a window that you lowered down in a partition or raised it up on hinges, or slid it up, or was it hinged to the side; do you know anything about that window that way?

A. No.

Q. You don't know anything in the world about that?

A. No.

Q. As a matter of fact, Mr. Davis, you didn't see the window at all; you just saw an opening, didn't you?

A. An opening was there.

Q. You don't know whether that window was glass or wood or composition, or what type it was?

A. No.

Q. You don't even know whether there was a window; you just know there was an opening there?

A. I know there was an opening there.

Q. Now when you look in—were these engines that you looked at,—were they opposite you or to your right or to your left, do you remember?

A. I couldn't be sure about that.

Q. As a matter of fact, you don't know how many engines there were in there?

A. No.

Q. You don't know where those engines were located, do you?

A. No; I know they were just there.

Q. They were in the engineroom?

A. Yes.

Q. Other than that you don't know?

A. No.

Q. Did you see any battery boxes or anything in there?

A. No.

Q. Do you know what the size of that engineroom was?

A. No.

Q. As a matter of fact, Mr. Davis, there is only one circumstance with reference to that engineroom of which you want to testify positively, and that is that there was an opening there?

A. Yes.

Q. And that that opening wasn't at that time enclosed by glass or otherwise?

A. Yes, sir.

Q. Other than that you are not positive about anything; that's the fact, isn't it?

A. I am positive about taking the linens and silverware off.

Q. I am talking about the engineroom. The only thing of which you are positive concerning that engineroom is that there was an opening there in that wall, and that that opening was entirely open and not covered by glass?

A. Yes.

Q. Other than that you are not positive about a thing concerning the engineroom, are you?

A. No.

Q. The thing that interested you wasn't the hole in the wall, but the engines, wasn't it?

A. That's right.

Q. Yet you didn't or you don't know anything about the engines?

A. Well, I didn't take time to look them over; just glanced at them.

Q. You were not interested in holes in the wall, were you?

A. No.

Q. You noticed that?

A. Yes.

Q. You were interested in the engines but you didn't notice them, is that right?

A. Yes.

Mr. Botts:

That is all.

(By Mr. Matteson):

Q. When you stood at this window and leaned on it, where did it come on you?

A. I couldn't be positive, but it seems that it came somewhere along here (indicating).

Q. Will you stand up and indicate to us?

A. Just about like that (indicating).

Q. It reached about the height of your belt?

A. Yes.

Q. When you got these linens did you get them off the beds or had somebody taken them off the beds before?

A. I am pretty sure they were taken off the beds; some of them were taken out of the drawers; I couldn't be positive where it was all taken from; we went all over the boat taking this stuff; picking this stuff up.

Q. At least some of it you yourself got off the beds?

A. I am pretty sure.

Q. And that refers to linens and sheets?

A. Yes.
Q. And blankets and covers?
A. Yes.
Q. Where was the silverware; was that on the table?
A. It seems to me that is was.

Mr. Matteson:
That is all.

(By Mr. Botts):
Q. Mr. Davis, do you have that memorandum with you at this time?
A. No.
Q. When was this last time you read it?
A. Well, I couldn't say just to the exact date.
Q. Where did you keep that memorandum?
A. I didn't keep it.
Q. Someone else kept it?
A. Yes.
Q. And they produced it to you at the time when it was exhibited to you?
A. Yes.
Q. Do you suppose you could get that memorandum now?
A. I don't know.
Q. I wish you would try to get that memorandum; I would like to see it. Will you make an effort to locate that memorandum and bring it up here?
A. I don't know anything about it.
Q. How is that?
A. I don't know anything about it; I don't know who has it or what.
Q. Do you even remember what was on that memorandum was what you had said some three and a half to four years ago?
A. Yes.

Q. You remember that?

A. Yes, sir.

Q. Now do you remember that because it was on a paper that was exhibited to you—by the way, who told you that that was your memorandum?

A. Well, they gave me the memorandum and my signature was on it; I signed it.

Q. Isn't it a fact that until you read that memorandum your memory about the whole transaction was just as hazy as it it now about the engine room?

A. Well, I had forgot about the whole thing, you know.

Q. When you stopped to look at the engines, do you remember whether you were going forward or towards some of the rooms up there, or were you coming aft with the bundles?

A. We were coming out with the bundles.

Q. You had bundles in your arms?

A. Yes.

Q. Do you remember what kind of bundles you had?

A. I think it was sheets and pillow cases.

Q. You had a bundle of sheets and pillow cases in your arms?

A. Yes.

Q. How did you lean through that window with these bundles in your arms?

A. Leaned through with them on my arm.

Q. You couldn't lean over with the bundle of sheets in front of you?

A. Not that far; not too far.

Q. Then you didn't lean through the window, did you?

A. Yes.

Q. In what part of that wall of the engineroom was that window; was it forward of after or centered of the engineroom wall?

A. I don't know.

Q. And you say no one ever suggested to you that they considered it particularly important for you to remember

the one and single and sole fact that you say you now remember, and that is that window was open?

A. Yes.

Q. And no one ever told you that they thought that was important?

A. Yes.

Q. Do you have any explanation as to why you remember that and you don't remember nothing else?

A. The only thing I can say it that I remember very little about the whole thing.

Q. I gather that. Do you have any explanation as to why that one single, solitary fact you remember, and your mind is almost a blank about everything else. Do you have any explanation of that?

A. No.

Mr. Botts:

That is all.

Re-Direct Examination.

By Mr. Underwood:

Q. Mr. Davis, do you remember anything about the appearance of the engines?

A. Well, I remember about the appearance of the engines—it seems to me that they were painted gray, and were nice and clean; that was the main thing I noticed, and I said something about it to Mr. Webber and he stopped.

Mr. Underwood:

That is all.

(Witness Excused.)

1566 Thereupon, RAY H. HAWKINS was called as a witness in behalf of the Respondent Phipps, and

having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Underwood:

Q. What is your full name?

A. Ray H. Hawkins.

Q. Mr. Hawkins, what is your business?

A. I am employed by the Bessemer Properties, Inc.

Q. Where do you live?

A. 273 Northeast 98th Street.

Q. How long have you been employed by the Bessemer Properties or its predecessors?

A. Since September, 1926.

Q. The office of that company is at 1317 Biscayne Boulevard?

A. That is right.

Q. What was your employment in the spring or the early part of 1935?

A. It was the same; it was then Biscayne Boulevard.

Q. Do you know the house-boat Seminole?

A. I do.

Q. Do you remember when you first had anything to do with the Seminole?

A. You mean when I first saw her?

Q. Yes; anything whatever.

A. I saw the boat in 1925 or 1926, but I never had anything to do with her.

Q. When did you first formally have anything to do with the Seminole?

A. It must have been 1929.

Q. Do you remember when the Seminole Boat Company was organized?

A. I do; that was in 1929.

Q. Do you mean at the time the Seminole Boat Company was organized, was the first time you had anything particular to do with the Seminole?

A. I was familiar with the boat. Of course the boat was owned by the principals of the company prior to that time.

Q. Are you an officer of the Seminole Boat Company?

A. I am.

Q. What officer are you?

A. Secretary.

Q. Do you remember when you became secretary?

A. It was shortly after the incorporation; I am not quite sure as to the date; the records will show that.

Q. I show you a paper which is marked "certified copy of certificate of incorporation of Seminole Boat Cmpany", which has been marked Libelants' Exhibit 81 for identification. Will you identify that and tell me what it is?

A. That is the certificate of incorporation of the Seminole Boat Company.

Mr. Underwood:

I offer it in evidence.

Mr. Matteson:

No objection.

Mr. Botts:

No objection.

The Court:

It will be admitted.

(Thereupon the certificate of incorporation of the Seminole Boat Company above referred to was marked Respondents' exhibit "T").

Q. I show you a book which is marked Seminole Boat Company Minute Book, previously marked Libelants' Exhibit 82 for identification; can you identify that book and tell me what it is?

A. That is the Minute Book of the Seminole Boat Company.

Mr. Underwood:
I offer it in evidence.

The Court:
Couldn't we save time by letting it be admitted, and then you examine it at your leisure?

Mr. Botts:
That is quite all right.

Mr. Matteson:
We will reserve our objections.

The Court:
Let it be admitted subject to objections to be hereafter made, if any.

(Thereupon the book above referred to was marked Respondents' Exhibit "U").

Q. I show you another book which has on the outside; "Seminole Boat Co.", which has been previously marked Libelants' Exhibit 79 for Identification. Will you identify that book and tell me what it is?

A. That is the stock book of the Seminole Boat Company.

Mr. Underwood:
I offer the book in evidence.

Mr. Matteson:
Under the same arrangement.

The Court:
Let it be admitted subject to objections hereafter to be made, if any.

(Thereupon the book above referred to was marked Respondents' Exhibit "V").

Q. I show you three papers which purport to be stock certificates of the Seminole Boat Company, Certificates Numbers 4, 6 and 8. Can you identify the signature at the lower left-hand and the lower right-hand corner of these papers?

A. I can.

Q. Whose signatures are they?

A. Mr. Scott's and mine.

Q. On all three of them is that true?

A. Yes.

Q. Can you say whether or not those certificates were issued on or about the dates they bear?

A. They were, sir.

Mr. Underwood:

I offer these three certificates in evidence, and ask that they be marked Exhibits W-1, W-2 and W-3.

Mr. Matteson:

Under the same arrangement.

The Court:

Let them be admitted subject to objections hereafter to be made, if any.

(Thereupon the stock certificates above referred to were marked, respectively, Respondents' Exhibits W-1, W-2 and W-3).

Mr. Underwood:

So that the record will show, may I state that certificate Number 4 is made out to John S. Phipps and covers five shares; and that certificate Number 6 is made out to John S. Phipps and covers fifteen shares, and certificate

Number 8 is made out to Mrs. F. E. Guest, and the same covers 20 shares. All of them bear date prior to this fire on June 24th.

The Court:

Are they outstanding and held by these owners, or were they surrendered and—

Mr. Underwood:

I will ask the witness.

(By Mr. Underwood):

Q. Are these outstanding certificates?

A. Yes.

Q. Are there any other certificates outstanding at the present time?

A. No.

Q. I will show you another book which says, "Seminole Boat Company", which is marked Libelants' Exhibit 76 for identification. Tell me what that is.

A. That is the journal ledger.

Q. Of the Seminole Boat Company?

A. Yes.

Mr. Underwood:

I offer that.

The Court:

Let it be admitted subject to the same ruling.

(Thereupon the book above referred to was marked Respondents' Exhibit "X").

(By Mr. Underwood):

Q. I show you two files which are entitled "Seminole Boat Company Journal, Checks and Vouchers", which

have previously been marked Libelants' Exhibits 77 and 78 for identification. Can you tell me what these are?

A. These are the voucher files and bill files of the Seminole Boat Company.

Q. Of the Seminole Boat Company?

A. Yes.

Mr. Underwood:

I offer these in evidence.

Mr. Matteson:

Under the same arrangement.

The Court:

The same ruling.

(Thereupon the files above referred to were marked Respondents' Exhibits "Y" and "Z").

(By Mr. Underwood):

Q. I show you a further book, which appears to be a check book, which says on the outside, "Seminole Boat Company Check Book". Can you identify that?

A. Yes.

Q. What is it?

A. It is the check book of the Seminole Boat Company.

Q. Can you tell me approximately when the Seminole Boat Company's Bank account began and when it ended, approximately?

A. It began in November 1928 and ended in 1931.

Q. It was closed out in 1931?

A. Yes.

Mr. Underwood:

I offer this in evidence.

Mr. Matteson:

Under the same arrangement.

The Court:

Let it be submitted subject to the same ruling.

(Thereupon the check book above referred to was marked Respondents' Exhibit AA).

Q. Mr. Hawkins, I show you a batch of papers, will you tell me what these are?

A. I assume they are check vouchers of the Seminole Boat Company.

Q. And bank statements?

A. Bank statements and checks—canceled checks.

Mr. Underwood:

If your Honor please, I don't think these have any real bearing on the case, but I will offer them and ask that they be marked for identification, so my opponents will have an opportunity to examine them if they wish; but I will not offer them in evidence so at not to encumber the record.

Mr. Matteson:

Were they marked for identification before?

Mr. Underwood:

I think not.—BB for identification.

The Court:

They will now be admitted for identification; that will put the burden on you to remember them if you want to offer them, and you may keep track of that.

Mr. Underwood:

I might say for the record that that does not quite include all of the checks of the Seminole Boat Company

that were issued, bye some have already been marked; there were two made out to Captain Pilkington, which are identified, and which I will offer in evidence,—that are not now in evidence.

(The said check vouchers were marked Respondents' Exhibit bb for identification.)

The Court:

As I understand it, these, together with the others that you just mentioned, account for all the checks issued that you are able to supply?

Mr. Underwood:

That is my understanding; I haven't checked them one by one against the check book, but I believe that is correct.

Q. Now, Mr. Hawkins, who was in charge of the office, 1317 Biscayne Boulevard, at the time the Seminole Boat Company was incorporated?

A. Mr. Paul R. Scott.

Q. From the time of the incorporation of the Seminole Boat Company in the fall of 1928, how long approximately did Mr. Scott remain in charge of the office?

A. I believe it was through about 1934.

Q. And prior to the time that—he went north at that time?

A. Yes, sir, he had been making frequent trips during every summer of '29 to '34.

Q. Now from the time of the incorporation of the Seminole Boat Company, who was it, if you know, who made the routine decisions about maintenance and upkeep and storage of the Seminole?

A. I did while in Miami, working under Mr. Scott.

Q. And when Mr. Scott was not there, what was the situation?

A. I had charge.

Q. Do you remember who the Captain of the boat was at the time of the incorporation, and following that time?

A. Shortly after the incorporation, Captain W. P. Baker.

Q. Will you remember whether the corporation made any contracts with Captain Baker?

A. They did.

Q. I show you a document and ask if you can identify that.

A. Yes, sir, this is the contract of employment between the Seminole Boat Company and Captain Baker.

Mr. Underwood:

I offer that: Before I offer it,—

Q. Who executed it on behalf of the Seminole Boat Company?

A. Mr. Scott and myself.

Q. Do you recognize Mr. Scott's signature?

A. I do.

Q. And that is your signature?

A. It is.

Q. Do you reconize the signature of W. P. Baker?

A. Yes, sir.

Q. Is that Captain Baker's signature?

A. Yes.

Mr. Underwood:

I offer that.

Mr. Matteson:

Do you want to make this under the same arrangement?

Mr. Underwood:

It is satisfactory to me.

The Court:

All right; the ruling is it will be admitted subject to objections hereafter to be made, if any.

Mr. Underwood:

I assume that any objections to be made, will be made while Mr. Hawkins is available.

The Court:

Will you be here so far as you know, the next ten days?

A. Yes, sir.

(The said contract was admitted in evidence and marked Respondents' Exhibit CC.)

Q. What did Captain Baker do with the Seminole?

A. He attempted to obtain charters for it.

Q. Generally what was the arrangement with Captain Baker, and tell us what he did.

A. Well, I think the contract covers that more specifically; but as I remember it, the arrangement was that he was to get a drawing account or salary, and attempt to charter the boat to anybody who was interested in it; and get a percentage of any net profits.

Q. Was the boat advertised for charter?

A. Yes, sir.

Q. Was she put out into the open market for charter?

A. Yes, sir.

Q. And did the Seminole Boat Company enter into the business of chartering the Seminole?

A. They did, sir.

Mr. Matteson:

If you Honor please, I move to strike out the last answer, as a conclusion. We should have the facts, just actually was done. The general statement that they were in the business of chartering, is simply a conclusion.

The Court:
What is the answer objected to?

(The last question and answer were read.)

The Court:
Is that what you object to?

Mr. Matteson:
Yes, sir; I think that is merely a conclusion.

The Court:
I think you can cover that by cross examination. I will deny the motion to strike.

Q. Was she chartered from time to time Mr. Hawkins?
A. Yes, sir.
Q. Was charter hire received from time to time?
A. Yes, sir.
Q. Approximately how long did that arrangement last?
A. With Captain Baker, sir?
Q. Yes.
A. I think it was under written contract through '31; but as a matter of fact, Captain Baker had access to the boat for charter at any time, if he had a party that was large enough to charter that boat, he knew it was available.
Q. For how long did that situation continue?
A. Right up until the boat was destroyed.
Q. Do you recall how the Seminole Boat Company paid its bills, in the beginning?
A. After the incorporation?
Q. After the incorporation.
A. Yes; when we had our own check accounts, the Seminole Boat Company borrowed money from the Boule-

vard Mortgage Company, and most of the bills were paid by a Simmon, who was paymaster.

Q. And what happened to those debts to the Boulevard Mortgage Company?

A. They were charged to the stockholders of the company.

Q. And do you know in what proportion?

A. I presume equally.

Mr. Matteson:

If your Honor please, I think the answer ought to be definite; there ought not to be any approximation.

Mr. Underwood:

That will come out eventually.

Mr. Matteson:

I move to strike out the presumption.

Mr. Underwood:

I have no objection.

The Court:

All right.

Q. Now from the time the Seminole Boat Company closed out its bank account, down to the time the boat was destroyed, can you tell me how the bills incurred at Miami were handled and how they were paid?

A. Yes, sir; they were paid through the Boulevard Mortgage Company and charged to the Seminole Boat Company.

Q. From the books of the Boulevard Mortgage Company?

A. Yes, sir.

Q. Now when she needed ordinary repairs or something done to her in the way of maintenance, or had to

go to a ship yard to be hauled out, who was it decided that she should go, and how much to spend?

A. I did.

Mr. Matteson:

If your Honor please, I object to that general question; I think it ought to be more specific than that? Just a general conclusion, covers a lot of territory; I think we ought to have specific facts brought out. However it can be covered on cross examination.

The Court:

I think so; I think that is all right.

Q. Now Mr. Hawkins, coming down to 1935, do you remember the Seminole being brought from Pilkington's basin at Ft. Lauderdale down to Miami?

A. Yes, sir.

Q. Mr. Hawkins, I show you a letter dated February 23, 1935, marked Defendants Exhibits F; that is a copy of a letter; can you tell me whether or not that is a letter you sent to Captain Pilkington?

A. That is a copy of the letter, yes, sir.

Q. In that letter you authorized Captain Pilkington to turn the Seminole over to Captain Baker; is that right?

A. That is right, sir.

Q. Captain Baker brought her down to Miami?

A. Yes, sir.

Q. What was the occasion for brining her down to Miami?

A. We had a number of inquiries for the sale of the boat.

Q. Who was it decided to bring her down to Miami?

A. I did, sir.

Q. Before you wrote that letter to Captain Pilkington did you have any discussion with Mr. John S. Phipps about that?

A. I did, with both the stockholders.

Q. And what was the subject of that discussion?
A. To use my own judgment, and see what offer I could get for her.
Q. And who were the stockholders at that time?
A. Mr. John S, and H. C. Phipps.
Q. Who employed Captain Baker to bring her down?
A. I did, sir.
Q. Who arranged the rate of wage?
A. I did.

The Court:
Just before that, go back there; who the stockholders were: Was that the stockholders of the Seminole Boat Company?

Mr. Underwood:
Yes, sir; John S. and H. C. Phipps.

The Court:
John S. and H. C. Phipps.

Mr. Underwood:
Yes, sir; the record shows that at that time each owned half the outstanding shares.
Q. Where was the Seminole placed when she came down to Miami?
A. At the Royal Palm Dock.
Q. Who decided that she should go there rather than some place else?
A. I did, sir

The Court:
Let me get this straight. Those outstanding certificates, one was in the name of some third party?

Mr. Underwood:

Yes, your Honor; Mrs. Guest. She is a sister of the Messrs. Phipps.

The Court:

Well, has it been brought out,—I just have forgotten; what is the connection, now, between this date when he states that there were only two stockholders, and the time when Mrs. Guest was a stockholder?

Mr. Underwood:

I shall show, your Honor, and the book already shows that in March,—we are now talking about February, bringing the boat down to Miami; in March Mrs. Guest purchased all the stock owned by Mr. H. C. Phipps; so that there have never been more than two stockholders at one time. Prior to March, 1935, half the shares were owned by Mr. J. S. Phipps and half by Mr. H. C. Phipps; and in March, Mr. H. V. sold all his stock to Mrs. Guest. From that time on down to the time of the fire, Mrs. Guest owned half the stock, and Mr. J. S. Phipps owned half the stock. That is what the stock book shows, and I will bring out a little more about that sale.

Q. What did you do with reference to the sale or charter of the boat at that time?

A. We placed a sign on it for sale or charter; and I consulted all of the leading yacht brokers located here, about the sale of her, and asked the opinion as to its value, and suggested they submit the offers that they had for the boat.

Q. Did you arrange to have the boat examined?

A. Yes, sir.

Q. By whom?

A. By Captain Bernard, who is the Lloyd's boat surveyor.

Q. Did you employ him for that purpose?

A. Yes, sir.

Q. Before you did that, did you have any discussion with Mr. J. S. Phipps about that?

A. No, sir.

Q. Who was it that decided to employ a surveyor?

A. I did, sir.

Q. Who was it that decided to employ Bernard, instead of somebody else?

A. I did, sir.

Q. Was anything done about insurance?

A. Yes, sir.

Q. What did you do?

A. I had—that was later on, that was I think in March.

Q. Well, tell us about what you did about insurance.

A. Well, before the boat was taken out on a trip to the Keys, which was the last trip the boat was on, I had the boat insured through Mr. Tom Pruitt.

Q. Who made those arrangements on behalf of the Seminole Boat Company?

A. I did.

Q. Now did you get a report from Mr. Bernard, of his survey?

A. Yes, sir.

Q. Do you recall whether he made any recommendation of work to be done?

Mr. Botts:

Objected to; I think the report is the best evidence.

Mr. Matteson:

I join in the objection.

Mr. Underwood:

I am simply asking him now whether he recalls.

The Court:

You asked him what was the contents, whether he made any recommendations.

Mr. Underwood:

May the question be read?

(The question was read.)

The Court:

I think that is subject to the objection, if there was a written report, which I gathered from what Mr: Hawkins stated that there was a written report. It may be I am wrong.

Mr. Underwood:

I will bring that out, your Honor.

Q. Did you get a written report from Mr. Bernard?

A. Yes, sir.

Q. Will you tell us whether you had any oral report from him prior to the written report?

A. Yes, sir.

Q. What was the nature of that oral report?

Mr. Botts:

Objected to; I think that is hearsay, in the first place, and in the second place, if there was a written report, certainly that is of more value than any. But my main objection is, that a conversation between this witness and that surveyor at that time, is not binding upon my clients.

Mr. Matteson:

I certainly concur in that position, if your Honor please. If this witness who made this examination,

made the observations or recommendations, he is the man to testify to it; his report should speak of it.

The Court:

Not his report, but what he found; if Captain Bernard made any examination and found certain things, he is the one to testify to what he found.

Mr. Underwood:

I have him here under subpoena, your Honor.

The Court:

I think the objection is well taken to this question.

Q. Following the oral report that Captain Bernard made, was any work done on the Seminole?

A. Yes, sir.

Q. And do you remember what that work was?

A. Yes, sir; there was a plate at the point where the propeller shaft went through the hull, that Captain Bernard thought was a little thin.

Mr. Botts:

Wait a minute; don't say what Captain Bernard thought.

The Court:

Do you move to strike what the witness has stated that Captain Bernard thought?

Mr. Botts:

Yes.

The Court:

That motion is granted.

A. We enforced this by using some cement on the inside of the boat.

Q. Was that something that Captain Bernard suggested be done?

Mr. Botts:

Wait a minute; objected to on the ground that is a hearsay statement, asking him if that is something Captain Bearnard thought was necessary. It is objectionable on every ground, nearly, that I can think of. How can he give his thoughts; among other things.

Mr. Underwood:

I didn't ask what Captain Bernard thought; I asked if that was something that Captain Bernard suggested.

Mr. Botts:

You said, what was necessary.

Mr. Underwood:

I don't believe I did, Mr. Botts; I will ask that the question be read.

Mr. Botts:

It is just as objectionable, either way; so let it ride.

The Court:

I think the objection is well taken; I will sustain it.

Q. Mr. Hawkins, I will put it to you this way. How many items did Captain Bernard recommend be done on the Seminole?

Mr. Botts:

I object to that on the ground that it is hearsay; that the recommendations of Captain Bernard have no pro-

bative value whatever in this cause, and are not binding on my client.

Mr. Matteson:
I join in the objection, your Honor.

The Court:
I think the objection is well taken. All I think so far, from what has appeared, that Mr. Hawkins can state, that there was an employment of Captain Bernard, and that there was conversation between them, and the independent fact that some work was done; that is as far as you can go.

Q. Will you tell us, Mr. Hawkins, whether or not you did all the work that Captain Bernard recommended?

Mr. Botts:
Wait a minute; now that is an indirect way of trying to circumvent the Court's ruling, and I object.

The Court:
The objection is well taken.

Mr. Underwood:
I don't see how else I can prove it, your Honor.

Mr. Botts:
You might get the witness that knows.

Mr. Underwood:
If your Honor please, this witness knows what Captain Bernard recommended to him, and this witness knows what work was done.

The Court:
I think he can testify to what work was done.

Mr. Botts:
Exactly; if he will ask him what work was done.

Mr. Underwood:
My purpose is to prove that he did all the work that Captain Bernard recommended; that this was an oral report; and the only way I can prove that is out of the mouth of this witness and Captain Bernard; I can't do it both at the same time.

The Court:
You might have to reintroduce him after you have Captain Bernard's testimony; but on the record now, I think all he can testify to is what was done.

Q. You have testified, Mr. Hawkins, I think, that you got a written report from Captain Bernard?
A. Yes, sir.

Mr. Underwood:
Mr. Botts thinks that is the best evidence.

Mr. Botts:
No, I don't think it is competent evidence, however; and you don't, either.

Mr. Underwood:
You want to keep out both my kinds of evidence?

Mr. Botts:
Right, all that is incompetent.

Q. Mr. Hawkins, I show yeu a paper; tell me whether or not that is the report you got from Captain Bernard, the written report.

A. Yes, sir, it is.

Q. Are those your initials up there in the upper right hand corner?

A. Yes, sir.

Q. What is the date of that?

Mr. Botts:

Objected to.

Mr. Underwood:

Object to the date of it?

Mr. Botts:

Yes, sir, anything that is in that document there, unless it is in evidence; yes, sir.

Q. About when did you get it, Mr. Hawkins?

A. March 29th.

The Court:

Let me rule on the other; I overrule the objection as to the date.

A. 1935.

Mr. Underwood:

I ask that that be marked for identification.

(The said report was marked Respondents' Exhibit DD for identification.)

Mr. Underwood:

Now, if your Honor please, I offer in evidence, Respondent's Exhibit DD for identification, which the wit-

ness indicates is the report made to him by Captain Bernard.

Mr. Botts:

To the introduction of which the Respondents Pilkington objects, on the ground that it is hearsay, that it is not the best evidence; that the only proper method of proving those is to bring in the witnesses who made it, and prove it as direct testimony; and that you are not permitted to avoid the calling of a witness by trying to put in his written reports, not testified to under oath nor in any other manner made competent evidence.

Mr. Matteson:

I certainly join in all of the objections, if your Honor please. It is quite incompetent to introduce the written report of a man who is not called as a witness, for any purpose at all.

The Court:

Well, so far as the document showeth the necessity of any repairs, it is inadmissible. So far as it is showing an independent fact, that a written report was made by an employed marine surveyor, it is competent—that independent fact, that a written report was made.

Mr. Botts:

We will stipulate, because we don't think that document ought to go in the record, unless the witness is here so that we can cross examine him, which seems to be the purpose of trying to get it in this way to avoid letting us cross examine this witness: If the sole purpose of it is to establish the fact that there was a written report, on behalf of the Respondent Pilkington, we stipulate that there was a written report; and, that fact admitted, there is no reason for encumbering the record with a document otherwise inadmissible.

The Court:
There is no jury in this case. I don't see any objection to it being admitted for the purpose that I have expressed.

Mr. Botts:
I want you men personally in here, to cross examine him.

Mr. Underwood:
Mr. Matteson had him under subpoena and didn't call him.

The Court:
I will overrule the objection, and admit it under the circumstances that I have pleaded.

Mr. Botts:
For that purpose only?

The Court:
Yes, sir. I have instructed that.

(The paper marked Respondents Exhibit Dd for identification, thereupon was admitted in evidence and filed as Respondents' Exhibit DD.)

Q. Did Captain Bernard place a value on the Seminole?

Mr. Botts:
Objected to as immaterial and hearsay.—If the Court please, I will withdraw the objection to the answer. He can answer it yes or no.

Mr. Underwood:
That is all I want.

A. Yes.

Q. Do you know whether or not she was insured at that value when you insured her?

Mr. Botts:

Now, objected to; that is an indirect method of trying to get in testimony that counsel knows is incompetent. Then the next question will be, what was she insured at; and they try to get in indirectly, testimony that he knows in incompetent; and I object to it.

The Court:

I think the objection is well taken. He can say what she was insured at, and build it up to other evidence.

Mr. Underwood:

Your Honor says that I can ask him what she was insured for?

The Court:

Yes, sir.

Q. Do you remember what figure she was insured for?

Mr. Botts:

Objected to, on the ground that the insurance policy is the best evidence.

Mr. Matteson:

I object on the further ground it is immaterial, irrelevant and incompetent.

The Court:

I don't see the materiality, but I will leave that open to be stricken if it doesn't appear. I will admit it subject to the materiality being shown.

Mr. Botts:

Don't you think the insurance policy is the best evidence?

The Court:

I don't think so. Technically and strictly it is, but we are not trying an insurance case, we are trying another case.

A. She was insured.

Q. And I think you are permitted to say at what figure she was insured.

A. $8,500, if I remember correctly.

Q. And do you remember whether or not that was the figure at which Mr. Bernard repored her value?

Mr. Botts:

I object.

Mr. Underwood:

Or am I asking the same question?

The Court:

Yes, sir.

Mr. Underwood:

I will withdraw it.

Q. Now, Mr. Hawkins, did you get any offers for the Seminole?

Mr. Botts:

Objected to as immaterial.

Mr. Underwood:

If your Honor please, may I deliver myself of a very brief statement here?—These gentlemen have said more

than once they wanted the whole picture. Here I am trying to give them the whole picture; and while I concede that whether or not he got an offer for the Seminole, strictly speaking is immaterial to the issues in this case. It is a proper part of the background leading up to the sale of Mr. H. C. Phipps' stock to Mrs. Guest; and it is the basis for what subsequently transpired. That is what I propose to prove. I think your Honor could understand what transpired here, and the nature of the entire arrangement, if we can put in some details, rather than to have simply the naked transaction of a sale of stocks by Mr. H. C. Phipps to Mrs. Guest.

Mr. Botts:
I insist on the objection.

The Court:
I shall overrule the objection.

(The question was read.)

A. Yes, sir.
Q. And did you get one offer that you thought was the best you could get?
A. Yes, sir; $5,000.

Mr. Underwood:
In deference to Mr. Botts I wasn't going to ask him the amount of that offer.

Mr. Botts:
I move to strike that part as being immaterial and not responsive to the question also,—the amount of that offer.

The Court:

I don't see the materiality of that. It certainly is subject to the technical objection it is not responsive. I shall grant the motion. I don't see the materiality of it. If it is made to appear that it is material, why you may offer it again.

Mr. Underwood:

May I put it this way, your Honor:

Mr. Botts:

Go ahead. We will withdraw the objection to that; let it stay in.

Q. What was the amount of the offer, Mr. Hawkins?

A. $5,000.

Q. What did you do with reference to that offer when you received it?

A. Submitted it to both the stockholders.

Q. And what was the reaction of Mr. H. C. Phipps, as expressed to you?

Mr. Botts:

Objected to. That is certainly incompetent, if the Court please, and hearsay; it calls for a conclusion as well.

Mr. Underwood:

If your Honor please, the issue in this case is whether Mr. J. S. Phipps operated and controlled the Seminole. That is the allegation against us. I am endeavoring to show that he did not; that one stockholder took just as much interest and had just as much activity in the Seminole Corporation, as the other; and this was a real live corporation, and behaved itself. The only way I can do that is by proving instances where each stockholder did

something. That is what I propose to do. I want to show that there was a course of dealing in the history of this corporation; certain things were submitted to the stockholders; and that both stockholders on occasion acted as such, and that one, no more than the other, did so. The only way I can do it is by proving an act. This is a verbal act, it isn't hearsay, when Mr. H. C. Phipps said, either I will or I won't sell at that figures, that is an act; it is an act expressed in words, it is true, but it is an act, nevertheless.

Mr. Matteson:
That isn't exactly what you asked.

The Court:
The question asked him was what his reaction was to it, and incorporates the idea of reasons.

Mr. Underwood:
"As expressed to you", was in my question.

The Court:
I think he could answer the question as to whether this stockholder did or did not give a formal answer to the communication from Mr. Hawkins.

Mr. Botts:
But that wasn't the question.

The Court:
Well, I will construe the answer that way; limit it to that phase,—to that question. You may answer the question with that correction.

A. He told me to sell it—talking about Mr. H. C. Phipps.

Q. Yes.

A. He told me to sell it.

Q. And did you communicate the offer to Mr. J. S. Phipps?

A. Yes, sir.

Q. What did he tell you?

A. He said he was undecided, he would let me know.

Q. And did he let you know later on?

A. Yes, sir.

Q. When did he let you know?

A. He told me that arrangements had been made for his sister, Mrs. Guest, to buy Mr. H. C. Phipps' interest.

Mr. Botts:

If the Court please I think that is bringing in testimony that should properly come from these witnesses themselves. Now they are saying what Mr. H. C. Phipps and what Mr. John S. Phipps said. Now then I think we are entitled to get that testimony, if at all, from the principal, and not by hearsay through the agent; and that that testimony should be stricken out. If they want to bring in what they did or said, let them bring Mr. John S. Phipps and Mr. H. C. Phipps here, so that we can cross examine them and find out the whys and wherefores. They say they went to get the picture; well, we would like to get the picture, from the direct source. I think that testimony is clearly objectionable on the ground that it is hearsay; and that we are entitled to have the witness Phipps here and let him state what the facts are.

The Court:

I certainly think, Mr. Underwood, that the answer of Mr. H. C. Phipps—I believe it is H. C.

A. H. C.

The Court:

As to what he wanted,—he was the one uncertain?

Mr. Botts:

That was J. S.

A. That was J. S.

The Court:

His being uncertain, because of a proposed sale or relationship to antoher purchaser of stock,—I think that is clearly incompetent.

Mr. Underwood:

If your Honor please, what I want to prove by this, is simply this: That Mr. Hawkins as secretary of this company, was directed to decline selling the boat on a specific offer, after the stockholders had met together and reached a decision as to the sale of the stock, from one stockholder, a member of the family, to another member of the family.

The Court:

No, I think that will have to come out from those witnesses themselves. I think all Mr. Hawkins can testify to about that, is that he as an officer, obtained an offer, and that he communicated that offer to the stockholders, and what their reply was. I don't think he can go any farther than that.

Q. Well, you didn't indicate the offer to Mr. J. S. Phipps?

A. Yes, sir.

Q. You got a reply from him?

A. Yes, sir.

Q. And what action did you then take following that reply on the offer to purchase the boat?

A. I refused the offer.

Q. And do you remember when that was?

A. Well, I have a record of it; it was in March, I think, 1935.

Q. And how long after you received that communication from Mr. J. S. Phipps and declined the offer to buy the boat, was the stock certificate to Mrs. Guest issued?

A. About a week.

Q. That stock certificate bears date of March 23, 1935?

A. Yes, sir.

Q. That was about a week after you were instructed by Mr. J. S. Phipps to decline the offer?

A. Yes, sir.

Q. Now there was a cruise made by the Seminole in the Spring of 1935, was there not?

A. Yes, sir.

Q. And were you on that cruise?

A. Part of the time, yes, sir.

Q. How many boats were along?

A. Two large boats.

Q. What were they?

A. Captain Starke, the Norma and the Seminole.

Q. You had some fishing boats besides?

A. We had four or five fishing boats.

Q. Do you remember what boats they were?

A. Yes, sir; the Clip, a fishing boat owned by Mr. John S. Phipps; and a little Prigg boat owned by the Seminole Company, a little runabout; and then Captain Starke of course had his own boat,—three or four boats.

Q. He had the Norma and fishing boats?

A. Yes, sir.

Q. What persons were on that cruise?

A. Well, on the beginning of the trip, on the Norma, Mr. Howard Phipps, Mr. H. C. Phipps, Mr. David T. Lehman, Jr., and myself. On the Seminole was Mr. and

Mrs. John S. Phipps, Miss Audrey Phipps, Mrs. Guest and her son Raymond.

Q. Who was master of the Seminole on that trip?

A. Captain W. P. Baker.

Q. Who employed him?

A. I did, sir.

Q. Who made the arrangements with him?

A. I did.

Q. Did you have any communication with him by telegfam?

A. Yes, sir.

Q. I show you a paper; will you tell me what that is?

A. That is a copy of the telegram to Captain Baker.

Q. What date did you send that?

A. March 27, 1935.

Q. Did you get a reply to that?

A. Yes, sir.

Q. I show you another paper; tell me what that is.

A. It is a reply from Captain Baker.

Q. What is the date of that?

A. March 25.

Q. Did you send him a wire after that?

A. Yes, sir.

Q. I show you still another paper; what is the date of that?

A. It is my wire to Captain Baker, dated March 28, 1935, confirming his telegram.

Mr. Underwood:

I ask that these be marked Respondent's Exhibits EE, 1, 2 and 3.

(The said three telegrams were marked Respondents' Exhibits EE-1, EE-2 and EE-3, respectively, for identification.)

Mr. Underwood:
I offer these in evidence.

Mr. Botts:
No objection.

The Court:
They will be admitted.

(Defendants' Exhibits EE-1, EE-2, and EE-3 for identification, thereupon were admitted in evidence and marked with the said respective numbers.)

Q. Did Captain Baker bring some part of the crew with him?
A. Yes, sir.
Q. Who was it decided that that was to be done?
A. Captain Baker and myself.
Q. Where did the engineer come from?
A. Palm Beach.
Q. You had nothing to do with the providing of the engineer?
A. No, sir.
Q. Did you know R. C. Abel?
A. Yes, sir.
Q. Was he on that cruise?
A. Yes, sir.
Q. And in charge of some boat?
A. In charge of the Clip,—the fishing boat.
Q. Did he have anything to do with the Seminole on that trip?
A. No, sir.
Q. Where did the party leave the Seminole after that trip?
A. At Matecumbe, trestle #2.

Q. Were any instructions given by you to anybody as to what to do with the Seminole from that time on?

Mr. Botts:

I think that is objectionable, if the Court please; it is hearsay. I mean, it is transactions between this man and some one else, but I can't see how they are binding upon us; res inter alios acta.

Mr. Underwood:

If your Honor please, it is a matter of instructions given by an officer of the owning corporation, owner of the boat. These are acts, consummated in words, but they are acts,—

The Court:

I think that is competent; overrule the objection.

A. Yes, sir.

Q. And what instructions did you give, and to whom?

A. Gave them to Captain Baker, and told him to take the boat to the Royal Palm Dock here, unload the surplus supplies, and take the boat to Captain Pilkington's boatyard at Ft. Lauderdale for storage.

Q. Did anybody tell you to issue those instructions?

A. No, sir.

Q. Did Mr. J. S. Phipps tell you to do anything about that?

A. No, sir.

Q. Did you give any instructions to the engineer?

A. No, sir.

Q. When did you next see Captain Baker?

A. Well, it was the day after he placed the boat in storage, or the afternoon of the day; I don't know which.

Q. Where did you see him?

A. At my office.

Q. Did he give you anything?

A. He gave me the keys to the boat.

Q. Describe those keys as well as you can for us Mr. Hawkins.

A. As I remember them, they were on a string, or regular key ring, with either a metal or a paper tag, denoting what they were. There were a number of keys.

Q. Do you know how many, about?

A. Oh, I wouldn't know; a group of them.

Q. What did you do with those keys?

A. I gave them to the cashier, to keep them.

Q. Did you do anything with them after that?

A. Yes, sir.

Q. What did you do with them?

A. The next day I gave them to Mr. Webber in my office.

Q. How many of the keys that you received from Captain Baker, did you give to Mr. Webber?

A. All of them.

Q. I show you a letter dated April 17, 1935, which has previously been marked Libelants' Exhibit 52. Did you write that letter?

A. Yes, sir.

Q. On April 17, 1935?

A. Yes, sir.

Q. Is that the letter you gave to Mr. Webber?

A. Yes, sir.

Q. Do you know whether Mr. Webber went to the Seminole at Captain Pilkington's yard?

A. Yes, sir.

Q. Do you know whether he brought anything back?

A. He did.

Q. Did you see what he brought back?

A. Yes, sir.

Q. Describe it to us.

A. Well, there was quite a large number of bundles of linen, silver, trophies off of the boat; must have been eight or ten bundles or more.

Q. And where were they put?

A. We built a special cedar chest for them in the office; placed them in that.

Q. Now did you have any conversation with Mr. Webber after he came back, with reference to the keys? Just answer yes or no.

A. Yes.

Q. And did you issue Mr. Webber any instructions about the keys?

A. Yes, sir.

Q. What instructions did you issue to him?

A. I told him to send them to Captain Pilkington.

Q. From that time on did you have any communication from Captain Pilkington, either orally or in writing, down to the time of the fire?

A. No, sir.

Q. Did Captain Pilkington ever make any request of you for any additional keys?

A. No, sir.

Q. Did he ever make any request of anybody else, to your knowledge, for any additional keys?

A. No, sir.

Q. When did you first learn about the fire, Mr. Hawkins?

A. It was the date of the fire, I think around one-thirty.

Q. What did you do?

A. I drove to the fire, accompanied by Mr. Webber, to Pilkington's boatyard.

Q. Did you see the Seminole then?

A. Yes, sir.

Q. Do you remember what time of day you got there?

A. I think it was around three o'clock; three-thirty or three; about an hour after the fire started.

Q. Was she still burning?
A. Yes, sir.
Q. Was she sunk yet?
A. No, sir.
Q. Did you see Captain Pilkington?
A. Yes, sir.
Q. Did you have a conversation with him?
A. Yes, sir.
Q. Where did it take place?
A. In his little office, or house; little frame building.
Q. Tell me the substance of that conversation.

Mr. Matteson:

If your Honor please, as far as the Libelants are concerned, we take it that this question is only being offered as discrediting Pilkington's testimony, not for the purpose of showing the conversation that was binding on the libelants in any way.

Mr. Underwood:

No; as I did before, your Honor, I offer this to prove these facts as Captain Pilkington stated these to be. You remember your Honor received that testimony from Captain Cody and from Mr. Webber.

The Court:

As against Pilkington?

Mr. Underwood:

As against both.

Mr. Matteson:

No, I think it was in the matter I suggested, as against Pilkington, as an admission, and as against the libelants only for the purpose of contradicting or discrediting Pilkington's testimony.

Mr. Underwood:

If your Honor please, at the proper time I shall be prepared to show you authorities which will indicate, I am sure to your satisfaction, that I am entitled to prove the fact that there was no gasoline in the boat, on the basis of Captain Pilkington's statement; and that is admissible against both the libelants and Captain Pilkington, and I offer it for that purpose. When Captain Cody testified and when Mr. Webber testified, I asked them both,—put the same question twice, once in a general way, to prove the facts, and once in a specific way to discredit Captain Pilkington; I want to get this on the record for that purpose.

Mr. Matteson:

On what theory would it be admissible against the libelants as proof of the fact?

Mr. Underwood:

Admission against interest, made at the time, voluntarily, and therefore proof of the fact.

Mr. Matteson:

Certainly not an admission on the part of anyone authorized to make them by libelants.

Mr. Underwood:

It doesn't have to be. An admission as against interest is admissible if made voluntarily, to prove the fact.

Mr. Botts:

If the Court please, it is such an astounding proposition of law to me, that they can attempt to establish a fact by such testimony, that I would like to see that authorioty. So far as it being a conversation between Captain Pilkington and this witness, I think as against Cap-

tain Pilkington it is probably admissible, but to attempt to establish a fact,—if counsel can produce authority for that I would like to see it, because I have never heard of it.

The Court:

Let us defer that until the final hearing. The testimony is going on, and as to how far it will be considered, if it is against him why we will unravel that later. You can make your objection though, for the purpose of the record.

Mr. Matteson:

Yes, I make my objection.

Mr. Botts:

If your—if this is intended to impeach Captain Pilkington, why then naturally it is not the proper way to put the question. So if it is intended to impeach Captain Pilkington, then I will object to the question in that it is not the proper form.

The Court:

You admit that so far as an admission, if there is anything of admission that comes in by this answer, it will be binding on Captain Pilkington?

Mr. Botts:

It might be, yes, sir; and I think it would be admissible; but if it is an attempt to impeach him, it is clearly not the proper method.

The Court:

Well, I won't ask Mr. Underwood that question; I will let him be governed by that.

Mr. Underwood:

If your Honor please, I intended to ask the question both ways. I can't lead him for the general purpose; I have to lead him for the impeachment purpose. I have to fire one barrel at a time, and this is not the impeachment barrel.

The Court:

You want to put in your objection?

Mr. Matteson:

I object to it generally, yes, sir.

Q. All right, Mr. Hawkins, I think you can go ahead now and tell us the conversation with Captain Pilkington.

A. Why naturally I was interested in the cause of the fire; I asked the Captain how it started. He said that he couldn't understand it; that shortly before, within the month, he had tried to run the generator in the engine room on the boat, and couldn't do so for the lack of gasoline.

Q. Now I have got to ask you that question in another way, Mr. Hawkins:

Mr. Underwood:

Mr. Botts, this is the impeachment barrel.

Mr. Botts:

All right, fire.

Q. Tell us whether or not, Mr. Hawkins, it is a fact that on the afternoon of the fire, in or about Captain Pilkington's house, and in the presence of yourself and some others, Captain Pilkington said in substance, "I cannot account for the fire; I know there was no gaso-

line in the boat, because I had been in her engine room and attempted to run the generator, within the month, but could not do so for lack of gasoline."

A. That is right; that is substantially correct.

Q. Do you remember what time you left the boatyard that day?

A. About four o'clock.

Q. Do you remember whether the fire was still burning?

A. Yes, sir, it was.

Q. And was the Seminole sunk as yet?

A. No, sir.

Q. Side was still above water?

A. Yes, sir.

Q. Did you ever make any arrangement with Captain Pilkington about the terms of storage of the Seminole?

A. No, sir.

Q. Now, following the fire did you communicate with Captain Bernard, of whom we have spoken before?

A. Yes, sir.

Q. Will you tell us the substance of your conversation with Captain Bernard?

Mr. Botts:

Objected to.

Mr. Matteson:

We object.

Mr. Underwood:

The purpose of this is to prove that Captain Bernard, your Honor, was an unfriendly witness, so that when I call him I will contend that he is an unfriendly witness; a witness I have never spoken to except in the corridor of the Courtroom. I want to lay this as the foundation to prove that he is an unfriendly witness, so that I can-

not be restrained from cross examining him, and will not be bound necessarily by what he says when I call him. —It is the Thomas situation.

Mr. Matteson:

If your Honor please, it seems to me it is sort of premature to bring in at this time. Certainly it wouldn't be admissible for any other purpose, and I certainly have no reason to believe the man is hostile to any side in this case. I think there is no reason for it at all.

Mr. Botts:

If the Court please, if they want to prove that a witness is unfriendly, and if they should for that purpose bring in witnesses by whom it might be shown that he has made statements directly showing that he was hostile, I think at the proper time that might be proper. But I strongly suspect that in this sense they are trying to indirectly get something before the Court that may be conceived to have probative value of other kinds. Now if the Court will limit the answer to statements that the witness might have made as to hostility, I won't object. But if they drag it in in this way, some statement that the witness is supposed to have made with reference to the condition of the Seminole, then the obvious purpose is not to show hostility, but to try to prove indirectly questions. Now I think that at this time proof of a conversation between this witness and Captain Bernard or Mr. Bernard, is inadmissible as hearsay, and not binding on any of these parties, and I object to it specifically on that ground, which I believe is clearly well-taken. But I want to make this statement, that I will not object, even though it is technically inadmissible, to testimony put in solely for the purpose of proving hostility, if that is the purpose, and without any indirect possibility of its being twisted to have a probative value on other issues in the case.

Mr. Matteson:

I think that is a very fair statement of it, if your Honor please; and if it is with the understanding that it is definitely limited to such statements, and reserving our right to move to strike it in the event it isn't so limited, I haven't any objection to the showing of the bias that exists; I can't conceive that it does.

Mr. Dyer:

It seems to me the only possible way the Court could rule that that evidence is now admissible, is to accept as a fact, and evidence, Mr. Underwood's statement that the witness is hostile; because there is nothing in the record to show his hostility, except Mr. Underwood's statement.

Mr. Underwood:

That is what I am trying to prove.

Mr. Dyer:

If you put him on the stand and show he is hostile, that may be so. * * *

Mr. Botts:

I think it is a very dangerous precedent to set; I don't think it should be permitted.

Mr. Underwood:

All I want to prove is the statement made by Mr. Bernard as to his hostility.

Mr. Matteson:

It seems to me the time to do this will be after Mr. Bernard is on the stand and testifies and shows that he is a hostile witness, by his attitude or his manner or his answers. It doesn't seem to me that it is proper at this

time to introduce statements by this witness, in advance of that. That is a thing that is to be determined by the attitude of the witness when he comes, and it isn't fair to bring in testimony of this kind in advance of that time.

Mr. Underwood:

Hostility isn't by any means always apparent from the demeanor of the witness, or his answers. I want to prove a statement made by Mr. Bernard, that I shall say indicates his hostility.

Mr. Botts:

Does it have to do with the condition of the Seminole?

Mr. Underwood:

Nothing whatever with the condition of the Seminole.

Mr. Botts:

I have made my position clear on that.

Mr. Underwood:

Your suspicions do me injustice.

Mr. Botts:

Your previous questions warrant some suspicion.

The Court:

Suppose we let the witness answer and then I will determine this question.

A. Yes, sir, I tried,—I called Captain Bernard and asked if it would be convenient for him to go to the fire, to try to determine the cause of it. He said he would be glad to do that, but he couldn't represent us, be-

cause it was most embarrassing to him because he represented a number of the insurance companies.

The Court:

When was that conversation?

A. I had two conversations; this was a day or two after the fire, and then later on I had another talk with him. I have used Captain Bernard all the time on boats that I have been connected with.

Mr. Matteson:

That certainly is no evidence of any bias. If I should refuse to accept employment for a client, because I don't want to represent him as against somebody else—

The Court:

Let us deal with that when he is brought in. I don't think the record is hurt by letting this go in at the present time so I will overrule the objection to his answering as he has, and considering that you have made a motion to strike.

Mr. Botts:

No, sir, I am not making a motion; I am satisfied with it just as it is, but I wanted to protect myself.

Q. Mr. Hawkins, I show you a paper and ask you if you can tell me what that is.

A. Yes, sir. It is a copy of a letter dated May 30, 1932, addressed to the Pilkington Yacht and Storage Basin.

Q. To whom did you deliver the original of this letter and—

A. To Mr. Frank Thill.

Mr. Underwood:

I ask that that be marked for identification.

(Said paper was marked Respondents' Exhibit FF for identification.)

Mr. Underwood:

I show that to Mr. Botts and ask him to produce the original if he can. I didn't have this letter before.

Mr. Botts:

I will say to Mr. Underwood that we have produced everything we can find and I think I am correct in saying that this has not been produced; if so, we cannot produce it because we produced everything we have; and we have made a most careful search after that other request.

The Court:

Do you offer that now as secondary evidence?

Mr. Underwood:

I can't prove that he got it, because Mr. Hawkins just delivered it to Mr. Thill, didn't even put it in the mail; it is something that was delivered by hand to a person who is supposed—I won't say what he said, my friends would probably rise and object.

The Court:

What is it?

Mr. Botts:

I don't know. I don't know whether it ever reached Captain Pilkington or not.

The Court:

There is no evidence that Mr. Frank Thill did contact the addressee of this letter at all?

Mr. Underwood:
I have no such evidence as yet, if the Court please.

Mr. Botts:
The position of Captain Pilkington is this; that we have no letter, and we neither affirm nor deny,—we have no recollection of it; so we can't say that it was or was not.

The Court:
Well it isn't offered in evidence anyway; you just offer it for identification?

Mr. Underwood:
That is all.

Q. Now, Mr. Hawkins, you have said that the Boulevard Mortgage Company made some payments on account of the Seminole and advances to the Seminole Boat Company; is that correct?
A. Yes, sir.
Q. Now have you prepared a list of other corporations and persons for whose accounts the Boulevard Mortgage Company made advances?
A. Yes, sir.
Q. And whose bills the Boulevard Mortgage Company paid?
A. Yes, sir.
Q. Is that the list?
A. Yes, sir.
Q. Rather than offer the list, may I just have the reporter put these names in the record, without Mr. Hawkins reading them?—I will ask the question; Mr. Hawkins, will you tell me what corporations and persons those are?

Mr. Botts:
Just a minute.

Mr. Matteson:
Listen. Let's see if I understand this correctly. This is supposed to be a list of persons for whom the Boulevard Mortgage Company advanced moneys from time to time?

Mr. Underwood:
Correct.

Mr. Matteson:
In other words it is supposed to be an abstract of what the books of the Boulevard Mortgage Company will show; is that right?

Mr. Underwood:
No. By no means an abstract of the book.

Mr. Botts:
So far as Respondent Pilkington is concerned, you can file the list or read it, either one. Maybe it would be better to file it then we could have it there where we could look at it, if you don't mind.

Mr. Underwood:
I will give you a copy of it.

Mr. Botts:
All right.

Mr. Underwood:
I am not offering the top two lines, because we don't like that phrase; it is to be conceded that that is not part of this thing. With that understanding we will just

let the reporter copy this in the record as though Mr. Hawkins had read it off in his answer; is that understood?

Mr. Botts:
Yes.

The Court:
How does that supplement the question and answer now? I just don't understand it.

Mr. Underwood:
Well, if your Honor please I have asked Mr. Hawkins to give us the names of a number of companies for whom the Boulevard Mortgage Company made payments and made adavnces of money from time to time. My purpose is to show that the Boulevard Mortgage Company made advances for a number of other companies, in the same way that it did the Seminole. The contention on the other side, will be, as I understand it, that the Boulevard Mortgage Company and the Palm Beach Company made advances for the Semniole, because Mr. John S. Phipps dominated the Boulevard Mortgage Company and dominated the Seminole Boat Company. My purpose is to show that he didn't dominate either of them; that this corporation and the Palm Beach Company did the same thing for a number of other corporations.

The Court:
Well, you have shown so far I believe, that the Boulevard Mortgage Company paid bills properly chargeable to the Seminole Boat Company.

Mr. Underwood:
That is correct.

The Court:
And the purpose of this is to show that the Boulevard Mortgage Company likewise made payments for these various—have listed corporations.

Mr. Underwood:
That is true, and individuals; did the same thing for some twenty others.

The Court:
Well, was the Boulevard Mortgage Company reimbursed for these amounts?

Mr. Underwood:
I shall prove that.

The Court:
So far as the Seminole Boat Company is concerned, any payments that were made by the Boulevard Mortgage Company, has it so far been proven whether the Boulevard Mortgage Company was reimbursed for the payment made for the account of the Seminole Boat Company?

Mr. Underwood:
I believe I asked Mr. Hawkins that, but I will ask him that now:

Q. Do you know, Mr. Hawkins, whether the Boulevard Mortgage Company has been reimbursed for the payment it made on behalf of the Seminole Boat Company?

A. Well, those records were kept in the New York office and I wouldn't know.

The Court:

The purpose of this, to go back, is to show that the Boulevard Mortgage Company made payments for these listed corporations.

Mr. Underwood:

That is correct.

The Court:

Or, individuals.

Mr. Underwood:

That is right.

The Court:

Is there any objection to the list being copied now by the reporter?

Mr. Botts:

None.

A. Bessemer Investment Co.; Bessemer Trust Co.; Biscayne Boulevard, Inc.; Duval Mortgage and Security Co.; East Shore Co.; Exchange Trading Corporation; Miami Plaza, Inc.; New Miami Shores Corporation; Palm Beach Co.; Phipps Realty Co.; Regent Land Co.; Seminole Boat Co.; Suburban Miami Investment Corporation; The Blackhawk Co.; The Mayaca Corporation; Boulevard Amusement Co.; Estate of Mrs. Bradley Martin; Frederick E. Guest; Mrs. Amy Guest; Bradley Martin; Henry C. Phipps; Howard Phipps; Mrs. John S. Phipps; John S. Phipps, M. G. Chace; Miami Corporation.

Q. Did the Boulevard Mortgage Company make any charge to any of these persons for that service?

A. No, sir.

Q. Mr. Hawkins, do you recall whether the Seminole Boat Company paid a personal property tax in the early part of 1935?

A. Yes, sir.

Q. I show you a voucher check and a check in support; will you tell me whether or not you recognize these?

A. Yes, sir.

Q. Does that bear your initials,—the voucher?

A. Yes, sir.

Q. Is the check there, your signature?

A. No, sir; signed by Mr. Clark, but I approved it.

Q. Payment was made by what company?

A. Seminole Boat Company.

Q. The payment was made by what company?

A. The Boulevard Mortgage Company.

Q. To whom was it charged?

A. Seminole Boat Company.

Q. Who decided that that property tax should be paid, at that time?

A. I did.

Mr. Underwood:

I offer these in evidence.

The Court:

Mr. Hawkins, as I understand now, when it came time, according to your directions, for this item to be paid, the Seminole Boat Company didn't have any funds to pay that?

A. That is right, sir.

The Court:

Is that correct?

A. That is right.

The Court:
And the Boulevard Mortgage Company did have the funds in the bank and could pay it?

A. That is right.

The Court:
So at the request of the Seminole Boat Company, the Boulevard Mortgage Company made actual payment of this account?

A. That is right.

The Court:
Now then was that exact amount, as a separate item, or as a part of a total, repaid to the Boulevard Mortgage Company?

A. Well, Judge, in our office we billed it through our head official and then periodically the accounts were all settled. Now I can't testify that I personally know that the account was reimbursed, but the books will reflect that.

The Court:
Well, who did you bill it to?

A. We sent it to the New York office, this disbursement, a copy of that voucher, together with the charge.

The Court:
Can you enlighten the Court as to who the New York office would bill it to?

A. To the stockholders of the Seminole Boat Company.

The Court:

As to whether it was actually paid by the stockholders of the Seminole Boat Company, and that the Boulevard Mortgage Company was reimbursed for that, you don't know that?

A. Well, the books would show that. The books were balanced as of January 1st, 1935, when the stock was transferred.

Q. Can you positively enlighten me on this, though, that that bill was not suffered as a depletion of the assets of the Boulevard Mortgage Company?

A. That is right, it was not.

The Court:

The stockholders of the Boulevard Mortgage Company didn't lose that amount of that bill?

A. No, sir.

The Court:

And according to the method of paying bills, the Boulevard Mortgage Company was just an intermediary or exchange?

A. It was for many people, including myself.

Mr. Underwood:

In due time I think I can show your Honor the original check by which this and a number of other items were paid back.

Mr. Botts:

No objection from Pilkington.

The Court:

Let it be admitted.

(The last paper offered was admitted in evidence and marked Respondents' Exhibit GG.)

Q. Mr. Hawkins, in February 1935, did you make a payment to the Boulevard Mortgage Company, to make a payment to Captain Abel for certain expenses?

A. Yes, sir.

Q. How much?

A. Captain Abel got twenty dollars I guess; this check is for $22.70.

Q. And against whom was the twenty dollars charged on the books of the Boulevard Mortgage Company when that check was drawn?

A. Seminole Boat Company.

Mr. Underwood:

I offer that in evidence.

The Court:

So on the books of the Boulevard Mortgage Company, the debit was set up as against the Seminole Boat Company which had requested this be done?

A. That is right, sir.

The Court:

In other words it wasn't set up on the books of the Boulevard Mortgage Company as a debit against the stockholders of the Seminole Boat Company?

A. No, it is against the company.

Mr. Botts:

No objection.

(The said check or voucher was admitted in evidence and marked Respondents' Exhibit HH.)

Mr. Botts:
Have you very many items like this?

Mr. Underwood:
Quite a number.

Mr. Botts:
What I was going to suggest, why don't you just let them be marked subject to the arrangement we had with the others; that if any of these we conceive later to be subject to objection, we will move individually to strike them; and we can perhaps make progress that way, as you did with the books of the Seminole Boat Company. You have no objection to that?

Mr. Matteson:
That sounds reasonable to me.

Mr. Underwood:
Does your Honor approve of that suggestion?

The Court:
Well, I do, and yet I am gaining information about this matter as we go along, and to just put it all in there, you all may understand it and I may not. I want to save time too, but I am getting information about this as we go along.

Mr. Botts:
Well, let the Court examine them and ask any questions as they go along, but I am not going to examine them; and we will save time by us not examining them and putting in any objections if we have any, and then later we will come back if we feel like it.

The Court:
It is just the nature of the bill, what was the nature of the charge, that I am interested in?

Mr. Underwood:

My principal purpose in all these things, your Honor, is to show who it was that determined to spend this money in this particular way. I am endeavoring to show that Mr. Hawkins operated and controlled the Seminole when she was at Miami, and not Mr. John S. Phipps and all those people. It was he who made the decision and not Mr. John S. Phipps. That is the purpose of all this.

Q. Now who was it determined to pay Abel at that time, that amount?

A. I did.

The Court:

Now that is offered, and no objection?

Mr. Underwood:

Yes; that is marked HH.

The Court:

I will admit all of them. You are calling my attention to the material facts you want to call to the Court's attention?

Mr. Underwood:

Yes, sir.

The Court:

But the ruling will be, they will be admitted, subject to any motion to strike.

Q. Now Mr. Hawkins, in March did you pay Captain Baker $78.25?—when I say you, I mean the Boulevard Mortgage Company.

A. Yes, sir.

Q. And against whom was that charged?

A. Seminole Boat Company.

Q. And what was the nature of the charge?

A. It was for various employes on the boat, and one minor repair.

Q. What was the nature of that repair?

A. Welding a head,—I presume a cylinder head.

Q. Who determined upon that?

A. I did.

Q. Did you have any conversation with Mr. J. S. Phipps before doing that?

A. No, sir.

Mr. Underwood:

I offer these.

(The said check-voucher, so offered, was admitted in evidence and marked Respondents' Exhibit II.)

Q. Also in March, Mr. Hawkins, did the Boulevard Mortgage Company make a payment to one Weinkle's, Incorporated?

A. Yes, sir.

Q. Against whom was it charged?

A. Seminole Company.

Q. What was the nature of the service or the material?

A. That is from a food store, so it was either—probably food.

Q. Did you approve of the purchase of that?

A. Yes, sir.

Mr. Underwood:

I offer that.

(The said check-voucher, was admitted in evidence and marked Respondents' Exhibit JJ.)

Q. Mr. Hawkins, in March, did you also,—did the Boulevard Mortgage Company make a payment to the Miami Radio Service Company?

A. Yes, sir.

Q. To whom was it charged?

A. Seminole Boat Company.

Q. What was the nature of the work?

A. Repairing a radio.

Q. Who determined that that should be done?

A. I did.

Q. Did you have any conversation with Mr. John S. Phipps before you did that?

A. No, sir.

Mr. Underwood:

I offer that, the voucher and check in support.

(The said check-voucher, was admitted in evidence and marked Respondents' Exhibit KK.)

Q. On March 1, 1935, did Boulevard Mortgage Company make a payment to the Bay Supply Company?

A. Yes, sir.

Q. And to whom was it charged?

A. Seminole Boat Company.

Q. What was the amount?

A. $110.80.

Q. What was it for?

A. Gasoline and kerosene.

Q. Who approved the purchase?

A. Captain Baker and myself.

Q. Anybody else?

A. No, sir.

Mr. Underwood:

I offer the check and the voucher.

(Said check and voucher were admitted in evidence and marked Respondents' Exhibit LL.)

Q. Mr. Hawkins, I show you a voucher and check No. 299 of the Boulevard Mortgage Company, which is made payable to C. H. Kelly, cashier; who was he?

A. He is the cashier in charge of all the rental collections in the office and the paying of petit bills.

Q. What was the routine for reimbursing him when he made expenditures for the various companies that you name?

A. Well, Kelly would present his petit cash receipts to me and I would approve them and the company would reimburse his petit cash fund.

Q. In March, did you make a payment to Mr. Kelly to reimburse petit cash fund on account of some disbursements for the Seminole Boat Company?.

A. Yes, sir.

Q. And to whom was that charged on the books of the Boulevard Mortgage Company?

A. Well, $45.00 of it was charged to the Seminole Boat Company.

Q. The figure is $45.81.

A. $45.81.

Q. What did that cover?

A. That covered express package from the Winton Engine Company for parts for the Seminole, and that was 1.12. To R. C. Abel, expenses in connection with the Seminole $20.00, to Abel, expenses in connection with Seminole, and $20.00 in cash to Abel for Steward on the Seminole.

Q. Did you approve that expenditure?

A. Yes, sir.

Q. Anybody else approve it?

A. No, sir.

Q. Are these the slips?

A. Yes, sir.

Q. That support those two twenty dollar payments and the 1.12 item?

A. Yes, sir.

Mr. Underwood:

I offer these.

(The said papers were admitted in evidence and marked Respondents' Exhibit MM.)

Q. Did you make a payment in March, when I say you I mean the Boulevard Mortgage Company,—to the Florida East Coast Hotel Company?

A. Yes, sir.

Q. And what was that for, so far as the Seminole Boat Company was concerned?

A. Storage—or dockage rather, to the Royal Palm Dock.

Q. How much of it was charged to the Seminole Company?

A. 73.66.

Q. To whom was the balance charged?

A. To John S. Phipps.

Q. What was that for?

A. That was for storage, for his boat, the Clip.

Q. That was owned by him?

A. Yes, sir.

Q. Did the Seminole Boat Company own the Clip?

A. No, sir.

Q. So that when you got these bills from the Florida East Coast Hotel Company, you charged the wharfage for the Clip to Mr. Phipps and the wharfage for the Seminole to the Seminole Boat Company?

A. That is right, sir.

Q. On the books of the Boulevard Mortgage Company?

A. Yes, sir.

Q. Who approved those bills?

A. I did.

Mr. Underwood:

I offer them in evidence.

(The said papers were admitted in evidence and marked as Respondents' Exhibit NN.)

Q. Did the Boulevard Mortgage Company make payments to the Coconut Grove Boat Works in 1935?

A. Yes, sir.

Q. On account of the Seminole?

A. Yes, sir.

Q. How much, and to whom was it charged?

A. It was charged to the Seminole Boat Company, and the amount was $200.

Q. What was the nature of the work?

A. Hauling, cleaning and painting the bottom, as per contract which I had made with them.

Q. Who decided to have that work done?

A. I did, sir.

Q. Did you have any conversation with John S. Phipps before that work was done?

A. No, sir.

Q. Who decided that the work should be done by the Coconut Grove Boat Works instead of Merrill-Stevens or somebody else?

A. I did.

Mr. Underwood:

I offer those.

(The said papers were admitted in evidence and marked Respondents' Exhibit OO.)

Q. In March, 1935, did you have anything to do with the purchase of a Prigg boat?

A. Yes, sir.

Q. Tell us about that.

A. Well, there was—the regular tender on the Seminole was not worth repairing, so we wanted to find another boat. Captain Baker recommended the purchase of one that was laying at the dock, the Royal Palm Dock, a very good boat, that the man had no need for. I wanted to buy it myself but I didn't have the money. Mr. John S. and I believe Mr. H. C. Phipps were in town at the same time,—I am not sure; I spoke to them about it, and I think the man was asking a thousand dollars for the boat and Mr. Phipps said he would like to have it personally, but any way, to see what I could find, and we would decide who would buy it. So later on—he said he would talk to—I don't remember whether it was his brother or his sister, about it. I bought the boat about a week later for $950.

Q. And the company paid for it?

A. The Seminole Boat Company.

Q. It was paid for by check of the Boulevard Mortgage Company?

A. Yes, sir.

Q. And charged against—

A. The Seminole Boat Company.

Mr. Underwood:

I offer these.

(The said papers were admitted in evidence and marked Respondent's Exhibit PP.)

Q. You have said that in this instance, Mr. Hawkins, you talked to the stockholders of the Seminole Boat Company before you made the purchase?

A. Yes, sir.

Q. Was that a deviation from routine? Tell us what the routine was about incurring expenses of that sort.

A. Well, within reason, repair and maintenance of the boat, why I did it.

Q. Who determined whether it was within reason?

A. I did.

Q. Mr. Hawkins, I show you the Boulevard Mortgage Company voucher to Kelly, the cashier, and ask you to tell me how much of that concerns the Seminole?

A. $20.80.

Q. What did that cover?

A. That covered the expense of Elliot Bryant, who was a sailor, and eighty cents for chrome plating some material.

Q. Who determined upon the chrome plating?

A. I did.

Q. Did you approve these expenses?

A. Yes, sir.

Q. Did anybody else?

A. No, sir.

Mr. Underwood:

I offer this.

(The said papers were admitted in evidence and marked Respondents' Exhibit QQ.)

Q. Did the Boulevard Mortgage Company make a payment to the Hamlin Mattress Company in April?

A. Yes, sir.

Q. To whom was that charged on its books?

A. Seminole Boat Company.

Q. What was it for?

A. It was for repairing some cushions on the stern of the boat, on the after deck.

Q. Who was it decided upon that?

A. I did.

Q. Who decided that the Hamlin Mattress Company should do it instead of somebody else?

A. I did.

Mr. Underwood:

I offer that.

(The said papers were admitted in evidence and marked Respondents' Exhibits RR.)

Q. Did the Boulevard Mortgage Company make a payment to Frank T. Bugde Company in April 1935?

A. Yes, sir.

Q. To whom was it charged on the books of that company?

A. Seminole Boat Company.

Q. What was it for?

A. Some screens and miscellaneous hooks.

Q. Who decided upon the purchase of those?

A. I did.

Q. Did you have any conversation with John S. Phipps before you decided that?

A. No.

Q. Who approved the price?

A. The price?

Q. Who approved the price?

A. Webber approved the price on that one.

Mr. Underwood:

I offer these.

(The said papers were admitted in evidence and marked Respondents' Exhibit SS.)

Q. Did the Boulevard Mortgage Company make a payment to D. L. Reisner, Inc.?
A. Yes, sir.
Q. Against whom was it charged?
A. Seminole Boat Company.
Q. What was it for?
A. Repairing some iron bands around the ventilation stack.
Q. Who decided on that work?
A. I did.
Q. Who decided that Reisner should do it?
A. I did.
Q. Did you have any conversation with John S. Phipps before you did that?
A. No, sir.

Mr. Underwood:
I offer that.

(The said papers were admitted in evidence and marked Respondents' Exhibit TT.)

Q. Now we have heard of Mr. Bernard; did the Boulevard Mortgage Company make a payment to Mr. Bernard?
A. Yes, sir.
Q. Against whom was it charged?
A. Seminole Boat Company.
Q. Was that the voucher check and Mr. Bernard's bill?
A. Yes, sir.
Q. Did you consult with anybody before you employed Mr. Bernard?
A. No, sir.
Q. Did you have a conversation with Mr. Phipps about employing a surveyor?

A. No, sir.

Q. Who was it decided to employ Mr. Bernard instead of somebody else?

A. I did.

Mr. Underwood:

I offer these.

(The said papers were admitted in evidence and marked Respondents' Exhibit UU.)

Q. Did the Boulevard Mortgage Company make a payment to Frank O. Pruitt, Inc.?

A. Yes, sir.

Q. Against whom was it charged?

A. Seminole Boat Company.

Q. On the books of the Boulevard Mortgage Company?

A. That is right.

Q. What was it for?

A. For $8400. insurance policy.

Q. On the Seminole?

A. Yes, sir.

Q. Who determined about that?

A. I did.

Mr. Underwood:

I offer these.

(The said papers were admitted in evidence and marked Respondents' Exhibit VV.)

Q. I show you another bill and voucher check of the Boulevard Mortgage Company to Florida East Coast Hotel Company. Can you tell me whether or not any part of that was charged to the Seminole Boat Company, and what for?

A. Well, it was storage; part of it was charged to the Seminole.

Q. Storage of the Seminole was charged against—

A. Seminole Boat Company.

Q. Who approved those bills?

A. I did.

Q. Who was it decided that the Seminole should lay at the Royal Palm Docks?

A. I did.

Q. Did you have any discussion with Mr. John S. Phipps about that? Before you did it?

A. No, sir.

Mr. Underwood:

I offer this.

(The said papers were admitted in evidence and marked Respondents' Exhibit WW.)

Q. Did the Boulevard Mortgage Company make a payment to Paul's Boat Supply?

A. Yes, sir.

Q. Charged to the Seminole Boat Company?

A. Yes, sir.

Q. What was that for?

A. Various supplies,—paint, pipe fixtures and so forth.

Q. Miscellaneous minor fittings?

A. That is right.

Q. And who passed upon the purchase of those?

A. I did, sir.

Q. Did you get anybody else's approval before you did that?

A. Only Captain Baker; I would always consult with him.

Q. Have any discussion with John S. Phipps before you did that?

A. No, sir.

Mr. Underwood:
I offer them.

(The said papers were admitted in evidence and marked Respondents' Exhibit XX.)

Q. Mr. Hawkins, did the Boulevard Mortgage Company make another payment to the Hamlin Mattress Company?
A. Yes, sir.
Q. And against whom was that charged?
A. Seminole Boat Company.
Q. Do you remember what that was for?
A. Well, I think it was recovering some kapok mattresses.

Mr. Underwood:
I might say to your Honor we haven't been able to find the bill of the Hamlin Mattress Company for this particular thing. Is that correct, Mr. Hawkins?
A. Yes, sir; that is the only work they did on that boat, they repaired these cushions with kapok and canvas covers.
Q. Is it your recollection that this is part of the same job?
A. Yes, sir.
Q. That you paid them somewhat before on account of?
A. Yes, sir.
Q. The same applies to this; who decided upon the necessity of the work?
A. I did.
Q. Anyone else consulted?
A. Only Captain Baker.

Mr. Underwood:
I offer these.

(Said papers were admitted in evidence and marked Respondents' Exhibit Yy.)

Q. Here is another voucher, Boulevard Mortgage Company to Kelly, cashier; can you tell me whether or not any part of that is charged to Seminole Boat Company?

A. $142.02 is charged to the Seminole Boat Company.

Q. And to who is the balance of it charged?

A. John S. Phipps.

Q. Now that is a great big pile of vouchers, Mr. Hawkins; I am not going to ask you to go through that and pick them out one by one. I will let them speak for themselves. Some part of this was charged to the Seminole Boat Company and some parts to John S. Phipps?

A. That is right.

Q. Did you approve that before it was paid?

A. Yes, sir.

Mr. Underwood:

I offer that.

(The said papers were admitted in evidence and marked Respondents' Exhibit ZZ.)

Q. Mr. Hawkins, did the Boulevard Mortgage Company make a payment to the Biscayne Boulevard Company in April, 1935?

A. Yes, sir.

Q. Was there some part of that charged to the Seminole Boat Company?

A. Yes, sir; $76.76.

Q. What did that cover?

A. Venetian strip windows, shades, toilet seat, bath cabinet, paints, nails and so forth.

Q. Who determined upon the purchase of those articles

A. I did, sir.

Q. Did you have any instructions or word from John S. Phipps about that?

A. No, sir.

Q. And against whom was that charged? The Seminole Boat Company?

A. Yes, sir.

Mr. Underwood:

I offer that.

(The said paper was admitted in evidence and marked Respondents' Exhibit 3-A.)

Q. Here is another voucher, Paul's Boat Supply, did the Boulevard Mortgage Company pay that?

A. Yes, sir.

Q. Charged it against what company?

A. Seminole Boat Company.

Q. What is it for?

A. Hose, paint. Here is a hose.

Q. That is a balance left over from previous bill, and one other small item?

A. Yes, sir.

Mr. Underwood:

I offer these.

(The said papers were admitted in evidence and marked Respondents' Exhibit 3-B.)

Q. Did the Boulevard Mortgage Company make a payment to the Electrical Equipment Company?

A. Yes, sir.

Q. Charged it against whom?

A. Seminole Boat Company

Q. What was it for?

A. It was putting condensors on the motors to eliminate static for the radio.

Q. Who decided upon doing that?

A. I did.

Q. Did you have any discussion with Mr. John S. Phipps before you did that?

A. No, sir.

Mr. Underwood:

I offer that.

(The said papers were admitted in evidence and marked Respondents' Exhibit 3-C.)

Q. Did the Boulevard Moragage Company make a payment to Edward Parkinson?

A. Yes, sir.

Q. Did it charge some part of that to the Seminole Boat Company?

A. Yes, sir.

Q. What was it for?

A. It was for repairing two Delco armatures.

Q. Who decided upon that work?

A. I did.

Q. Did you have any conversation with Mr. John S. Phipps before that?

A. No, sir.

Mr. Underwood:

I offer those.

(The said papers were admitted in evidence and marked Respondents' Exhibit 3-D.)

Q. Did the Boulevard Mortgage Company make a further payment to the Biscayne Boulevard Company in May, 1935?

A. Yes, sir.

Q. Did it charge some part of that to the Seminole Boat Company?

A. Yes, sir.

Q. What was that for?

A. That was for flash lights, toilet seats, miscellaneous equipment, brooms, coffee pots.

Q. Who was that decided upon the the purchase of the equipment?

A. I did.

Q. Did you have any discussion with Mr. John S. Phipps about that?

A. No.

Mr. Underwood:

I offer that.

(The said papers were admitted in evidence and marked Respondents' Exhibit 3-E.)

Q. Did the Boulevard Mortgage Company make a payment to the Hopkins-Carter Hardware Company on June, 1935?

A. Yes, sir.

Q. Did it charge that to the Seminole Boat Company?

A. Yes, sir.

Q. What was it for?

A. It was for fishing equipment, a lengthy bill.

Q. Burners and tarpon hooks and sinkers and glass bottom boxes and things of that sort?

A. Yes, sir.

Q. And against whom was it entered on the books of the Boulevard Mortgage Company?

A. Seminole Boat Company.

Q. Who decided to buy that equipment?

A. I did.

Mr. Underwood:
I offer them.

(Said papers were admitted in evidence and marked Respondents' Exhibit 3-F.)

Q. Now following the cruise, did Boulevard Mortgage Company make a payment to Captain Baker?
A. Yes, sir.
Q. And is that the check and the voucher?
A. Yes, sir.
Q. Against whom? Against whom was it charged on the books of the Boulevard Mortgage Company?
A. Seminole Boat Company.
Q. Who was it made the arrangement with Captain Baker as to the amount he should be paid himself, and the crew that he furnished?
A. I did.

Mr. Underwood:
I offer that.

(The said papers were admitted in evidence and marked Respondents' Exhibit 3-G.)

Q. Did the Bouelvard Mortgage Company make a payment to the Bay Supply Company?
A. Yes, sir.
Q. Against whom was that charged?
A. Seminole Boat Company.
Q. What was that for?
A. Gasoline, oil and kerosene.
Q. Who determined to buy the fuel from that company?
A. I did, on recommendation of Captain Baker.

Mr. Underwood:
I offer that.

(The said papers were admitted in evidence and marked Respondents' Exhibit 3H.)

Q. Now did the Boulevard Mortgage Company make a payment to No-Name Lodge?
A. Yes, sir.
Q. In April, 1935?
A. Yes, sir.
Q. What was that for?
A. That was for groceries purchased.
Q. On what occasion?
A. On the last cruise the boat was out; Mr. Phipps was on the boat with his sister.
Q. To whom was that charged on the book of the Boulevard Mortgage Company when that was drawn?
A. John S. Phipps.

Mr. Underwood:
I offer that.

(The said papers were admitted in evidence and marked Respondents' Exhibit 3-I.)

Q. Did the Boulevard Mortgage Company make a payment to Southern Food Stores, Inc. in April?
A. Yes, sir.
Q. In 1935, April?
A. Yes, sir.
Q. What was that for?
A. It was for groceries, supplies for the trip.
Q. Does the voucher show any charge when that check was drawn?
A. No, sir.

Q. Do you know to whom that was charged?
A. Eventually?
Q. At that time or eventually, either one.
A. It was charged to Mr. John S. Phipps.

Mr. Underwood:
I offer them.

(The said papers were admitted in evidence and marked Respondents' Exhibit 3-J.)

(Adjourned.)

May 9, 1939, two o'clock p. m.

Afternoon Session.

1644 Thereupon, RAY H. HAWKINS a witness produced in behalf of the respondent Phipps, resumed the stand and was examined and testifed further as follows:

Direct Examination (Cont'd.)

By Mr. Underwood:
Q. Mr. Hawkins, you identified a number of vouchers this morning. Are those all that you have found in your files concerning payments on account of the Seminole between January 1, 1935 and the time of the fire?
A. Yes, sir.
Q. You described the routine with some particularity as to the expenses that were incurred during that period. Will you tell us how that routine compared with the routine that was followed in previous times back as far as the beginning of the Seminole Boat Company?
A. It was all the same.

Q. Do you know of your own knowledge whether any of the charges made as shown on those bills against the Seminole Boat Company were subsequently changed so that the expenses were charged to some other person or corporation?

A. No, sir.

Q. Have you been told whether or not such changes were made?

A. I understand—

Q. Just tell us whether you were told, first.

A. Yes.

Q. This may be objected to but I want to ask the question at any rate. Will you tell us what you had been informed as to changes made in those charges insofar as it affected the books of the Boulevard Mortgage Company?

Mr. Matteson:

Will the person who made the changes be a witness?

The Underwood:

At the proper time I shall produce the original records and the original entries showing these changes. I simply want to make it clear now. I am not withholding anything. Some of these items I shall show were eventually charged a different way than they were originally charged in these vouchers.

Mr. Boots:

Would you mind asking him, as a preliminary question, who told him. That might make some difference.

Mr. Underwood:

Not at all.

(By Mr. Underwood):

Q. Who told you, Mr. Hawkins?

A. Who told me about the charges that were changed?

Q. Yes.

A. I think that was Mr. Riley; I am not sure about that. I had some correspondence and telephone calls with Mr. Riley about it.

Q. Who is Mr. C. A. Weiss?

A. He is the head auditor in the New York office.

Q. I show you a memorandum. Does that bear his signature?

A. Yes, sir. Prior to this Riley told me and this confirmed what Mr. Riley told me.

Q. The date of this is 1938?

A. Yes, sir.

Mr. Underwood:

I am doing this as a gesture. I do not want it said later that I put all of this stuff in and left out items subsequently charged in another way. I think that perhaps Mr. Hawkins has stated all that he can say of his own knowledge.

Mr. Matteson:

Are you identifying that paper in any way?

Mr. Underwood:

I will if you want me to. I had not intended to.

Mr. Matteson:

He has referred to it, and if it comes up again we want to know what it is.

Mr. Underwood:

Do you want to have it identified?

Mr. Matteson:

In some manner. I don't care how.

Q. It is a letter addressed to Mr. Roy H. Hawkins, Miami office, from Charles A. Weiss, Jr., dated New York, April 14, 1938; is that right?

A. Yes, that is right.

Mr. Matteson:

Suppose you just let Mr. Hawkins initial that?

The Witness:

I already initialed it while or when it was filed.

Mr. Botts:

Just mark this for identification.

(Thereupon the letter above referred to, together with attachment hereto, were marked Respondents' Exhibits 3-K-1 and 3-K-2, for identification.)

Mr. Underwood:

There are some pencil notations on this Exhibit 3-K-2 for Identification which I shall erase. They are notes that I made on it.

Mr. Botts:

That's all right.

(By Mr. Underwood):

Q. Mr. Hawkins, you had been on the Seminole a number of times?

A. Yes, sir.

Q. Do you remember the window in the starboard side of the Seminole that goes into the alleyway?

A. Yes, sir.

Q. Did you ever use that window as a means of getting into or out of the engineroom?

A. Yes, sir.

Q. About how high was that window off the floor in the alleyway?

A. About to my waist. I used to pinch my stomach in getting in. I think I pinched my stomach every time I crawled in there.

Q. Did you have any difficulty getting in or out of that window?

A. No, sir.

Cross Examination.

By Mr. Matteson:

Q. On what occasions did you ever crawl in that window?

A. Two or three times when the boat was laying at the Royal Palm Dock, and the last time I was out on the boat I went down there one day and spent about thirty minutes talking to the engineer. You could go from either the deck or this other one.

Q. You say you spent about half a hour down there talking to the engineer?

A. Yes; passing the time of the day.

Q. That was *Schlapi*?

A. Yes, sir.

Q. How high is that passageway that goes by the engineroom?

A. I don't remember.

Q. How tall are you?

A. Six feet.

Q. It was about six and a half or seven feet?

A. I don't remember. We didn't have to stoop to get in there. We had a door.

Q. Plenty of head room over your head?

A. Yes.

Q. This window was right close up under the deck above?

A. No, I wouldn't think so; it was about; for instance, as you walked along that companionway it was about so high.

Q. I am not asking you that now. I am asking you this: It is a fact, isn't it, that the top of that window was very close to the ceiling as you went through that passageway; pretty close to the top of the wall?

A. I really don't know.

Q. Do you know the dimensions of that window?

A. No, sir.

Q. Mr. Hawkins, you have been rehearsing a considerable number of transactions here relating to the Seminole, where supplies were bought, about expenses incurred and arrangements made, and all of those, and I think you said that you alone made the decisions; is that right?

A. On anything there that I testified to I made the decisions; if it was a question of repairs to the boat, that decision was usually made on the recommendation of Captain Baker; he would say, "This ought to be repaired" or "that ought to be done", and I would go ahead and order it repaired.

Q. But, as I understand it, you yourself would be the last word on that?

A. On any of these repairs.

Q. You didn't have to consult with anybody else?

A. No.

Q. And it was on your authority that all of that was done?

A. Yes, sir.

Q. You didn't have to consult with anybody else in your office or any other office?

A. No, sir. So long as the boat was in my charge I was responsible for keeping it clean and keeping it in good order, and those were my instructions.

Q. From whom did you get these instructions?

A. Mr. Scott.

Q. When was that?

A. Well, of course, you see we were both in the office and all of these details I would usually handle, and then I would talk to Mr. Scott if there was anything of importance.

Q. That was so long as he was there?

A. Yes, sir; after that I would do it myself.

Q. After that you did it of your own responsibility?

A. Yes, because I was in charge of the office.

Q. When was it that Mr. Scott left?

A. If I remember correctly it was in the spring of 1934 that he moved to New York.

Q. Prior to that there had been substantial periods each year that he was away?

A. Yes, for instance, in the summer.

Q. Now after he left you were the head of the office?

A. Yes; that is, of the Miami office.

Q. The Miami office?

A. Yes.

Q. Now just what office is that?

A. The office of Bessemer Properties, Inc. and the New Miami Shores Corporation.

Q. Are there other corporations except those two?

A. There are one or two, yes.

Q. Everything that goes on in that office is under your direction, is that right?

A. That is right.

Q. Regardless of what company is involved?

A. That is right, sir.

Q. After Mr. Scott left you didn't consult with anyone else?

A. On the Seminole?

Q. Yes.

A. No, sir; that was routine business; you understand that on any of those repairs that it was with Captain Baker.

Q. With the advice of Captain Baker?

A. Yes.

Q. Did Captain Baker receive a regular salary as master of the Seminole?

A. He did the first two years; I think it was two hundred a month.

Q. What two years would that be?

A. I think that was 1929-30 and 1930-31.

Q. After that was he just paid when he worked on the Seminole?

A. Just paid when he worked on the Seminole. I believe in 1933 or 1934 Captain Baker purchased his own boat, but I don't remember what year it was. You see, the Seminole was such a large boat that it was too expensive for the ordinary man to charter, and that's the reason it never made a lot of money in the charter business. Captain Baker was available to take it out if we had a charter.

Q. And he was only paid when the vessel was actually in commission and operated?

A. Yes, sir, or when he did anything on it.

Q. From whom do you draw your salary as head of that office?

A. The salary is sent to me by Mr. Fowler who is the paymaster in the New York office, and it is charged to Bessemer Properties, Inc.

Q. It comes to you from New York in the form of a check?

A. Yes, sir.

Q. What sort of a check?

A. It is a check drawn on the Corn Exchange Bank.

Q. By whom?

A. By Mr. Fowler as paymaster.

Q. What is Mr. Fowler paymaster of?

A. Now you've got me. I presume that he pays most all of the district managers and probably the office force in New York.

Q. Are you a district manager?
A. Yes.
Q. District manager of what?
A. Miami.
Q. That is—
A. Bessemer Properties, Inc.
Q. Does Bessemer Properties Inc. operate other places than in Miami?
A. Yes.
Q. Where else?
A. Palm Beach, Florida, and Port Mayacka, Florida, and I believe they have an office in Delaware.
Q. It is a Delaware corporation?
A. Yes.
Q. I suppose their office in Delaware is just a nominal head office of the company?
A. I couldn't testify to that. My business was with the New York office through Mr. Scott and Mr. Layman, Jr.
Q. As a matter of fact is Mr. Fowler paymaster of the Henry Phipps' estate?
A. I couldn't testify as to that.
Q. You know there is such an organization, don't you?
A. Yes, sir.
Q. Is that incorporated?
A. I don't know, sir.
Q. This check which you get from the paymaster in New York, is that the only salary that you get?
A. Yes.
Q. You drew no salary from the Seminole Boat Company?
A. No, sir.
Q. No part of your salary was charged against the Seminole Boat Company?
A. No, sir.
Q. So that so far as the Seminole Boat Company was concerned your services were gratuitous, is that right?

A. That is right.

Q. What officer of the Seminole Boat Company were you?

A. Secretary and Treasurer.

Q. Who were the other officers of the Seminole Boat Company?

A. Mr. Scott was the president and Mr. Riley was vice president.

Q. Is Mr. Scott still president?

A. Yes.

Q. There has been no change in that since he left New York?

A. No, sir.

Q. Are you an officer of the Boulevard Mortgage Company?

A. No, sir.

Q. What is your connection with the Boulevard Mortgage Company?

A. It is one of the corporations that does business through my office; it is one of the corporations of the principals of the company.

Q. To whom do you refer as the principals of the company?

A. The Phipps family and all of their kindred.

Q. I understand that the Boulevard Mortgage Company does a sort of banking business for these various corporations and individuals that are in this list that you read into the record?

A. Yes, sir.

Q. Will you explain what you mean by "banking business"?

A. It is really a clearance account for the various corporations and the individuals.

Q. But as a matter of fact the Boulevard Mortgage Company pays bills and advances money for these various corporations, is that right?

A. Yes, sir.

Q. And then through a system of inter-company charges it eventually gets reimbursed, is that right?

A. That is right.

Q. I would like to get this set-up as clearly as I can: Henry Phipps was the father of John S. Phipps and Henry C. Phipps, is that right?

A. That is right.

Q. He is dead and there is an organization known as the Henry Phipps Estate, is that right?

A. That is right.

Q. Referring to the names on this list, we have identified Henry C. Phipps and John S. Phipps as the sons of Henry Phipps. Who is Mr. Howard Phipps?

A. That is a brother.

Q. He is also a son of Henry Phipps?

A. Yes.

Q. Who is Bradley Martin?

A. His mother was a Phipps. Is that Bradley Martin, Junior or Senior.

Q. It doesn't say.

A. There are two of them.

Q. We will say Bradley Martin, Senior?

A. He was the husband of one of Henry Phipps' daughters.

Q. Then he is a son-in-law of Henry Phipps?

A. That is right.

Q. And there is a Bradley Martin, Junior?

A. Yes, sir.

Q. Does this arrangement pertain to Bradley Martin, Junior, as well?

A. Yes, sir.

Q. Who is Mrs. Amy Guest?

A. She is a sister—she is a daughter of Henry Phipps, and a sister of John S. and Henry C. and Howard.

Q. Mrs. John S. Phipps is of course the wife of John S. Phipps?

A. Yes, sir.

Q. Who is Frederick E. Guest; is that the husband of Mrs. Amy Guest?

A. That is right.

Q. Who as Mrs. Bradley Martin. I see it down here as "Estate of Mrs. Bradley Martin".

A. Her father was Henry Phipps, and I think she was a sister of John S., H. C. and Howard Phipps and Amy Guest.

Q. She was the wife of Bradley Martin?

A. Yes, sir.

Q. And Bradley Martin's name appears on this list, too?

A. Yes.

Q. Who is M. G. Chace?

A. M. G. Chace as a friend of the Phipps family; he lives in Rhode Island, and he has no connection with this company.

Q. Now we have down here on this list a matter of about 15 corporate names. I take it that the reason why they are included is because the Phipps family are interested in these corporations; is that right?

A. Not all of them.

Q. Of course I assume, Mr. Hawkins, that if a stranger like myself, or even Mr. Botts here, should go into the Boulevard Mortgage Company, they would not be able to get the same service that is rendered to these various corporations and individuals?

A. If it was somebody we had any business dealings with we would extend them credit.

Q. I take it that the reason why these people are on this list is because they are members of the Phipps family?

A. Most of them; two or three of them are not; for instance, the Miami Corporation; that is a company that

we did business with, and it was owned by the Deerings, and we extended them credit.

Q. Wherever anyone or any corporation is in position to be on this list no charge is made for the services?

A. No, sir.

Q. I take it that all of these corporations mentioned in this list have at least an office in your office; is that it?

A. No, I wouldn't say that.

Q. What?

A. I don't know that all of them have an office there.

Q. All right, we will go down the list: Bessemer Investment Company?

A. No, sir.

Q. Bessemer Trust Company?

A. No, sir.

Q. Biscayne Boulevard, Inc.?

A. Yes.

Q. Duval Mortgage and Security Company?

A. Yes, sir.

Q. East Shore Company?

A. No, sir.

Q. Exchange Trading Corporation?

A. No, sir.

Q. Miami Plaza, Inc.?

A. Yes, sir.

Q. New Miami Shores Corporation?

A. Yes.

Q. Palm Beach company?

A. No, sir.

Q. Of course Palm Beach Company would be represented on the account of one or more of your companies here; is that right?

A. What?

Q. I say the Palm Beach Company would be represented on the books of account of one or more of your corporations?

A. We don't keep the books of the Palm Beach Company, and when we make any charge that they incur, they are billed for it.

Q. Phipps Realty Company?

A. No, sir.

Q. Where is the office of that company?

A. I am not sure; I believe that the Florida office is in Palm Beach; I am not sure of that. That company has not been used in a long time.

Q. Regent Land Company?

A. Yes, sir.

Q. You have already mentioned Seminole Boat Company?

A. Yes, sir.

Q. Suburban Miami Investment Corporation?

A. Yes, sir.

Q. The Blackhawk company?

A. Yes, sir.

Q. The Mayaca company?

A. Yes.

Q. The Boulevard Amusement company?

A. Yes, sir.

Q. And the Miami corporation?

A. No; that is a Deering company.

Q. Were all of those corporations that we have named controlled by members of the Phipps family?

A. No, sir; not all of them.

Q. But they were all corporations in which members of the Phipps family were interested?

A. Not all of them, but I think a majority of them were; you named one or two there that were not; for instance, the Miami corporation.

Q. Eliminate the Miami Corporation?

A. Yes.
Q. All right.
A. I don't know about M. G. Chace company.
Q. That is all.
A. I am not sure about M. G. Chace.
Q. How was that ofifce here in Miami designated?
A. As Bessemer Properties, Inc.
Q. The office was at 1317 Biscayne boulevard?
A. Yes, sir.
Q. What name was on the door?
A. Bessemer Properties, Inc. and New Miami Shores Corporation.
Q. Those were the only two names on the door?
A. Yes.

Mr. Underwood:
You mean now?

The Witness:
Do you mean now?

Q. Yes.
A. Then it was—it used to be Biscayne Boulevard.
Q. Now the two names that you mentioned are on the door?
A. Yes.
Q. When was the change made?
A. I think the consolidation was about two years ago; changed from Biscayne Boulevard to Bessemer Properties, Inc.
Q. You speak of a consolidation.
A. Yes.
Q. What was that consolidation of?
A. A number of companies—Biscayne Boulevard, Mayaca Company, New Miami Shores Corporation; those are the only three I recall; there were other companies con-

solidated with them, but I do not have a list of them now.

Q. I think you spoke of your duties with respect to the Seminole as being in the nature of a manager?

A. Yes, sir.

Q. In other words, what you did was what any manager of a property would do with respect to the property that he was designated to manage?

A. I hope so.

Q. And that would be true whether the principal was a corporation or an individual, wouldn't it?

A. Yes.

Q. In other words, if you were designated as manager by an individual you would have done just exactly the same things as you did in connection with your duties with reference to the Seminole?

A. I would.

Q. This book which has been produced, Respondent Phipps' Exhibit "U"—I think it has been described as the minute book of the corporation; is that right?

A. I am sure that is the book you have there.

Q. Is this the only such record there is of the Seminole Boat Company?

A. The only Minute Book; we have lots of files, correspondence files.

Q. And this contains all of the minutes there are in existence of meetings, either of the stockholders or of the board of directors; is that right?

A. Yes, sir.

Q. I notice from the by-laws of the corporation as they appear in this book that your duties as Secretary are described as follows: "Seventeenth. "The secretary shall be sworn to the faithful discharge of his duty. He shall be secretary of and shall attend all meetings of the corporation, the board of directors, the executive committee and standing committees. He shall act as clerk there-

of and shall record all of the proceedings of such meetings in a book kept for that purpose. He shall give notice of meetings of stockholders and directors, and shall perform such other duties as shall be assigned to him".

There is nothing in your duties as prescribed in that paragraph that gives you authority as manager of the boat Seminole, is there?

A. I don't know; you put your own interpretation on it. Mr. Scott is the president of the company and he was the one that turned the boat over to me.

Q. Now with respect to the duties as prescribed for the Treasurer—you can look them over if you like. There is nothing in the by-laws that gives you any authority to do the various things that you have described yourself as doing with respect to the Seminole, is there?

A. I don't know, sir. If anyone is going to have charge of the receipts and disbursements, they should have charge of how they should be disbursed and how they should be incurred.

Q. This provides in general that you shall have custody of the funds and securities?

A. Yes, sir.

Q. And that you shall disburse funds and keep account of the same, is that right?

A. Yes, sir.

Q. There is nothing there that authorizes you to make decisions with respect to the management of the property of the corporation other than disbursing funds—

Mr. Underwood:

If your Honor please—

A. That is a question of interpretation.

Mr. Underwood:

I hesitate to object to that, but, after all, the language of the by-laws speak for themselves. That is a question of judicial interpretation.

Mr. Matteson:

I just want to find out where the authority came from?

The Witness:

I told you that Mr. Scott, president of the company, told me to take charge of the boat.

Q. You had no financial interest in the Seminole or in the Seminole Boat Company?

A. No.

Q. Neither did Mr. Scott?

A. No.

Q. Neither did Mr. Alley?

A. Not to my knowledge.

Q. And also the other officers—you were the three officers of the corporation?

A. Yes, sir.

Q. You were also the three directors?

A. Yes, we were the three directors.

Q. Were there any other directors?

A. No.

Q. There was no resolution at any time of the board of directors giving you authority to manage the boats, was there?

A. I don't recall that. My authority came from Mr. Scott, the president of the company.

Q. Did you ever attend a meeting of the board of directors of the Seminole Boat Company, that is, that you recall?

A. Yes, sir.

Q. When was that?

A. I don't remember the dates; the book will show them.

Q. Where was it held?

A. Well, I think a majority of them were here in Miami, but I am not quite sure about that. I think you will find them all properly recorded.

Q. Were the three of you ever assembled at one place for a meeting?

A. Yes, sir.

Q. The Seminole Boat Company was not in any sense a profit-making corporation, was it?

A. Unfortunately not.

Q. Well there was never any intention that it should be, was there?

A. Absolutely, yes.

Q. You know as a matter of fact that it is quite customary for owners of yachts and vessels to charter their boats from time to time for the purpose of reducing expenses, don't you?

A. No.

Q. You do know that individual owners of expensive yachts, when they are not needed for their own use, charter them from time to time?

A. I have had no connection with them. The only thing I know about this is that Captain Baker thought he could make a success out of chartering the boat.

Q. That was the idea of Captain Baker?

A. I don't know if it came originally from Baker, but I talked to Baker a little about it.

Q. How did it first come up; do you recall?

A. No, sir, I don't.

Q. Did he make the suggestion to you or to someone that he thought he could make some money chartering the boat?

A. I don't know who made the original suggestion but I know that I talked to Captain Baker about this

contract that I made with him, and he had every reason to believe that he could make a success out of it and make a good living out of his share.

Q. That was in 1929?

A. Yes. It was just too expensive to operate.

Q. As a matter of fact was there ever more than one charter of the Seminole?

A. Yes. I think there were several charters.

Q. Will you tell me when they were and to whom?

A. I can quote it from memory but we have records of those charters.

Q. Could you from your records make up a list for me of the charters the Seminole had, and the dates and to whom and the amount of the charter that was received?

A. I think that can be done.

Q. Will you do that for me? Not now, but later on?

A. Yes.

Q. When did your connection with the Miami office, as you call it, begin?

A. September, 1926.

Q. I have in my hand here this book marked Libelants' Exhibit 76 for Identification. This is an account book of the Seminole Boat Company, is it not?

A. Yes.

Q. And that is the only account book there is of the Seminole Boat Company?

A. Yes.

Q. And this was kept in your office?

A. Kept in my office, that is, part of the time. I think that later on that book was sent to Palm Beach but I am not sure.

Q. When was this book sent to Palm Beach?

A. I believe when the boat was sent there in 1931 or 1932.

Q. Let me ask you this: what bookkeeper kept this book while it was in your office?

A. I couldn't answer that; we had so many. We have a bookkeeper that could tell you.

Q. For instance, I show you this page 35; can you tell me whose handwriting that is?

A. I couldn't. Sometimes they put their initials on it. That would be a guess. I wouldn't know who wrote that.

Q. Was this book in your office at the time of the fire?

A. Why I think that ledger was in Palm Beach; I am not sure as to that.

Q. I would like for you to be just as sure as you can about that. What was the first you saw of this book after the fire?

A. I am sure that the—I don't remember.

Q. You were in charge of that office?

A. Yes, but you asked me when was the first time I saw that. I think we sent that book to Palm Beach for them to keep the records in 1931 or 1932; I cannot be certain about that.

Q. Then the entries in this book for 1932 and 1933 were made in Palm Beach?

A. They may have been, yes.

Q. Were they or weren't they?

A. I don't know.

Q. This book was part of the records that were in your custody as treasurer of the Seminole Boat Company?

A. Yes, and if they sent it to Palm Beach I would have a receipt in the files for it.

Q. Have you a receipt in the files for it?

A. I don't know; I will have to look.

Q. Where is that file?

A. I don't know. Do you have it?

Q. I have no objection to you asking Mr. Underwood, if you wish.

A. They have all of the files; so I don't know where it is.

Q. You say there would be a receipt showing that this file was transferred to West—to Palm Beach?

A. There would be some record of it, yes.

Q. Well, I would like to see that record. Can you get it for me?

A. If I can find it; I can find it if it is in the files.

Q. I would like to have either the witness or counsel for the witness produce that record. Do you know where this book came from when it was produced in Court here today?

A. I turned them over to Mr. Alley, all the books that I had.

Q. When was that?

A. That was after the fire.

Q. Was this book one of those books?

A. That I am not sure. I turned the minute books over to him; I know that. Also the stock book.

Q. When was that?

A. It was after the fire.

Q. How long after the fire?

A. That I don't know.

Q. You have no recollection of that?

A. Not at the time.

Q. Do you now?

A. No.

Q. Was it a short time after the fire or months after the fire?

A. I wouldn't want to say, sir; I don't know.

Q. Have you a record of that?

A. I would have, yes.

Q. Where is that record?

A. Probably in the files.

Q. When you turned those books that you had over to Mr. Alley after the fire was this book one of them?

A. I can't say for sure.

Q. Will you find out and let us know?

A. Yes.

Q. And let us have what record you have on the subject?

A. Yes, sir.

Q. Do I understand that you cannot identify the handwriting of none of the bookkeepers whose writing appears in this book?

A. No, sir.

Q. Who was your head bookkeeper in 1933?

A. Mr. L. M. Handley.

Q. Is he still with you?

A. He is not in Miami, sir; he is in New York.

Q. And his assistant was—

A. Mr. Wilson.

Q. And he is still there?

A. Yes.

Q. How many bookkeepers did he have working under him?

A. From two to six, depending on the time of the year.

Q. Which one of them in particular was—in other words, was one of them in particular assigned to a particular set of books?

A. That was usual, yes.

Q. Can you tell us who was assigned to keep the books of the Seminole Boat Company?

A. No, sir. Mr. Wilson or Mr. Handley would do that; I would look to them to keep the records straight.

Q. The Iolanthe was sold recently, was she not?

A. Several years ago; about three years ago, I should say.

Q. Three years ago?

A. Yes.

Q. Did you have something to do with arranging the sale of the Iolanthe?

A. Yes, sir.

Q. What did you have to do with that?

Mr. Underwood:
I objected heretofore to anything about the Iolanthe, as it is not a part of this case, and I would like to make that same objection again.

The Court:
What did I rule before?

Mr. Underwood:
You ruled against me. I think you said you would take it and see what developed.

The Court:
All right, I will do the same thing now.

A. I negotiated the sale for it.
Q. To whom was she sold; do you remember?
A. Yes; to a man by the name of Young who lives over on Normandie Isles; traded it for a lot.
Q. Prior to her sale did you arrange to list her with various brokers?
A. Yes.
Q. In similar manner as you did with the Seminole when there was some thought of selling her?
A. Yes.
Q. Did the Boulevard Mortgage Company pay accounts with respect to expenses of the Iolanthe?
A. Yes, sir.
Q. In a manner similar to that in which the expenses of the Seminole were paid?
A. Yes, sir.
Q. Only in that case, I take it, the expenses were charged to John S. Phipps?
A. That is right.
Q. He was the owner of the Iolanthe?
A. That is right.

Q. And I assume it was at Phipps' instructions that you arranged for and negotiated the sale of the Iolanthe?

A. Yes, sir. I would like to correct that. I don't know whether he told me or Mr. Riley told me; I am pretty sure that it was Mr. Phipps, though.

Q. In any event, the instructions came, directly or indirectly, from Mr. Phipps?

A. That is right.

Q. Who was Mr. Riley?

A. Mr. Riley is now manager of the Palm Beach office; formerly he was assistant to Mr. Alley of the Palm Beach office.

Q. When did he become head of that office?

A. A couple of years ago.

Q. Was that before or after the fire?

A. I am not sure about that.

Q. Does he hold a similar position in the office at Palm Beach to the one that you hold here?

A. Yes, sir.

Q. What did he have to do with the Seminole?

A. I can't testify about Mr. Riley, but I think he had charge of the Seminole when it was in Palm Beach under Mr. Alley.

Q. To the best of your knowledge he performed similar functions in Palm Beach to those that you performed down here?

A. Yes, sir.

Q. And the boat was usually stored at Ft. Lauderdale?

A. Yes.

Q. For a number of years?

A. Yes.

Q. When she was at Fort Lauderdale who would she be under, you or Mr. Riley?

A. Under Mr. Riley.

Q. Mr. Riley?

A. Yes.

Q. As a matter of fact she was usually stored there the greater part of the year, was she not?

A. Yes, sir.

Q. Mr. Riley had no connection with the Seminole Boat Company, did he?

A. No, sir; except working under instructions of Mr. Alley.

Q. He drew no salary from the Seminole Boat Company?

A. No.

Q. What became of the Prigg boat that you have spoken of?

A. It was sold sometime after the fire, I believe.

Q. To whom was she sold?

A. To Mr. John S. Phipps.

Q. Is that the name of the boat?

A. The name of it was Ro, Junior.

Q. Prigg was the type of boat?

A. Yes.

The Court:

She was sold to whom?

The Witness:

Mr. John S. Phipps.

Q. I understand that you arranged for the employment of Mr. Bernard as a surveyor to examine the Seminole, is that right?

A. That is right.

Q. And that was at the time that a sale of the vessel was contemplated?

A. At the time of that and at a time that she was going out; it all happened about the same time, the decision to make a trip on her and the sale, within a week or ten days; but I employed Bernard specifically because

of the deal that I had for the sale of the boat—the purchaser wanted to have the bottom examined.

Q. And that was the real reason for the employment of Bernard at that time?

A. Not only that; he wanted to know the condition of the boat and we had decided to put insurance on it.

Q. That was the principal moving purpose, in connection with the sale of the boat, is that right?

A. It was part, however, I wanted to know the condition and I wanted to find out about the value. It so happened that the prospective purchaser wanted to especially examine the bottom, and we wanted to place insurance on it because she was tied up at the Royal Palm Dock, and if I remember right I had the insurance placed on it before I sent her up to the Cocoanut Grove Boatyard, so that she would not be in transit without insurance. I am not sure whether it was put on before or later on.

Q. You say the insurance was placed on it before she went to Cocoanut Grove?

A. I am not sure; the record will show that.

Q. What was the date that that trip began?

A. To the Keys?

Q. Yes.

A. I don't know; I don't have—I have a memorandum of it; I think it was sometime around the latter part of March or the first part of April, 1935.

Q. Have you any record that you can refer to quickly and tell us?

Mr. Underwood:

The 6th of April.

A. Then the insurance was placed on it before. She was repaired at Donovan's early in March.

Q. Was that in March?

A. Yes.

Q. What was the nature of the repairs there?

A. Scraped the bottom and painted the hull.

Q. Is that all?

A. That's all, yes.

Q. The boat was brought down from Ft. Lauderdale the latter part of February, wasn't it?

A. That is right.

Q. I understand that the reason for bringing her down at that time was because of the contemplated sale?

A. That is right; and Captain Baker thought also that he might be able to get a charter if he had it tied up at the Royal Palm Dock where people could view her.

Q. Between the time that she left Ft. Lauderdale and the time that she went on this cruise, the only work that was done on her of any importance was this work done at the Coconut Grove Boatyard, is that right?

A. No. There were quite a few minor things done right at the Royal Palm Dock, painting and varnishing and repairing little things, and that is only the little work that Captain Bernard recommended on the hull.

Mr. Matteson:

I move to strike out what Captain Bernard recommended on the hull. I asked him what was done.

The Court:

I think you are entitled to have that stricken.

Q. The one piece of work done by the Coconut Grove Boat Works, in addition to the scraping and painting of the bottom, was putting this plate on the stern?

A. No; that wasn't done at the Coconut Grove Boat Works; that was done a the Royal Palm Dock.

Q. You are referring to the plating of the stern?

A. Yes.

Q. That was reinforced with concrete?

A. Yes, to keep it from swaying.

Q. And that was done at the Royal Palm Dock?

A. Yes.

Q. While the boat was afloat there?

A. Yes; the only thing that was done at the Coconut Grove Yard was to scrape the hull and paint it.

Q. Were there any log books kept on the Seminole?

A. Yes, sir.

Q. Were they delivered to your office from time to time?

A. No; they stayed on the boat.

Q. Are any of those log books in existence now?

A. I understand they were destroyed.

Q. As far as you know there are none in existence?

A. That is right.

Q. Now at the time you brought the boat down from Ft. Lauderdale there were only two people who were interested in the Seminole Boat Company, and they were John S. Phipps and Henry C. Phipps?

A. That is right.

Q. Now it is true, is it not, that Mr. John S. Phipps took much more lively interest in the vessel than Mr. H. C. Phipps?

Mr. Underwood:

I object to that.

The Court:

What is the ground of the objection?

Mr. Underwood:

On the ground that it is immaterial in this case; on the ground that it calls for a comparison on the part of the witness. I have no objection to the witness being asked what Mr. H. C. Phipps did and what Mr. John

C. Phipps did, but I do not think it is proper to get at it by way of comparison.

The Court:

I think it is a proper question. I will overrule the objection.

A. Yes, sir.

Q. And he used her more, did he not?

A. Not to my knowledge, no, sir.

Q. You did arrange to apply for insurance on the yacht Seminole prior to your last trip to the Keys, didn't you?

A. Yes, sir.

Q. Is it a fact that you arranged for insurance for only a short period or in such way that it could be canceled in a short period?

A. I don't remember that I so arranged it.

Q. Your purpose was to see that she was covered for that trip, is that right?

A. I may have done that.

Q. Your purpose was to see that she was covered for that trip?

A. Yes; that is the policy we have with automobiles and boats and everything, to see that they are insured when they are in use.

Q. As a matter of fact the insurance was canceled shortly after this trip, wasn't it?

A. Yes, sir.

Q. Do you remember that shortly after the time you applied for the insurance on the Seminole that you were asked for a credit report on the Seminole Boat Company by the Retail Credit Company service?

A. I don't remember that.

Q. Do you recall that a representative of that service came to your office and interviewed you with respect to the Seminole Boat Company?

A. I don't remember it, sir. We had no occasion to seek credit.

Q. Of course it may be that the insurance company wanted to know who the Seminole Boat Company was?

A. I see. I don't remember about that at all.

Q. I show you this credit report, or a copy of it, and ask you if you will just read it and see if that refreshes your recollection?

A. I don't know. These people call the office daily about all kinds of credits, and I rarely ever see them. I never saw that report.

Mr. Underwood:
Will you have that marked, please?

The Witness:
That is not correct.

Q. I will ask you about that.

Mr. Botts:
I offer this for identification.

(Thereupon the document above referred to was marked Libelants' Exhibit 106 for Identification.)

Mr. Underwood:
Mr. Botts, may I see it?

Mr. Botts:
Would you mind my reading it. I have never seen it before.

Mr. Underwood:
Certainly not.

(By Mr. Matteson):

Q. Were you vice president of the Biscayne Mortgage Company and New Miami Shores Corporation on April 18, 1935?

A. Yes, sir.

Q. Were you local agent for the Phipps' interests at that time?

A. Yes, sir.

Q. Secretary of the Seminole Boat Company?

A. Yes, sir.

Q. Is it true that the Seminole Boat Company is a closed corporation or was a closed corporation on that day and not a trading company and not engaged in business?

A. No, sir.

Q. I want to ask you this direct question: if it is a fact that you were interviewed by Mr. J. E. Lawson on behalf of the Retail Credit Company on or about April 18, 1939, and if it is not a fact that at that time you stated to him in words or in substance: "The Seminole Boat Company is a closed corporation, and is not a trading company and is not engaged in business"?

A. I did not say that; I don't remember being interviewed by anybody from the Credit Bureau; as a matter of fact, a majority of the times when they come to my office I don't talk with them; they talk to one of the bookkeepers.

Q. Is it not a fact that at that time you said to the man that I have mentioned, in words or in substance the following: "This is a holding company for the yacht Seminole, which has been in the Phipps family for the past five or more years and is now principally owned by John S. Phipps, the older brother of H. C. Phipps, the latter being no longer interested in the company or in the boat"?

A. I did not say that.

Q. Was that the fact?

A. It is a fact; I didn't make that statement.

Q. I mean is the statement which I read to you a true statement?

A. It is not.

Q. Can you recall anything that you might have said to such a representative which might have been misinterpreted to mean what I have just read to you?

A. Well, to begin with I rarely talk to any of these credit representatives, for the simple reason that we are not interested in seeking credit, and usually when they call at the office that is what I tell them.

Q. Well it is true, I assume, that you don't remember talking to this man at all?

A. That is right. And I certainly would not have made that statement.

Q. But if you had said to him that you declined all financial information, which was an established policy of the company, and that you traded for cash locally, that would have been in character with your attitude?

A. Yes; if I was interviewed that is what I would have said.

Q. Let me put it this way: This last statement which I read to you, in which it was stated that the boat Seminole is now principally owned by John S. Phipps, the older brother of H. C. Phipps, the latter being no longer interested in the company or in the boat"—is in what respect not true?

Mr. Underwood:

I object to incorporating in the record this way the contents of the paper, if that is what Mr. Matteson is doing. Of course I have no objection to his asking Mr. Hawkins if on a certain date he made a certain statement, but I do not think it should be incorporated in the record as a part of this paper; it is getting in by indirection what he cannot, at least yet, do directly.

Mr. Matteson:

I am not intending by my question to do that. This is cross examination and I am simply trying to find out—

Mr. Underwood:

The only point I make, your Honor, is that I do not want any part of this to go in the record indirectly in this fashion. If it is understood that no part of the document is in evidence, that is all right.

Mr. Botts:

That is understood.

The Court:

I think you should interrogate him, Mr. Matteson, independent of quoting from the instrument. You have asked him if that was true or not, and he said not. Now then I think you can go further and elaborate on that, but do not purport to quote from the document. I will reverse my ruling and sustain the objection.

Q. I will amend the question. Irrespective of any paper that is involved, I will ask you to tell me what is wrong or what is untrue, as of April 18, 1939, with the statement that at the time the boat Seminole was principally owned by John S. Phipps, the older brother of H. C. Phipps, the latter being no longer interested in the company or in the boat?

A. What date was that, sir?

Q. April 18, 1935.

A. I think that on that date the records will show that Mrs. Guest was part owner in the boat, so that statement is incorrect.

Q. Then it is true or was true as of that date that Mr. H. C. Phipps was no longer interested in the company or the boat?

A. I am not sure of the date, but the records will show that.

The Court:
What was that date?

Mr. Underwood:
I think it was the 23rd of March that the transfer was made and the new stock certificate issued. The stock certificate to Mrs. Guest was dated March 23, 1935, and the canceled stock certificates which had been issued to Mr. H. C. Phipps are in the stock certificate book, and there is written across the face of them the word "canceled", and then the figures—either 3-23-35 or 3-25-35. I can't quite make it out. It must be March 23rd, the same date as the stock certificate to Mrs. Guest.

Q. Now Mr. Hawkins, getting back: you have told us about a lot of transactions here relating to what might be termed minor repairs to the Seminole; routine expenses. If any major overhaul or substantial expense out of the ordinary were to be incurred on the Seminole, do I understand you would have consulted the stockholders in that event?

A. I would have; yes, sir; or Mr. Scott if he had been there.

Q. Where would you put that upper limit of the expenses that you would incur without consultation with some one else?

A. Well there is no particular limit. Anything within reason. The question of the rebuilding of any part of the boat, naturally, involving substantial money, I would incur to the limit of five hundred dollars or more without talking to anybody. I do that daily on other things.

Q. And that sort of thing you do in all your various capacities there?

A. Yes.

Q. At the Miami office, no matter what company is involved, or individuals?

A. Yes.

Q. Now who originated this idea of selling the Seminole? Who first spoke of that?

A. Well I don't remember. After the boat did not prove successful for charter, why we had a number of inquries for the sale of it from time to time, and every time we would have the boat examined, try to get an offer on it. This last time I think I was responsible for it.

Q. Well you must have understood in some way that it was agreeable to the shareholders of the corporation, did you not?

A. Oh yes.

Q. After all, disposing of the principal asset of the corporation is a serious step, isn't it?

A. Sure. When I brought her to Miami the last time, I talked to both the stockholders about it—to J. S. and H. C. Phipps, about it.

Q. You had listed the boat for sale with various brokers, hadn't you?

A. Yes, sir.

Q. When did you first do that, do you recall?

A. Well of course the boat—it was generally known the boat was for sale, any time from 1931 or '2, on. But the last time that I listed it, and asked the brokers to make an offer for sale, was in February 1935, after I had brought her from Lauderdale. I think the reason that that came about was that I had an inquiry, and the broker said it was too much trouble taking his prospects to Fort Lauderdale, getting permit from Capt. Pilkington to go aboard, and all that; it was much easier to see it here.

Q. As a matter of fact, the expense in connection with this boat had been out of all proportion to the use that was obtained for her, for several years, hadn't it?

A. Yes, sir.

Q. So that she was a sort of a white elephant on the hands of whoever had her; is that right?

A. Well that depends on how you look at those things.

Q. And you had known or understood over a period of years that if an opportunity to sell the boat came, that the stockholders would be agreeable to that; is that right?

A. The boat was always available for charter or sale, if the proper sale could be made.

Q. And that was so because you understood that was what the stockholders wanted; is that right?

A. Well I understood that they would like to sell it if they could get a price for it; would consider selling. I never had a definite price on it.

Q. Now was there ever any resolution of the board of directors or stockholders of the company authorizing you to negotiate for the sale of the boat?

A. No, sir. There was authority from the stockholders; ample authority, verbal authority.

Q. Verbal authority?

A. Yes, sir.

Q. The result of your conversations?

A. Yes, sir.

Q. But there was no authority contained in any resolution on the books of the company and their Minutes?

A. No, sir.

Q. Was there any resolution on the books of the company at any time, either the board of directors or the stockholders, authorizing you to enter into this agreement with the Boulevard Mortgage Company for the advancing of expenses and the reimbursing of the Boulevard Morotgage Company with respect to that?

A. No, sir.

Q. Was there ever any resolution authorizing you to open a bank account for the Seminole Boat Company?

A. Well I couldn't answer that. The records—I don't remember how we opened the account, whether it was by resolution or Minutes; I don't remember how we did that. The record would show that. You see that was when it was first incorporated.

Q. As a matter of fact, I have looked through this minute book and I would like to have you tell me whether this is a fair statement of the contents: that there are minutes of various meetings of the board of directors and of stockholders' meetings, but there is no record of any transaction of any business at any of those meetings, with the single exception of the ratification of the contract which you made with Mr. Baker. Is that a correct statement?—and the election of officers.

Mr. Underwood:

I object to that as calling for a conclusion as to the contents of the document, which is in evidence. The best evidence of that is the book itself, which is in evidence.

Mr. Matteson:

I haven't any objection to that; I was simply trying to shorten the thing up.

The Court:

Well I doubt if Mr. Hawkins has read that over lately, and I don't think he should be called on to confirm or disaffirm your version based on a reading today; so I think I had better sustain the objection.

Mr. Underwood:

I think, Mr. Matteson, there is one resolution here, at

a meeting on November 14, 1938, the directors did pass a resolution authorizing the treasurer to open a bank account with The First National Bank of Miami.

Mr. Matteson:

Yes; I missed that. This book is in evidence, is it not?

Mr. Underwood:

It is.

Mr. Matteson:

I will withdraw any objection to it, then.

Q. Mr. Hawkins, can you tell us how often and by whom the Seminole was used from 1929 to 1935?

A. No, sir.

Q. Was there any record of this kept in your office?

A. Yes.

Q. And what was the nature of that record?

A. Well there is a record kept of all the activities of the boat; all expenses and all charters.

Q. Well is that in any other place than in this account book that we have talked about, which is Exhibit 76 for identification?

A. The expenses would be in that book.

Q. Yes. Now is there any other record of the use made of that boat by any persons whatever, whether charterers or not?

A. Of course we keep a correspondence file on everything, and naturally if the boat was in use there would be expenses, so I presume you would find it. I wouldn't want to testify from memory.

Q. Well this record here as I gather from the testimony, goes no further as a general record than 1933. This journal record in this book, which is the day by day record, I take it; stops at the end of 1933.

A. Is that the Seminole?
Q. Yes. And beyond that—

Mr. Underwood:
That is just one account.

Mr. Botts:
No, that is all.

Mr. Matteson:
That is all I am referring to, is the journal account.

Mr. Underwood:
It is the journal account, but it is one company, isn't it?

Q. This is the only one. And other than that there are simply a number of ledger accounts under different headings; so that as a running record this stops at the end of 1933. What I want to ask you is, is there any other record than this, of the use of the Seminole by any persons whatever, from this time on?
A. Any use of the Seminole would be—expenses would be kept in the ledger; any use would be referred to in the correspondence file. Whether they are in there or not I don't know—in that particular ledger.
Q. Is the correspondence file a record that has been produced here?
A. I don't know.

Mr. Underwood:
I think not.

The Court:
Was a ledger account opened with a charterer, debiting him with the amount of the charter, and giving him credit?

A. No, sir; if a charter was obtained, he would pay a certain amount, you see, and that would go in the Seminole boat account, and the expenses would be deducted.

The Court:

I say was any record kept in that book, which is a combination journal and ledger, as I understand it: was there any record kept in there of receipts from charter-parties?

A. Oh yes, of receipts and disbursements.

The Court:

Can you point out an account with a charterer?

A. I don't actually keep the books myself, Judge, but I think I could quickly do that. I think there were receipts and disbursements in 1929.—Here you are, sir.

Mr. Underwood:

There is no number on that page, is there, Mr. Botts?

Mr. Botts:

No number on any of the pages.

Mr. Underwood:

The witness indicates a page headed "Charter of Seminole".

Q. Now by referring to this account here on the page headed Charter of Seminole, just tell us what that indicates. We are not experienced in bookkeeping; we want to know what it means.

A. Neither am I an expert in bookkeeping. I didn't keep this ledger. I presume it means they spent $150. on this date, and the receipts were $3300.

Q. Well I show you that these two columns seem to balance when you get to the bottom of them. Isn't it a

fact that the left hand column in fact is the total receipts, and the right hand the individual payments aggregating that amount?

A. I don't know.

Q. It would seem to indicate that in the year 1929 there was a total of $8550?

A. That is right.

Q. —received, and in December 1930 $4284. received?

A. That looks right.

Q. That would indicate two charters, is that right,—one in each year?

A. I couldn't say to that, whether it was one charter or two charters.

Q. You don't remember any more than two charters, do you?

A. Well, I don't remember the number at all.

Q. Now Mr. Hawkins, Mr. John S. Phipps did use this boat occasionally for trips, did he not?

A. Yes, sir.

Q. And when he wanted to make a trip on the Seminole, how would he arrange for that?

A. Well, it all depends on where the boat was. I don't recall but this one trip that he made; I think he did make two trips, but I don't remember. The last one—

Q. You mean you don't recall any one except the one in 1935?

A. I am sure there was another trip, but the date I don't remember.

Q. How did he arrange for the trip in 1935?

A. He told me he would like to go out on the boat.

Q. And what did you say?

A. I asked him when he wanted to go, and so forth; the number of his party.

Q. No question about his right to use the boat, was there?

A. Certainly not; he was a stockholder.

Q. You didn't have to consult with Alley or Mr. Scott or any one else to find out whether he was to have the privilege of using it, did you?

A. No, sir.

Q. When he told you he wanted to use the boat, that was the end of it, wasn't it?

A. As far as I know.

Q. In other words, you recognized his authority in that respect?

A. Yes.

Q. Now I noticed there was one item here that you referred to of personal property tax on the Yacht Seminole, which you paid and which was charged to the Seminole Boat Company, I think you said. Of course if the yacht had been owned individually, that tax would have had to be paid just the same, wouldn't it?

A. Yes, sir; I think so.

Q. I noticed another item there, that you bought some condensers on the spark plugs of the engines.

A. Yes, sir.

Q. —to avoid interference with the radio?

A. Yes, sir.

Q. How did that come about?

A. The boat was lying at the Royal Palm Dock and we had a number of men working on her, and they told me the radio wasn't any good, they would like to fix it; and I told them to fix it.

Q. Well the engines on the boat weren't operating while she was lying at the Dock, were they?

A. They would turn them over every day; this generator would run every day, to keep the batteries charged.

Q. Were those arrestors on the main engine or the generator?

A. I don't remember. If I remember, there were clips near the radiator.

Q. Well you have told us about the use of the yacht, if a stockholder wanted to use the yacht, they asked you, and they had the right to do so; is that right?

A. There was no question.

Q. In other words, the whole purpose of the arrangement that you had was for the convenience of the stockholders?

A. No, sir. The purpose was to put the boat in charter.

Q. And outside of that, your purpose was to suit the stockholders; is that right?

Mr. Underwood:

May I ask if the question asks for this witness' purpose, or the stockholders purpose?

Q. I am talking about this witness.

A. Well I will answer this: in the last trip that Mr. Phipps took on the boat, at which I was a guest, he asked me before went out if we had any prospects for charter; otherwise he wouldn't use it; he would use a smaller boat.

Q. Well outside of this ever imminent occurring possibility of a charter, your aim and object in the management of the Seminole was that she was available, ready and suitable, satisfactory, to the stockholders? That's right, isn't it?

A. And to Mr. Scott, who was the president of the company; and he gave me my instructions.

Q. Of course you and Mr. Scott were in a similar position with respect to the stockholders, weren't you?

A. Yes, but as long as he was here I was answering to him.

Q. I think you said that when the offer of $5,000 was under consideration and you consulted with Mr. Henry Phipps, he was quite ready to sell the boat?

A. Yes, sir; he at first asked me—I met Mr. Phipps at the race track, about a week before the Derby of that

year; told him of the offer. He said he thought it was awfully low, but what was my recommendation; and I told him to sell it, that he couldn't make any money out of it. He said "All right, sell it."

Q. But it was Mr. John S. that held back on selling?

A. Mr. John S. said that he was undecided; that he didn't want to sell for that price, it was so small; he would let me know what he wanted to do.

Q. In other words, as between them it would appear that Mr. John S. had the greater attachment for the boat; is that right?

A. I don't know. He probably thought it was worth more.

Q. You are familiar with the provisions of the certificate of incorporation that has been offered in evidence, and connected with your testimony, are you not?

A. Yes, sir.—In a general way; I haven't read it in a long while.

Q. The stock of the Seminole Boat Company was not assessable, was it?

A. I don't remember; I would have to look at it to find out.

Q. Will you verify that for me when you have an opportunity? I won't ask you to do it now.

Mr. Underwood:

The stock certificates and certificate of incorporation speak for themselves on that, don't they?

Mr. Matteson:

I believe they do, but I would like to have it clearly in the record.

Mr. Underwood:

If the witness is to be asked that, I object to it on the ground they speak for themselves.

Q. I call your attention to paragraph 7 of the certificate of incorporation.

The Court:

He is what the charter provides: (reading).

Mr. Matteson:

And there is further provision, which is No. 7, "The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever." Nevertheless I understand that in every year of the incorporation of the Seminole Boat Company there was a more or less substantial deficit in expenses?

A. Not such—

Q. Well I say, a more or less substantial: which was actually made good by the stockholders at the end of those years. Is that right?

A. Yes, sir.

Q. So that those, in view of these provisions, were voluntary payments?

A. Yes, sir.

Q. And will you tell me—referring to the exhibit that you have introduced, how much is outstanding on the books of the Seminole Boat Company at the present time? Can you tell me that?

A. I couldn't without having the bookkeeper check the records for me.

Q. Will you do that for me?

A. Yes, sir.

Q. Getting back to this Prigg boat; how long was that held, do you know?

A. How long did the Seminole Boat Company own it?

Q. Yes.

A. No, sir; I don't remember, but it was two or three years.

Q. And it was resold to Mr. John S. Phipps for the exact price that you paid for it originally?

A. Yes, sir.

Q. And in the meantime do you know whether the purchase price of that yacht was treated as an expense of the corporation or not?—or whether that remained as an open account on the books during that period?

A. The books would have to show that. It was charged to the Seminole Boat Company; that is the way I charged it when I bought it.

Q. And outside of that, the only asset that the Seminole Boat Company had at the time of the fire was the Yacht Seminole, is that right?

A. Yes, sir.

Q. And that vessel was rendered practically worthless by the fire, was it not?

A. Yes, sir.

Q. So that the only substantial asset of the corporation was destroyed by the fire?

A. Yes, sir.

Mr. Matteson:

If your Honor please, there is this book, ledger account, and all these vouchers, and two more files of vouchers with sheets which summarize them, which have been offered here today, which will take some time to study them, to find out just what they signify. If it is agreeable, I would like to stop at this point and reserve my further examination until I have had an opportunity to study those documents.

The Court:

Any objection to that?

Mr. Underwood:

No objection to that. How much time do you want?

Mr. Matteson:

I don't think it will take so very long.

Mr. Underwood:

Shall we recess now and continue in the morning?

Mr. Matteson:

That is all right with me. Mr. Botts probably has some questions he wants to ask.

Mr. Botts:

If it is agreeable, I have some questions that I can ask, and then if Mr. Matteson could look over these documents during the evening perhaps, we can go ahead; or we can adjourn now; just as you please.

Mr. Underwood:

As you wish; it is immaterial to me.

The Court:

I believe we can make time by proceeding.

By Mr. Botts:

Q. These various items represented by the various checks and vouchers of the Boulevard Mortgage Company, those reflect,—each of them, transactions I believe you said during the year 1935?

A. I don't remember whether all those are '35 or not?

Q. Well that's my recollection of it. Now those are typical of the method in which you handled various payments for the Boat Seminole, as I understand it?

A. Yes, sir.

Q. And by some bookkeeping entries, ultimately followed by cross entries in various books, and perhaps exchanges of checks, the Boulevard Mortgage Company was through the New York office reimbursed for those various expenditures?

A. Well the New York office a great many times would reimburse this office, if we had some items this office was to be credited for; but that was the clearance account.

Q. It was cleared in that way, sometimes by payments and sometimes by bookkeeping entries perhaps?

A. Well I don't know about that.

Q. Now then with particular reference to this check, Exhibit PP, the check dated March 29, 1935 for $950., in purchase of this Prigg boat?

A. Yes, sir.

Q. That was charged as I understand it to the Seminole Boat Company?

A. That is right, sir.

Q. And do I understand that the Seminole Boat Company would reimburse the Boulevard Mortgage Company for that amount?

A. The Boulevard Mortgage Company billed the Seminole Boat Company; I presume that the account was cleared out at the end of the year, which was customary. I think the books would show that.

Q. By payments from the stockholders?

A. Yes, sir.

Q. As a matter of fact, any such charge against the Seminole Boat Company and reimbursement, is not reflected by this ledger?

A. Well I couldn't tell you whether it is in that ledger or not. It would be properly charged to the Seminole Boat Company.

Q. Now as a matter of fact, the only entry in this Seminole Boat Company ledger is this unnumbered sheet, wherein under date of June 22nd there is a charge of $950. under the heading Prigg Cabin Boat. Now can you tell me whether or not there is any other entry in this ledger with respect to that boat?

A. I couldn't tell you without examining it, or without having my bookkeeper examine it.

Mr. Botts:

Let me ask him off the record: * * * If the Court please, in view of what Mr. Underwood has said to me, I think it won't be necessary for me to go into that feature of this any further, because if it is going too come from a witness that knows more about it than Mr. Hawkins, there is no use in attempting to go into it with him.

Q. As a matter of fact, Mr. Hawkins, this Seminole Boat Company matter was just one of the extra duties that was imposed on you without any compensation or reimbursement?

A. I wouldn't say it was imposed on me; I welcomed it.

Q. And you undertook this because it was a matter for the accommodation of these stockholders, first Mr. H. C. Phipps and Mr. J. S. Phipps, and later Mrs. Guest and Mr. Phipps; that is correct?

A. That applies to all the stockholders.

Q. And with respect to this Boat Seminole, as with respect to their other companies, you did exactly what you were instructed to do by the Phipps brothers—or I would put it, the stockholders; that is correct, isn't it?

A. Well no, Mr. Lehmann is the man that is the head of it, our general manager. Most of our instructions came from him.

Q. But as a matter of fact, with reference to this Boat Seminole, didn't you defer entirely to what you ascertained in one way or the other, was the desires of these stockholders?

A. Stockholders; yes, sir.

Q. And their personal wishes with reference to the handling of this boat, were followed by you so far as you could ascertain them?

A. Well yes, of course.

Q. And that was done irrespective of any resolution in the minute books, or instructions from the president or otherwise; isn't that true?

A. Well they never did conflict. The primary purpose was to charter the boat; and at no time would the Phipps people consider using it unless the boat was—no chance of chartering it. Any time that boat could be chartered, that was the purpose of it.

Q. As a matter of fact there never was a charter after 19—As a matter of fact I call your attention to this ledger sheet with respect to charters, and I will ask you if that doesn't show that the last payment on account of a charter was on April first of the year 1930.

A. That's what that shows.

Q. All right, I will ask you, isn't that a fact?

A. I wouldn't want to quote from memory. I don't know how many times it was chartered, or for what, or what was received. We have records to check on that.

Q. Well as a matter of fact, to your knowledge, there was never a charter after the year 1930, was there?

A. Mr. Botts, I don't remember when the last charter was. That is what we keep those records for.

Q. And as I understand it you will produce—

A. Yes, sir.

Q. A list of exactly when the last charters were?

A. Yes, sir.

Q. And a list of the various persons who used it independent of charters?

A. Yes, sir.

Q. That would be the stockholders or their invitees?

A. If you want that.

Mr. Underwood:

If your Honor please, I hesitate to let Mr. Hawkins make that promise, because I have been through the files as far as I could gather them; I have been trying to get such list, and have not been able to do so.

Mr. Botts:

All right, we will leave it, so far as he is able.

Mr. Underwood:

I have two charters here, which are all I have ever been able to find in the files. Now my understanding, if I may be permitted without objection to state my understanding of what actually happened—I can't testify to this; it may refresh Mr. Hawkins' recollection. My understanding is that when Capt. Baker had it, he made the charters himself. The charters did not find any record in the records of the company. He accounted from time to time for the charter hire that he received.

A. That is correct.

Mr. Underwood:

But the charters themselves were made by Baker, under the authority of his contract, and were not made by the company directly, but through Baker.

Mr. Matteson:

Those receipts would show in the books, would they?

Mr. Underwood:

They do show; there are some eight entries of receipts of charter.

Mr. Botts:

But the latest one is April 1st, 1930.

Mr. Underwood:

The latest one I know of.

Q. Now then when you bought this Prigg boat on March 29, 1935 the voucher shows Mr. Scott was in New York at that time, wasn't he?

A. I am not sure; I think he was.

Q. And Mr. Alley was in Palm Beach?

A. See who signed that check and I can tell you.—Well then Mr. Alley signed it, and Mr. Scott was in New York.

Q. Mr. Alley was in Palm Beach?

A. Yes, sir.

Q. And you had no directors meeting with respect to this matter?

A. No, sir.

Q. Who then authorized you to expend this sum of money on behalf of the Seminole Boat Company?

A. Well the way it came up, I told you, I saw this little boat which I would like to have had. We needed it for the Seminole to replace this tender that was no good. And Mr. John S. Phipps and his brother were down, they usually came down together. I showed him the boat, told him the price; he told me to buy it; he also would like to have it personally, but would decide on who would buy the boat and who would pay for it; and I think he said he would talk to Amy, who is his sister, and Mrs. Guest, and after I bought the boat he would let me know.

Q. Your authority to buy that boat came from Mr. John S. Phipps, anyway?

A. Yes, sir; I think he consulted his sister or his brother about it. It was four or five days elapsed between the time I first talked about it, and when I finally bought it.

Q. I believe you stated that you also made disbursements on behalf of the Boat Iolanthe, from time to time?

A. From time to time; not a great deal on that boat.

Q. Did the Iolanthe ever stay down here at Miami?

A. I think she did, for a few days at a time, but never for long periods.

Q. And when it was down here, you used your discretion with reference to expenditures for the Iolanthe, didn't you?

A. Not so much as I would on the Seminole.

Q. Well she wasn't down here as much?

A. No, but even then, it was a personal matter, to take it up with them.

Q. As a matter of fact, with reference to this series of expenditures, weren't you in effect instructed by the stockholders to use your discretion about keeping that boat in first-class usable condition?

A. Those first instructions came from Mr. Scott, and the stockholders later confirmed them.

Q. And the stockholders confirmed it?

A. Yes, sir.

Q. You knew of course that Mr. Scott had no personal interest in the boat?

A. Yes, sir.

Q. And that he as you were acting on behalf of the stockholders?

A. Yes, sir.

Q. And when you ordered these various items paid, you knew that you were in fact expending moneys that would be reimbursed from the stockholders?

A. No, because you see, I personally employed Capt. Baker, because he had great hopes of making a lot of money on this boat; he was a friend of mine.

Q. Let's refer to these 1935 vouchers that have been offered in evidence here.

A. But even then he hoped to get a charter for the boat.

Q. But he didn't?

A. No, sir. Business was picking up there again, and larger boats were available.

Q. Independent of the possible contingency of a charter, however, you knew that this money you were ex-

pending was in—from a practical standpoint the money of these two stockholders, didn't you?

A. I didn't think they would repudiate any debts.

Q. You knew that you were in fact spending money that they would pay out?

A. No, I knew it was the Seminole Boat Company debt; I had no knowledge of what they would do about it.

Q. They never had repudiated a debt of the Seminole Boat Company had they?

A. No.

Q. Now I have understood, Mr. Hawkins, that you will examine your records, and if it is fact, confirm your impression that you have a record showing when the ledger and when the other records went to the Palm Beach office?

A. Yes, sir.

Q. And if you find that your memory is correct, and you have such a record, you will produce the same?

A. Yes, sir.

Q. On this trip, the last trip of the Seminole, in which you said you were the guest of the party which went on two different boats, could you recall at this time just what points you visited on that trip?

A. Yes.

Q. You joined the party here at Miami, did you?

A. No, I joined it at Trestle No. 2, Matecumbe.

Q. The boat left—

A. I didn't join the Seminole, I joined the party.

Q. I said, the party. I understand you were on the other boat. But the two boats cruised together, did they not?

A. They did, but the last four or five days I was on the Seminole.

Q. Now the boat proceeded from Miami to Trestle #2 at Matecumbe, where you joined them?

A. Yes, sir.

Q. Then from there, where did you go?
A. I think we went from there to Long Key.
Q. Then from there where did you go?
A. We went to Bahia Honda, and Harbor Key.
Q. Where is Harbor Key?
A. It is about twenty miles west of Bahia Honda.
Q. And then from there?
A. Back to Trestle #2.
Q. That was where the guests and owners left the boat?
A. Yes, sir.
Q. Now then from Trestle #2 the boat came back to Miami and thence to Fort Lauderdale?
A. That is right.
Q. While the boat was at these various points of stoppage, five which you have named, including a stop going and coming at Trestle 2, was the boat anchored—I mean the Seminole, anchored most of the time?
A. Well, yes. We would fish out of these smaller boats.
Q. In other words, the Seminole would be under way until you would reach these various points, and then she would anchor and the small boats would be used for fishing? That was substantially the program, was it not?
A. Yes, sir.
Q. And did you ever see these fishing boats, I believe you said four or five in number,—did you ever see them refuel while you were on that trip?
A. No, sir.
Q. You don't know where they got their gasoline supply?
A. No, sir.
Q. When you were on the Seminole did you ever see them get gasoline, take gasoline off the Seminole?
A. No, sir.

Q. If they did that you simply didn't observe it, is that right?

A. I didn't observe it, because it would be out of my line. I don't know where it would be; I mean I never saw it.

Q. Do you recall approximately the speed under way of the Seminole?

A. No, sir. I don't think she was a very fast or a very slow boat. Very comfortable. I don't remember.

Q. Could you give us an approximation of the number of hours that she was under way after you joined her at Trestle 2, until you left her at that point?

A. I really wouldn't know.

Q. Well now do you know approximately the distance from Trestle 2 to Long Key?

A. I don't know. I think it is about fifteen miles.

Q. A short distance?

A. Not far.

Q. And then from Long Key to Bahia Honda?

A. I would say about—I don't know.

Mr. Underwood:

If your Honor please, I suggest that if these distances are regarded as important, we can get a chart and agree on them. I don't know whether the Seminole went there by the shortest possible route or not.

Q. Do you recall what time of the day you left Long Key?

A. No, sir.

Q. You don't have any recollection at all about those things?

A. I just know it was a very comfortable trip.

Q. Now so far as these books are concerned, you really don't know anything about how they were kept or when the entries were made? That is a fact?

A. I would tell our head bookkeeper, any charge that goes through there, I would be the one to tell him; but I didn't keep the books physically.

Q. You don't have any idea, about what any of these entries here mean, then, do you?

A. I can figure it out. The bookkeeper could do it much quicker.

Q. Well if the bookkeeper is going to come, then I would rather ask the bookkeeper about those questions. Now I believe you stated that the afternoon of the fire, you had a conversation with Captain Pilkington, in which some mention was made about an attempt to run the generator.

A. That was definitely stated.

Q. I will ask you if you can tell us now where, in relation to the premises up there, that statement was made? Was it inside the house, or outside the house?

A. Inside the house; it was under shelter; whether it was on the porch or in the little office, I don't remember. But there was a little office, that the telephone was on the wall, and some man in uniform was using the telephone.

Q. Now then, did you see Mr. Gary Miller?

A. I don't know Mr. Gary Miller.

Q. You don't know him?

A. No, sir.

Q. Did you see any one that was identified as the County Attorney, up there?

A. I wouldn't know the county attorney.

Q. If you saw him, no one identified him to you? That is what I am getting at?

A. Yes, sir.

Q. And do you recall now who was present at the time that conversation took place?

A. Yes, sir.

Q. Will you please tell us now every one as near as you can, who was present on that occasion?

A. To my knowledge the only one was Capt. Pilkington, Mr. Webber, Mr. Riley, myself, and this man in uniform.

Q. And the man in uniform was using the telephone at the time?

A. Yes, sir; the man in uniform is the man that told me that Captain Abel was still on board the boat, which I didn't know up until that time.

Q. And will you repeat again now, as nearly as you can, the exact statements that were made on that occasion?

A. Yes, sir. I asked Capt. Pilkington how in the world the fire started. He said that he couldn't understand it; that he had been aboard the boat within the last month or so, tried to run the generators, but he couldn't do so for the lack of gasoline. He just couldn't understand how it happened.

Mr. Botts:

That is all I have at this time, if the Court please. Of course when we go over these records I am liable to have some other questions; I don't know. But it seems from what the witness said that most of the questions that I wanted to ask, he would just have to answer "I don't know; somebody else did it"; and so I am not going to clutter up the record with that kind of questions.

The Court:

All right, do you wish to utilize the next twenty minutes with another witness, or would you rather take a recess?

Mr. Underwood:

I understood Mr. Matteson expects to be prepared to go on with his further cross examination in the morning. * * *

(Thereupon the hearing was recessed until ten o'clock a. m. of the following day.)

Miami, Florida, May 10, 1939, 11:00 o'clock A. M.

Morning Session.

1712 Thereupon ROY H. HAWKINS, a witness produced by the Respondent Phipps, resumed the stand and was examined and testified further as follows:

Cross Examination (Continued).

By Mr. Matteson:

Q. Mr. Hawkins, referring to these telegrams that you produced and which were offered in evidence yesterday, I refer you to this one that is marked EE-1, in which it says, "I am depending on you to take out the Seminole after your present charter". That "present charter" referred to there was a charter to Captain Baker's own boat, the Molly-O?

A. Yes.

Q. That doesn't refer in any way to a charter of the Seminole?

A. No.

Q. On whose instructions did you send that telegram?

A. Mr. John S. Phipps.

Q. In other words, Mr. John S. Phipps wanted to make a trip on the Seminole and you were making the arrangements.

A. He and his sister, Mrs. Guest, were making the trip together.

Q. Your instructions came from Mr. John S. Phipps?

A. Yes; he told me that his family and Mrs. Guest and her family were going to take the boat out.

Q. Now, Mr. Hawkins, you have no connection with the Palm Beach Office, have you?

A. Very slightly, sir.

Q. You had no direct connection with them at that time?

A. Only in this respect: occasionally I go to Palm Beach and they ask my opinion about various properties there, values and sales and so on.

Q. Whatever it is, it is only a matter of cooperation; in other words, you have no official connection with it?

A. No, sir.

Q. And no authority over it?

A. No, except that that is also Bessemer Properties, Inc.

Q. That is another office of Bessemer Properties, Inc.?

A. That is right.

Q. A coordinate office with yours?

A. Yes; I consult with them back and forth about a great many things.

Q. You have no jurisdiction or authority over Mr. Riley of the Palm Beach office?

A. Well, I never attempted to assume any.

Q. Well, as a matter of fact, you would not have the right to issue any instructions, of course?

A. I tnink I might, sir, if there was something involving property and things of that kind, things that the company had an interest in.

Q. You never did?

A. I won't say that; I might have.

Q. You don't recall any circumstances under which you have done anything of that kind?

A. When you say instructions, I might say that we don't usually try to give definite instructions, rather, we make suggestions; I may have said many times, "Jim, I think it would be a good thing for you to do this or that". For a long time I paid Mr. Riley's salary through my

office, and I still pay his office personnel through my office; I am the pay-master for that office.

Q. I would like to ask you this: In your office, Mr. Hawkins, when letters are written it is customary for the initials of the person dictating the letter to appear on the face of the letter, is it not?

A. Yes, sir.

Q. In other words, for instance, I show you this exhibit, Libelants' Exhibit Number 51, which is a letter signed by you with the initials "RHH" down in the left-hand corner; do those initials indicate that you dictated that letter?

A. Yes, sir.

Q. Then referring to Libelants' Exhibit Number 54, the initials "WLW" appear in the lower left-hand corner; I take it that would indicate that that letter was dictated by Mr. Webber, is that right?

A. That is right.

Q. Mr. Webber, in testifying yesterday, stated that he thought this letter was dictated by you, but that was evidently an error, was it not?

A. Well, usually—I couldn't say whether he dictated it or not; I am not sure. He signed it.

Q. It was prepared for his signature?

A. He evidently wrote it and signed it; you could exactly who wrote it by comparing the typewriters.

Q. Now, Mr. Hawkins, I show you this letter of March 20, 1934, Libelants' Exhibit Number 46, addressed to Captain Pilkington and signed by yourself. Did you write that letter?

A. I signed it, yes; the girl wrote it.

Q. The girl wrote it, of course.

A. Yes.

Q. And you dictated it?

A. Yes, sir.

Q. This letter reads: "Dear Captain Pilkington: Will you kindly deliver to Captain Willie Baker the Yacht

Seminole. I would appreciate any assistance you can give him in getting her out immediately. Thanking you, I am Very truly yours, John S. Phipps by Roy H. Hawkins", is that right?

A. Yes. That was probably in error, the "John S. Phipps signature.

Q. You expected Captain Pilkington to recognize the authority of John S. Phipps' signature in that case, did you not?

A. No; mine.

Q. Yours?

A. Yes, sir.

Q. You can't explain it in any other way than an error?

A. It may have been due to a different girl writing it rather than my regular secretary.

The Court:

Let me see that.

Q. Is it possible that that represented your state of mind and feeling that John S. Phipps was the dominating influence with respect to the Seminole?

A. No, sir.

Q. I show you another letter dated December 1, 1933, Libelants' Exhibit No. 51. Did you write that letter?

A. Yes, sir.

Q. Now in this case you wrote to Captain Pilkington with respect to the Yacht Dorothy?

A. Yes, sir.

Q. And you signed this "Palm Beach Company By Roy H. Hawkins"?

A. That is right.

Q. You were not connected with the Palm Beach Company, were you?

A. Well, I had no official title with the Palm Beach Company. As I stated before, I did a little work with the

Palm Beach Company, and it was one of the Florida Companies of the Phipps' interests in Florida. The Yacht Dorothy is owned by Mrs. Guest and is in charge of the Palm Beach office.

Q. In this case you signed that letter "Palm Beach Company"?

A. Yes, sir.

Q. I notice next in this chronological file is a letter, Libelants' Exhibit Number 47, addressed to Pilkington's Boat Yard from Palm Beach, signed "Palm Beach Company", by "J. F. Riley". Do you notice that?

A. Yes, sir.

Q. Then I think there is a letter in here, Libelants' Exhibit Number 52; did you write that one, too?

A. Yes, sir.

Q. And that is addressed to "Pilkington" and signed by your name?

A. Yes, sir.

Q. And over your name appears "Seminole Boat Company"?

A. That is right.

Q. I take it that in that case, as in the other case, what you expected Captain Pilkington to recognize was your signature, "Roy H. Hawkins"; is that right?

A. Yes, sir.

The Court:

Let me see that one.

(By Mr. Matteson):

Q. After all, putting yourself in the position of Captain Pilkington receiving all of these letters with a lot of different corporate names on them, and names of individuals that he recognized, it is quite understandable that there might have been some confusion in his mind—

Mr. Underwood:

I object to that; it calls for the operation of Captain Pilkington's mind.

The Court:

I think that is argumentative, and not in development of any facts. I will sustain the objection.

Q. Now, Mr. Hawkins, I would like to get a picture of the corporate activities of the Seminole Boat Company as reflected by this Minute Book which you have produced here. Following the certificate of incorporation and the by-laws, there appears minutes of the first meeting of the Seminole Boat Company held in Wilmington, Delaware by the incorporators, E. L. Mackey, L. C. Christy and H. Kennedy. Who are they?

A. I don't know.

Q. They are just somebody connected with the Corporation Service Company?

A. I don't know.

Q. Nobody connected with your organization?

A. Not in Miami or Palm Beach.

Q. In any event, they proceeded at once to elect Mr. Scott, Mr. Alley and yourself as directors, and to transfer their subscriptions to you as appears in those minutes; is that right?

A. That is right.

Q. Then the next minutes that appear here are the minutes of the meeting of the Board of Directors at Miami on November 14, 1928 at 10:00 A. M.; yourself, Mr. Alley and Mr. Scott being present; is that right?

A. Yes.

Q. Now the business transacted at that meeting consisted of the election of Mr. Scott as president, Mr. Alley as vice-president and yourself as secretary and treasurer; is that right?

A. Yes, sir.

Q. Then the next item was the authorization to the treasurer to open a bank account with the First National Bank of Miami; is that correct?

A. That is correct.

Q. And the next establishes an office of the corporation at 1317 Biscayne Boulevard, Miami; is that right?

A. That is correct.

Q. Then the corporate seal is adopted and the form of stock certificates; is that right?

A. Yes.

Q. And the issuance of the stock is authorized in a separate item, being item No. 12; is that right?

A. That is right.

Q. And the offices are authorized to file corporate reports, is that right?

A. Yes, sir.

Q. And the principal office of the corporation is designated as being at Wilmington, Delaware?

A. Yes, sir.

Q. And Mr. Graham Magee of 1317 Biscayne Boulecard is appointed counsel?

A. Yes, sir.

Q. And the secretary was authorized to use the corporate seal?

A. Yes, sir.

Q. And that is all the business that was transacted at this meeting?

A. That is all that appears in the minutes.

Q. Now the next minute is a meeting of the Board of Directors of the company held in Miami on January 28, 1929, and yourself and Mr. Scott and Mr. Alley being present.

A. Yes.

Q. The president reported the purchase of the gasoline Yacht Seminole.

A. That is right.

Q. A resolution was adopted authorizing the purchase for a consideration payable in the capital stock of the corporation?

A. That is right.

Q. That is all of the business that was transacted at that meeting?

A. That is right.

Q. Then there was a special meeting of the Board of Directors held October 21, 1929 with yourself, Mr. Scott and Mr. Alley being present, and the president brought up for consideration the matter of his contract with Mr. Baker?

A. That is right.

Q. And the contract was incorporated in the minutes and a resolution was adopted authorizing the officers to enter into that contract?

A. That is right.

Q. And that is all the business that was transacted then?

A. Yes.

Q. Then the next minute was the annual meeting of the stockholders held January 26, 1931, and the only business transacted was the election of directors, Mr. Scott, yourself and Mr. Alley?

A. That is right.

Q. Then the next minute is the annual meeting of the Board of Directors of the same day, an hour later, at which you three were present, and the only business transacted was the re-election of the same officers of the corporation?

A. That is correct.

Q. The next minute is the annual meeting of the stockholders held on January 25, 1932, at 10:00 A. M., and the only business was the election of these directors as previously—

A. That is correct.

Q. And the next minute is the annual meeting of the board of directors held at 11:00 o'clock on the same day, when the same three directors were present, and the only business was the re-election of the same officers of the corporation, is that right?

A. That is correct.

Q. The next minute is the annual meeting of stockholders on January 30, 1933, and the only business transacted was the re-election of the directors previously named, is that right?

A. That is correct.

Q. Now the next minute is the annual meeting of the Board of Directors immediately following, an hour later, at which two directors were present, Mr. Alley and Mr. Hawkins, and the only business transacted was the re-election of the officers that previously held office, is that right?

A. That is right.

Q. Then there was a special meeting of the Board of Directors held on October 9, 1933 and yourself and Mr. Alley alone being present, and a resolution was adopted changing the corporate agent of the corporation at Wilmington from Corporation Service Company to the Delaware Registeration Trust Company?

A. Yes.

Q. And that is the only business that was transacted in that meeting?

A. Yes.

Q. Then the next meeting is the annual meeting of the stockholders held January 22, 1934, at which the only business transacted was the election of yourself, Mr. Scott and Mr. Alley as directors?

A. That is correct.

Q. The next minute is the annual meeting of the Board of Directors immediately following, at which Mr.

Scott, Mr. Alley and yourself were present, and the only business transacted was the re-election of the previous officers, is that right?

A. Yes, sir.

Q. The next minute is the annual meeting of stockholders held on January 28, 1935, and the only business transacted was the re-election of the directors that previously held office?

A. That is right.

Q. And the next meeting is the annual meeting of the Board of Directors held on January 28, 1935, the three directors being present, and the only business transacted being the re-election of Mr. Scott, Mr. Alley and yourself to the offices that you previously held, is that right?

A. Yes.

Q. And that is the last meeting that was held of stockholders or directors of the Seminole Boat Company?

A. Yes, sir.

Q. Now, Mr. Hawkins, you have been secretary and treasurer of the Seminole Boat Company from the first meeting of the company down to the present time, is that right?

A. Yes.

Q. As secretary and treasurer it has been your duty to keep the accounts and funds and records of the corporation?

A. They were kept under my direction, yes.

Q. I asked you yesterday about this account book, and I believe you said something about it being sent up to Palm Beach, and I asked you when that was done.

A. Yes.

Q. Can you tell us now?

A. Yes.

Q. When was that done?

A. In 1934. I have a memorandum here which will give you the date; it was on January 30, 1934, at the

time when the balance sheet was sent in connection with the company. The book was taken to Palm Beach by our Mr. Clark, a lawyer for Bessemer Properties. The accountant in my office thought it would be easier to keep the records in Palm Beach, as the boat was there then.

Mr. Underwood:

If your Honor please, I offer in evidence now, since Mr. Matteson read this communication, letter of January 30, 1934 from Mr. Handley to Mr. Alley, and the two documents attached thereto, one of which is a copy of a letter from Mr. Handley to Mr. LeCount, dated the same date, and the other two sheets are entitled "Balance Sheet, Seminole Boat Co., Miami, Florida, December 31, 1933".

Mr. Matteson:

I object to them, if your Honor please, as being self-serving declarations. The testimony of the witness stands by itself without any documents being necessary.

The Court:

Let me see it.

Mr. Botts:

If the Court please, in behalf of the Respondent Pilkington I object to these documents on the ground that they are immaterial and irrelevant. The sole question was the date when certain books were delivered, and the witness has answered that question. These documents serve no useful purpose, and are merely unsworn statements without any probative value. I do not think there is any use of encumbering the record with them.

The Court:

Well, it shows how the matter was handled and the conduct of the affairs of the Seminole Boat Company. I think they are all right. I will overrule the objection.

(Thereupon the documents above referred to were marked Respondent Phipps' Exhibits 3-L-1, 3-L-2 and 3-L-3, respectively.)

(By Mr. Matteson):

Q. Referring to this account book again, I want to go over the high-lights—

A. You understand that I didn't keep this book?

Q. It was kept under your supervision, however?

A. That is right.

Q. The first account in the ledger appears to be the account of the First National Bank which, I take it, is the bank deposit account?

A. Let me see what all of this is.

Q. The first section there, I take it, is the Journal.

A. That seems to be correct, sir.

Q. And this—

A. Wait a minute; what is that?

Q. That is all part of the same account, consisting of three pages?

A. That is right.

Q. And this account was balanced out on June 2, 1931, is that right?

A. That is right.

Q. And since June 2, 1931 the Seminole Boat Company has had no bank account

A. That is correct.

Q. I refer you to this page in the letter headed by the name of W P. Baker, and it shows certain debits and credits to W. P. Baker. I take it those were payments under the contract arrangement that you made with him; is that right?

A. I presume they were, sir. The only thing I looked at was the balance sheet at the end of the month or the six months, or the end of the year; I never looked at those books.

Q. Well, you are responsible for these books?

A. I have men under me that are responsible for the keeping of them.

Q. But you mean to say you never even looked at them and saw them, or aren't familiar with them at all?

A. I never kept any of these books, but I have an accounting department that does; and every month they give me statements of each company, each account, delinquents, receipts and everything. No bills were incurred when I had charge of the boat unless I approved them.

Q. Now let me ask you about this; this seems to show that in 1929 there were certain payments to Mr. Baker, and that the final payment was on September 18, 1929, $250; is that right?

A. It looks like it.

Q. Was that contract ever renewed?

A. Yes, sir, I think it was; I am not sure, I believe we have a renewal of it.

Q. The contract was for one year, was it not?

A. I think it was renewed; I am not positive about it.

Q. When we went over the Minutes together a few minutes ago there was not any authorization of it in the Minutes?

A. No, there was not. I don't know whether the contract automatically carried a renewal or not; you would have to read that.

Q. Then I find three pages here showing,—headed "Mrs. F. E. Guest, Henry C. Phipps, John S. Phipps" at—

A. Yes, sir.

Q. I take it that these show the debits and credits on the books of the Seminole Boat Company to those individuals?

A. Yes, sir.

Q. I see that on June 22nd, 1935, Mrs. Guest was credited with a payment of $1224.90.

A. Yes, sir.

Q. I believe that that was a payment of one half of the share of the general expenses of the Seminole between June 1st and April 30th, 1935, was it not?

A. The voucher would show that, I wouldn't know.

Q. All right. We can check that. In any event it does show payments by her to the Seminole Boat Company of that amount?

A. That is correct.

Q. Credited as of that date. Now passing to Henry C. Phipps, there are various credits over a period of years to the company aggregating $122,440.72; is that right?

A. Yes, sir.

Q. That represents the amount of cash paid in to the company by Mr. Phipps during that period; is that right?

A. Yes, sir.

Q. Then passing to the account of John S. Phipps, it shows a total of contributions by him of $13,665.63, is that right?

A. Yes, sir.

Mr. Underwood:

Can we agree at this point that the total of J. S. Phipps' contributions down to that date, was the same as the combined total of H. C. Phipps and Mrs. Guest?

Mr. Matteson:

Well, I am just taking it as the books show. We can add it together, that may be right. I am reading what the books show.

Mr. Underwood:

It is simply arithmetic to show that.

Mr. Matteson:

I assume you are right.

Mr. Underwood:

Do you mind if we ask the witness that question at this point. May I interpolate that question: Mr. Hawkins, will you add up the payments made by Mrs. Guest and Mr. H. C. Phipps and tell me whether or not they are equal to the total payments by John S. Phipps? What is the combined total paid by Mr. H. C. Phipps and Mrs. F. E. Guest?

A. $13,665.62.

Mr. Underwood:

And what is the total by Mr. J. S. Phipps?

A. $13,665.63.

Mr. Underwood:

A difference of one penny; is that right?

A. That is right.

Q. Now I go to a page here that is headed, Palm Beach Company, now the Bessemer Properties, Inc., 1937 on. Is that right?

A. Yes, sir.

Q. This apparently represents advances by that company; is that right?

A. I don't know what it represents.

Q. Well, it shows the account balanced out on June 22, 1935, does it not?

A. Yes, sir.

Q. Now from that time on there is an aggregate of advances by the Palm Beach Company and the Bessemer Properties, Inc., of $13,879.36, is that right?

A. Yes, sir.

Q. And that is outstanding now as a debit against the Seminole Boat Company in favor of the Palm Beach Company?

A. I couldn't say that; I would have to have the bookkeeper make up a statement.

Q. Well, your company has never reimbursed the Palm Beach Company or the Bessemer Properties, Inc. for any of this expense, has it?

A. I say I would have to have the bookkeeper advise me on that and check it.

Q. And you as the treasurer of the company can't tell us that?

A. No, sir, I would have to have him check his books and give me a statement. Apparently that is correct; but as I say, I am not the bookkeeper.

Q. You say apparently that is correct?

A. I think that we have general statements that show you the profit and loss for the period.

Q. Well, we will just pass on to the next item. Now there is an account here headed Boulevard Mortgage Company, that seems to have been balanced out at the end of 1933, is that right?

A. That is right.

Q. No further credits with respect to that.

A. Apparently not.

Q. Now we come to the profit and loss surplus account; we have entries running from 1928 down to 1937, showing a total debits, as loss of the company, of $68,945.61, is that right?

A. Yes, sir.

Q. Over a period of December 31, 1928 to December 31, 1937?

A. That is right.

Q. Now you think that may include depreciation?

A. I don't know; it seems like a large figure.

Q. And what depreciation was charged on the Seminole? $2,000, is that right?

A. It would show on the books; I don't know what it is.

Q. You think there are entries indicating that $2,000 would be the amount?

A. Yes.

Q. If that is the amount over a period of even assuming it is ten years, at that rate there would be $20,000, and if you deducted that much we would still have a loss of $48,945.00?

A. Yes, sir.

Q. And it is true that every single entry in this profit and loss statement is an entry of a loss?

A. Well, you would have to check each one of them to find out.

Q. They are all on the same side of the ledger, aren't they?

A. Yes, sir.

Q. There are none on the credit side?

A. No.

Q. Now here is a page on the charter of the Seminole; now it seems to indicate that the last credit with respect to a charter of the Seminole was on April 1st, 1930, and was $600.; is that right?

A. Yes, sir.

Q. There has been no income from any charter of the Seminole since that time?

A. Not to my knowledge.

Q. I pause a minute to point out an entry with respect to commission on charter, $350. on April 17, 1929; is that right?

A. Yes, sir.

Q. Here is the page of depreciation on Seminole, and you have, let's see: You have a total of $10,333.32 charged to depreciation; is that right?

A. Yes, sir.

Mr. Underwood:

That is through 1934.

A. That is through '34, yes, sir.

Q. I don't suppose you have been charging depreciation on the Seminole since 1935, have you?

A. I hope not. It is an expense.

Q. Now, here we come to a page, medical expense, Seminole fire.

A. Yes, sir.

Q. And I take it these are expenses in connection with Mr. Thomas' injuries?

A. They seem to be so.

Q. In 1935, you have a total of $2378.43, and the account balanced at that time; is that right?

A. Yes, sir.

Q. Then in 1936, you have a total of $2854.25 more, and the account balanced at that time; is that right?

A. That is correct.

Q. And in the year 1937, you have items totaling $988.

A. That is correct.

Q. And in the year 1938 items aggregating $900?

A. Yes, sir.

Q. Now then you come to a sundry item which shows items of expense during the year 1935 aggregating $540.99, is that right?

A. That is correct, sir.

Q. And the account balanced at that time?

A. Yes, sir.

Q. And then in 1936 you have items aggregating $5,023.94?

A. Yes, sir.

Q. And $5,000 of that amount represents a payment to Mrs. R. C. Abel, is that right?

A. That is correct, sir.

Q. And $21.90 represents payment in connection with the estate of R. C. Abel?

A. Where do you see that?

Q. Here.

A. Yes, sir.

Q. And an additional amount in 1937, bond of Mrs. Abel, $10.

A. Yes, sir.

Q. Well now, Mr. Underwood asks me to ask you with respect to the item, bond, Mrs. Abel, $10., and item fees Abel estate, $11.90; if you can tell us what the purpose of those items was.

A. I couldn't quote from memory, I would have to look on the check vouchers.

Q. Was any suit ever brought by Mrs. Abel against Seminole Boat Company?

A. Not to my knowledge, sir.

The Corut:

Did you ask him about that $5,000 item?

Mr. Matteson:

I was going to ask him some more about that.

Q. Do you know anything about the payment of $5,000 to Mrs. Abel?

A. I know that it was paid; Mr. Alley, the senior officer of the company in Florida, told me that he was going to pay it.

Q. That situation, as I see it from the books, is this: The Seminole was destroyed on June 24, 1935.

A. Yes, sir.

Q. And she was practically the sole asset of the Seminole Boat Company at that time?

A. That is correct, sir.

Q. And even at that time there was outstanding on the books of the company something over two thousand dollars of expenses which had been incurred by one or more of these corporations that advanced money for you?

A. I don't know the exact figure, but the books will show that.

Q. Well, I think we noted that Mrs. Guest paid something like $1200.

A. Yes, sir.

Q. —subsequent to that time. So the total would have been somewhere between two thousand and twenty-five hundred, outstanding liabilities at the time of the loss; is that right?

A. Well, the books show the liability at that time; I wouldn't want to quote the amount.

Q. And since that time there have been incurred additional expenses aggregating some thirteen thousand dollars?

A. I don't know what the figure is, there have been additional expenses.

Q. Mr. Underwood called my attention to the fact that the credit entries seem to indicate that the twenty-four hundred dollars that I had in mind was credited to the stockholders as paid on June 22, 1935, two days before the fire.

A. Yes, sir.

Q. Now I think that there were at least some outstanding liabilities of the company in addition to that, at that time; is that right?

A. The books show that; I wouldn't quote from memory.

Q. And we noted yesterday, I think, the fact that under the corporation charter the stock is not accessible, and the private property of the stockholders is not subject to liability for the liability of the debts of the corporation; that is right, is it?

A. Yes, sir.

Q. Well, did I understand from what you said that you had nothing to do with the payment of the $5,000 to Mrs. Abel?

A. I didn't say I had nothing to do with it, I said that I know Mr. Alley, the senior officer of the company in Florida, told me that he was going to pay it.

Q. By senior officer you mean that he was the vice president?

A. He was the vice president; Mr. Scott being out of the state.

Q. Well, you know no more about it than that?

A. He told me he had talked to the stockholders.

Q. But I mean, you know nothing about it except what Mr. Alley has told you?

A. That is all.

Q. And with respect to this substantial amount that was paid out here for the account of Mr. *Abel*—

Q. Did you have anything more to do with that than you have with respect to the payment of Mrs. Abel?—did I say Abel? I should have said Thomas there.

A. The five thousand to Mrs. Abel.

Q. Perhaps you better strike that out, I might have made a mistake. With respect to these substantial payments that were made to or for the account of John Thomas—

A. Yes, sir.

Q. Did you have anything more to do with them than you did with the payment for the account of Mrs. Abel?

A. Mr. Alley told me that he was incurring those expenses.

Q. That is all there was to it; he simply told you that he was doing it?

A. Yes, sir.

Q. And there was no authorization of the expenditure of any such amount incorporated in any resolution of the Board of Directors, was there?

A. No, sir.

Q. I think you said Mr. Alley said that he was doing it with the consent of the stockholders?

A. He told me that he had talked to the stockholders, yes, sir.

Q. Well, that would certainly be a thing that would require the authority of the stockholders under those circumstances, wouldn't it?

A. I presume so, sir.

Q. Now you produced a list of vouchers here yesterday representing payments from your office in relation to expenses of the Seminole?

A. Yes, sir.

Q. And I think they ran down to perhaps June, 1935. Do they represent the last payments that were made by your office? I mean, are there any other subsequent to these that you have produced?

A. Not to my knowledge, I think that is all of them,—no, I beg your pardon; we have been paying through my office, we have been paying the storage on the Seminole,—the hull.

Q. Out at Nuta's yard?

A. Yes, sir.

Q. Then you are still incurring expense for the storage?

A. Storage.

Q. Now I want to get back to the transfer of this account; it was your duty as an officer of the corporation, to keep these accounts, or have someone keep them under your supervision, wasn't it?

A. To see that they were kept, yes, sir.

Q. And the by-laws provide, Section 27, "The books, accounts and records of the corporation may be kept in any office of the corporation within or without the State of Delaware and shall be open to inspection by the stockholders at such times, and subject to such regulations, as the Board of Directors may prescribe."

A. Yes, sir.

Q. And we noted a little while ago action by the Board of Directors at the first meeting, establishing an office at 1317 Biscayne Boulevard?

A. That is right.

Q. And according to our analysis of the Minute book, no other office was ever designated for the Seminole Boat Company, was there?

A. Why I would have to check through there and find out whether it was. I don't recall that it was.

Q. Then as I understand your testimony, in January, 1934, the books of the company were transferred from your office to the Palm Beach office?

A. Mr. Alley, who was the vice president of the company.

Q. And thereafter they were no longer subject to your jurisdiction?

A. I go to the Palm Beach office quite regularly, sir. I don't keep books in either office.

Q. But they were out of your custody; this office is the office that you are in charge of, isn't it?

A. Yes, sir.

Q. And that is the only office that you are in charge of?

A. I tell you, I go to the Palm Beach office quite frequently.

Q. Of course you do, but I say, it is the only office that you are in charge of.

A. Yes, sir.

Q. Then from the time of the transfer to the Palm Beach office there was no—where did you get the authority to transfer the books there, that it was your duty as an officer of the corporation to keep, to another office, that was not an office of the Seminole Boat Company?

A. Mr. Alley, the vice president of the company.

Q. You did that just because he told you to do it, is that right?

A. Yes, sir, with my consent; I saw no objection to it.

Q. There was no action by the Board of Directors authorizing any such act, was there?

A. We were the only two directors in the state, at the time.

Q. So you felt nobody could object, is that it?

A. That is right, sir.

Q. But there was no formal authority of any kind for that, was there?

A. Nothing placed in the Minutes, no, sir.

Q. I would like to ask you to give us as specifically as possible just when Mr. Scott left the Miami office and you succeeded to the authority there.

A. That would be a guess on my part.

Q. Well, I think you said it was about the spring of 1934, was it?

A. I believe it was, yes, sir.

Q. Do you remember anything about the circumstances of his leaving? I mean, what passed between you, just how it came about?

A. It was one of those gradual things; he had been going up there every summer for a number of years, until he finally told me he was going to the New York office permanently, and moving. Even when Mr. Scott was in the New York office I would always correspond with Mr. Scott about matters pertaining to the Miami office.

Q. Then since the time of his departure, except for such correspondence, he hasn't had any direct connection with the Miami office?

A. Well, he has been more or less in charge of the Miami office, while he is in New York; that is, all business that I have in the Miami office, I would take up through Mr. Scott in the New York office.

Q. I see. There was no formal delegation of your duties as treasurer—secretary, to Mr. Alley or anyone else in Palm Beach, was there?

A. I don't exactly know what you mean by that.

Q. I mean, there is no resolution of the Board of Directors, or any action appearing on the corporate records?

A. Of the Seminole Boat Company?

Q. Yes.

A. That it was—

Q. That your functions were transferred or delegated to Mr. Alley or anyone else in Palm Beach?

A. No.

Q. There is no record of any authorization of the Board of Directors for the officers of the corporation, either to obtain or accept advances from the Boulevard Mortgage Company or any other of these corporations that advanced money, was there?

A. No, sir.

Q. Neither was there any authorization of repayment?

A. No, sir.

Q. Nor any assessment of stockholders?

A. No, there was not.

Q. Nor any authorization of any requests upon stockholders for payment of money?

A. No, sir.

Q. The whole thing, I take it, was handled in a purely informal manner?

A. No, the books of the company were kept in good order; the affairs of the company were run in good order.

Q. I would like to ask you about these vouchers. You were testifying yesterday about relations with Mr. Bernard; I think you introduced this voucher showing the payment to Mr. Bernard,—Exhibit UU.

A. Yes, sir.

Q. This statement is for examination of the vessel on dry-dock and afloat on March 26th and 27th, 1935?

A. That is right, sir.

Q. And had he made some examination of the boat before that?

A. I think he had, years before, but I didn't know.

Q. I mean, in that year.

A. No, sir.

Q. When was the reinforcement put on the plate in the stern of the Seminole? Was that before or after she was dry-docked?

A. Two days after she was taken off the dry-dock.

Q. Then the total amount that you paid to Mr. Bernard for this survey was $17.50?

A. He said he didn't want anything else, as the other repairs were minor.

Q. And you said you asked him for a valuation too?

A. Yes, sir.

Q. Did this cover that?

A. Yes, sir.

Q. Now, just a matter of detail here, I would like to ask about; on this blue sheet attached to this check, which I take it you call the voucher, do you?

A. Yes, sir.

Q. I notice that the word, "Charge Seminole Boat Company" on that sheet, are apparently original writing by a typewriter, while the balance of the sheet is carbon. Is there some detail of your office system that explains that?

A. In all probability the check was written and I told them to charge it, because I initialed it. It is billed the Yacht Seminole and owners, and I initialed that.

Q. Well, wasn't—that wasn't the point that I was getting at. This blue sheet is a carbon of the original check; the original check is in two parts, is it not?

A. That is right.

Q. And the part above the check part contains a description of the item, with respect to which the payment of the check is given; is that right?

A. That is correct, sir.

Q. Now I take it that all of this that appears to have been transferred to the blue sheet by carbon paper, would appear on the original check?

A. Yes, sir.

Q. Now I note that the words "Charge Seminole Boat Company" here, are apparently in original typewriting.

A. No, the word "Charge" is not; Seminole Boat Company is. In all probability the girl might have written the check and said "How do you charge it?" And I said "Seminole Boat Company."

Q. Well, perhaps I am more familiar with your office system than you are about that, Mr. Hawkins. Isn't it a fact that wherever there is a charge with respect to the item which is described in the upper half of the check, it is never put on the check itself?

A. No, not on the check itself. It is on the voucher.

Q. Yes; so that even if we had the upper half of this check here, the words "Charge Seminole Boat Company" would not appear on it.

A. They would appear on the voucher.

Q. They would appear on the voucher, but not on the upper half of the check?

A. No.

Q. And that is the regular routine of your office, is it not?

A. That is right.

Q. Well, then, the point I get at is this: That whoever got this check would know that it was the Boulevard Mortgage Company check?

A. That is right.

Q. And would know that it was a payment of a certain amount, but they could not know who was the party that was really paying that.

A. Well, Mr. Bernard did.

Q. Well, I am just talking about, as far as appears on the face of the document.

A. Of course his bill, he would know, because he billed the Yacht Seminole.

Q. But there is nothing on the—

A. On the check, to say, Seminole Boat Company.

Q. Yes.

A. No, there isn't.

Q. That would be true of any check that went out; the indication of the charge would not be on the document that left the office?

A. That is not correct; if they got the check at the office, we make them sign the voucher. That was evidently mailed to them.

Q. That would be the only feature, if they came to the office and got it?

A. Then he would sign the voucher.

Q. And it would depend on whether he took the trouble to compare it with the check that he received?

A. I am not so sure, but I think on some of the checks we had the part up here, that shows the charge; you see there has been a part torn off.

Q. Yes, I have one here with that part on.

A. Yes, there is one.

Q. This one that you refer to is Exhibit 3-J?

A. That is right, sir.

Q. It just happens that on that one there isn't any charge, either on the original or the blue sheet.

A. That is right.

Q. So that doesn't help us on the particular thing we are discussing.

A. But it would be usually right here, charge Seminole Boat Company.

Q. Now getting back to Exhibit UU again, we unfortunately in this case do not have the upper half of the check.

A. Yes, sir.

Q. But it is clear, is it not, that Seminole Boat Company was written in original typewriting on the copy?

A. Yes, sir.

Q. So that it would have on the upper half of the check, which of course is missing—

A. Yes, sir.

Q. And isn't it a fact that that was your office routine?

A. No.

Q. You say it wasn't?

A. Not to write it on the copy; we would write it on the original.

Q. Now referring to Exhibit 3-I, on this one I note that the charge is in carbon too, but in a carbon of a different impression from the balance of the blue voucher. You notice that, don't you?

A. Yes, sir.

Q. These are made in duplicate, are they not?

A. Checks?

Q. Checks.

A. No.

Q. Checks and vouchers?

A. No. The vouchers,—I think we made two vouchers, I am not sure.

Q. This one, number 3-A, is the order of Biscayne Boulevard Company.

A. Yes, sir.

Q. And what I have said does not apply to an inter-company check; I am talking about checks that were outside of the company.

A. The charge is on there.

Q. Yes, it is; it is an inter-company check. Now that one—

A. That shows you.

Mr. Underwood:

That is Exhibit XX; the charge does appear, is that right?

Mr. Matteson:
Yes, sir.

A. That is right, sir; so does that one.

Mr. Underwood:
Indicating Exhibit RR.

A. No, I tell you, one thing I do in my office, I approve all the bills before I sign the checks.

Q. Well now, here is one that illustrates what I have in mind; this is VV.

A. Yes, sir.

Q. Now there the charge is in original typing.

A. That is right.

Q. On the carbon, isn't it?

A. That is right.

Q. So it wouldn't appear in the original?

A. But it is evidently copied on the other part of the voucher. The girl may have made two typings of it. There you are, "Charge Seminole Boat Company." You will find the majority of them, the charge is just like I told you.

Mr. Underwood:
That is Exhibit OO.

Q. Well—

A. There you are, that is, Charge Seminole Boat Company; the girl may have put it in her machine twice.

Mr. Underwood:
Referring to Exhibit SS.

A. The majority of these are this way, Charge Seminole Boat Company. I am the one that usually tells

them how to charge it, and I initial it. See here, on that bill there was some question about it, I wrote there, "Charge Seminole Boat Company." Nobody else can duplicate that.

Q. Well, I want to get this off system correctly.

A. Yes, sir.

Q. Then I understand that your testimony is that in every case of a voucher check issued in your office—

A. Yes, sir.

Q. —the charge should appear, if everything is done in normal manner, in original typewriting on the upper half of the check, and the carbon on the voucher?

A. Unless there is some question about the charge, and I may tell them I will have—write the check and I will tell you how to charge it. That happens sometimes.

Q. Now I think either you have testified or it is in the answers to interrogatories, that when one of the stockholders made trips, the operating expenses of that trip were charged to the stockholders; is that right?

A. No, sir.

Q. How about that?

A. I don't know that that was ever done, sir, except possibly on the last trip.

Q. Well, I call your attention to this voucher here, which appears to have been for groceries on the last trip.

A. Yes, sir.

Q. And was charged to Mr. John S. Phipps.

A. That is right.

Q. Now why was that charged to Mr. John S. Phipps?

A. Because he personally incurred this expense at No-Name Lodge. I didn't know anything about the bill, and I sent it to Mr. Riley in Palm Beach, to have him approve it. I had some correspondence about it.

Q. Then wasn't that handled so with respect to that trip, that the groceries and items of that kind were charged to Mr. John S. Phipps?

A. I understand it was done later; not the first charges. I charged to Seminole Boat Company.

Q. Not the first charges. When a voucher came in that had a number of different items on it, who would determine the distribution of those charges?

A. Usually I did.

Q. I take it there would be some cases where the items would have to be split up?

A. That is right, sir.

Q. As I understand it now from you, the major part at least, of the operating expenses of the Seminole on this last trip, including such things as crew, gasoline groceries, things of that kind, were charged to the Seminole Boat Company?

A. First charged to the Seminole Boat, but Mr. Phipps had told me when he made this last trip, and invited me to go along, and his sister was going along, inasmuch as she was a new stockholder, and he had mentioned to me that he wanted it to be his treat. I had no specific instructions not to charge it otherwise. You will find one bill in there for groceries that I didn't put the charge on, because I didn't know how it was to be charged; but for the crew, I charged the Seminole Boat Company. That later was changed, I understand; I had nothing to do with the change.

Q. And such items as guides and guide boats, were also charged to the Seminole Boat Company, weren't they?

A. I believe there was only one guide boat, and that was Captain Baker's.

Q. And that expense was charged to the Seminole Boat Company, was it not?

A. I think in the first instance it was, yes, sir. I had no specific instructions to the contrary.

Q. And I think one of these vouchers shows an item of "Tips to the crew" charged to Seminole Boat Company; do you recall that one?

A. I don't recall it, there probably is; but the last party Mr. Phipps wanted for his treat.

Q. And I think this item of 1500 gallons of gasoline for the trip was charged to the Seminole Boat Company; do you recall that one?

A. I think that is correct, yes, sir.

Q. Now do I understand from you that this is the way it was generally done, items of this type were charged to the Seminole Boat Company?

A. What is the way it was generally done?

Q. The way it was done on this occasion; you said you charged all these things to the Seminole Boat Company because you had no specific instructions to do anything else. Now I am asking you if on several occasions when the stockholders made trips on the boat, you did it the same way?

A. I always charged all expenses to the Seminole Boat Company, unless I was told to the contrary. If I was doubtful about a charge, I would hold it up until I found out.

Q. Do you recall ever receiving instructions on any occasion to do anything different than that?

A. No, sir, I didn't. There was some question, as I stated, about the actual expenses of the last trip,—not the maintenance of the boat; the expenses of the crew, and the groceries.

Q. Now one more thing I want to ask you; it seems as if we ought to be able to get from your records. During the years of the existence of the Seminole, can you tell us exactly how the Seminole was utilized in each year? How long she was laid up, how long she was used by the stockholder or anyone else; so that we can have a schedule of the use that was made of the Seminole.

A. Well, I wouldn't want to quote that from memory. Captain Baker I think had the boat the first two years, and kept it at the Loyal Palm Dock, excepting when he

was out on charter. To my knowledge she was not used after '31 or '32, by anyone except possibly there might have been a trip in '34; I am not sure as to that.

Q. There was one summer when she went north, wasn't there?

A. I think she went north, but I don't remember what year. That was all in the log of the boat, that was destroyed in the fire.

Q. Mr. Batchelor tells me that you were telling us something about the use of the boat by the stockholders and I interrupted you. Do you recall what that was?

A. No, sir, I don't.

Q. I would like to ask you another thing with respect to the keys that you say you received from Captain Baker.

A. Yes, sir.

Q. How long were those keys in your possession, do you recall?

A. I don't remember. It was a very short time. I think it was a day or two.

Q. Well, they were in your possession and then you gave them to Mr. Webber to make a trip with them?

A. That is right.

Q. And then he brought them back here?

A. That is correct, sir.

Q. And sometime after that, Mr. Webber sent some keys back to Captain Pilkington?

A. The day after, or that same afternoon, he told me Captain Pilkington wanted the keys so he could air out the boat, keep it clean.

Q. Now I think you testified about the bringing back of various supplies and trophies and silverware and so forth from the Seminole, and about your fixing a place for storage of them down at your office.

A. Yes, sir; they are there now.

Q. Well, was it because of the contemplated sale of the Seminole that you decided to remove all these things and store them down there?

A. No, sir; Captain Baker had advised me that some of the linens molded, due to the lack of moth balls and so forth; and he suggested we put them in a cedar chest.

Q. And the silverware and the trophies, and the linens, had always remained on the boat before, had they not?

A. I don't know that. I think that the linens had been on the boat most of the time.

Q. And the silverware and trophies?

A. I don't know about them, sir.

Q. As far as you know, they had? You don't know anything to the contrary?

A. I didn't know anything to the contrary, no, sir.

Q. What were the trophies?

A. Oh there were some cups from polo tournaments and things of that kind.

Q. Personal effects of members of the Phipps family, is that right?

A. Yes, sir. There were some on there I don't believe belonged to them.

Q. And it was about that time that you were considering a possible sale of the Seminole, was it not?

A. No, the sale idea was over then, because the sale had been refused, and Mrs. Guest had bought Mr. H. C.'s interest, and the boat was not then being offered for sale.

Q. As a matter of fact, this boat had been continuously offered for sale since 1928 or 1929, hadn't she? Listed with the various brokers?

A. I don't think she was offered for sale during the first two years that Captain Baker operated her as a charter boat. That is when he kept her at the Royal Palm Docks.

Q. Isn't it a fact that she was listed with Henry J. Gielow, Inc. of New York City in 1929, at a sale price of $75,000 and a charter rate of $7500 per month?

A. I don't know that to be a fact.

Q. Isn't it a fact that she was listed with the same concern for sale in 1935 at a price of $5,000?

A. I don't know that to be a fact, and I doubt that that is true. I never listed it with any New York firm when I offered it for sale, and not at any time at any specific price.

Q. I think you mentioned an auditor in New York by the name of C. A. Weiss, and I think you have stated that some of the charges on the books were made by the authority of statements forwarded by him; is that correct?

A. Now what was the statement I was supposed to have made?

(The question was read.)

A. That is correct; that was sometime after the last trip.

Q. Well, who is Mr. C. A. Weiss?

A. He is the chief accountant in the New York office.

Q. When you say New York office, what office do you mean?

A. I mean 457 East 57th Street.

Q. Henry Phipps estate?

A. That is the Henry Phipps estate and affiliated companies.

Q. Then you accept that as a basis of making charges in the books of the Seminole Boat Company, because he is the auditor of the Henry Phipps estate?

A. Yes, sir, he is the auditor and he was there with Mr. Scott, who was the president of the company, and the two stockholders.

Q. I want to take an item more or less at random so we can get the system that is followed here in this bookkeeping system of yours. Now look at voucher number 52 dated June 25, 1931, items aggregating $541.50, for repairs, maintenance, storage and wages on the Seminole. Then there appears on this voucher the following statement; "To record liability to the B. M. Company"—that is the Boulevard Mortgage Company I believe.

A. Yes, sir.

Q. "For various expenses paid through the New York office for account of Boulevard Mortgage Company; see Boulevard Mortgage Company journal voucher number 350, recording asset from Seminole Boat Company and liability to Phipps Realty Company. For details of these charges furnished by New York office see Boulevard Mortgage Company bookkeeping file statement of Boulevard Mortgage Company in account with Phipps Realty Co. for month of May, 1931."

A. That is what it says.

Q. Is that the way it is done?

A. That is the way it is said.

Q. It is kind of complicated, isn't it?

A. Most bookkeeping is very complicated. And here are the initials of the man that made the entry, and there is the chief auditor's approval.

Q. Now that item would be in the journal account, would it not?

A. Yes, sir, general voucher 350.

Q. Well, that is Boulevard Mortgage Company 350, isn't it?

A. Yes, sir, Boulevard Mortgage Company, journal voucher 350.

Q. Then on the authority of this voucher, it is entered here in the—

(Discussion was had.)

That was transferred as a credit to the Boulevard Mortgage Company on the page headed with the name of the company, is that right?

A. That is correct, sir.

Q. Now just what does this mean: "To record liability Boulevard Mortgage Company for various expenses paid through the New York office for the account of Boulevard Mortgage Company.

A. I presume it means exactly what it says.

Q. Well, what expenses are paid by the New York office?

A. For what company?

Q. Well, it says, expenses paid through the New York office for the account of Boulevard Mortgage Company.

A. Well, I don't know what expenses they might be referring to.

Q. Well, they are listed at the top of the voucher, aren't they?

A. Maintenance, storage and wages; that is evidently what it was paid for.

Q. "See Boulevard Mortgage Company, journal voucher 350, recording asset from Seminole Boat Company and liability to Phipps Realty Company. For detail of these charges furnished by New York office see Boulevard Mortgage Company bookkeeping file statement". Where was the Phipps Realty Company located?

A. I don't know where their principal office was.

Q. Did they have an office in Palm Beach?

A. I think they had a resident agent there.

Q. Well, these items, repair and maintenance at least, would seem to indicate that probably was a Palm Beach item, wouldn't it?

A. Probably so, I don't know.

Q. Well, then would it be something like this: That this item of expense would be incurred by the Palm Beach Company, or Phipps Realty Company in Palm Beach,

and by them reported to New York and then charged back by New York to the Boulevard Mortgage Company for the account of the Seminole Boat Company?

A. That may be the case. I don't keep the books and I don't know how they handle that.

Q. Is that the way you size it up?

A. That looks to be the case.

Q. Well, then, this came back eventually to you for a charge on the books of the Seminole Boat Company?

A. That is correct.

Q. Books of the Seminole Boat Company were in your office?

A. That is right, sir.

Q. Well now, after the Seminole Boat Company's books left your office, that meant a complete reversal of the current, didn't it? In other words, if you incurred expense here you would have to charge it to New York and let them charge it back to Palm Beach, in some reverse method?

A. Sometimes we would send those vouchers direct to Palm Beach.

Q. Now your statements however always did, either directly or indirectly, pass through New York?

A. I think they did, sir.

Q. So that your record checked with the New York office?

A. They always have a check of all our records.

Q. And as a matter of fact, a large part of your entries are based on statements from the New York office, is that right?

A. I wouldn't say a large part of them, no, sir.

Q. A considerable part of them?

A. The books reconcile.

Q. For instance this entry in toto is based simply on a statement from the New York office, isn't it?

A. Yes, sir; it was probably accompanied by a journal voucher and a statement of expenses.

Mr. Matteson:

I think that is all at this time. I assume Mr. Hawkins is going to be around here during the trial, if anything comes up.

By Mr. Botts:

Q. Mr. Hawkins, this payment of $5,000 to Mrs. Abel—

A. Yes, sir.

Q. —wasn't actually made by a Seminole Boat Company check was it?

A. I don't know. Mr. Alley told me that he was going to pay it; how he paid it I don't know.

Q. He discussed it with you?

A. Yes, sir.

Q. Prior to its payment?

A. Yes, sir, he told me he was going to pay it.

Q. And you approved it on his statement that the stockholders of the Seminole Boat Company had approved it?

A. I told him I thought it would be a good thing.

Q. Did you get any receipt from Mrs. Abel?

A. I presume he did, he usually does.

Q. Now then these entries, fees, Abel estate,—do you know what those were?

A. No, sir.

Q. Did Mr. Alley tell you what they were?

A. No, sir.

Q. And this bond of Mrs. Abel, you don't know what that was about either?

A. No, sir.

Q. Mr. Alley didn't discuss those with you?

A. Not those details.

Q. Now then over here in this item listed, medical expense, which seems to have had its origin in—well the first entry is December 3, 1935; it seemed to have its origin in 1935. I notice a lot of items in here under the head of Thomas, attendance fee, $125, and then later this attendance fee became $75.

A. Yes, sir.

Q. Did you discuss that with Mr. Alley?

A. He did with me, sir; he told me what he was going to do.

Q. Well, did he tell you what he meant by attendance fee?

A. I think he gave Mr. Thomas some money each month.

Q. Well, you don't know why it was entered attendance fee, instead of payment to Thomas, do you?

A. He can probably tell you that; I can't.

Q. You don't know?

A. I don't know why he called it attendant's fee.

Q. But anyway he told you those payments were being made to Mr. Thomas?

A. Yes, sir.

Q. On the authority of the stockholders of the Seminole Boat Company?

A. Yes, sir.

Q. And on his information thus received, that the stockholders authorized it, you approved it; is that right?

A. Yes, sir.

Q. Now then getting back to these minutes; when you made this contract with Captain Baker to operate the Seminole, which was reflected in the minutes of the company, you did that on the authority of the stockholders of the Seminole Boat Company, didn't you?

A. Yes, sir, and the other directors,—and the directors.

Q. It is a fact however, that everything that you three fellows did as officers of the Seminole Boat Company, you did it on behalf of the stockholders and because that is what they wanted, didn't you?

A. I don't know that that is a fact.

Q. You never did anything that they didn't want done, did you?

A. Well, I might have done so, I don't remember.

Q. As a matter of fact isn't it true that every act that you did with reference to the boat Seminole, whether reflected in the minutes of the corporation or otherwise, that so far as you know, and so far as you knew when you did that, you did that as reflecting the ultimate wishes of the stockholders of the Seminole Boat Company; isn't that true?

A. I think that generally that is true, excepting Captain Baker and myself were trying to charter the boat and make the most money out of it; we did a lot of things we never even consulted the stockholder about.

Q. You didn't consult, but I say, that as near as you understood it, you thought that reflected the wishes of the stockholders just the same, didn't you?

A. The wishes of the stockholders were, to make money out of the boat, and that is what Captain Baker and I were trying to do.

Q. And if there is anything like these various payments for repairs and various maintenance and so forth, as reflected by these various vouchers that have been introduced in evidence for the year 1935, those were authorized by you because of your general understanding that that reflected the wishes of the stockholders, that you should keep that boat in shape; isn't that true?

A. It was the wishes of the stockholders that the boat be kept in good shape and it was the instructions of Mr. Scott to me, to do so.

Q. And conform to those wishes of the stockholders, you took these various actions, didn't you?

A. Not to conform, but it was my general instruction to keep the boat in good shape and try to make money on it.

Q. Now then the various expenses as reflected by, I think that is the Sundry account in here, included funeral expenses of Captain Abel; were you consulted about this before they were incurred, or did you discuss them?

A. Mr. Alley told me from the very date after the accident that he wanted to take care of Thomas, wanted to take care of Abel.

Q. And you concurred in that?

A. Yes, sir.

Q. Because you were informed by him that was the wishes of the stockholders?

A. Yes, sir.

Q. Now the stockholders at that time were Mrs. Guest and Mr. John S. Phipps?

A. That is right, sir.

Q. I am referring to the time subsequent—at and subsequent to the fire?

A. That is right.

Q. And these various charges—I mean these various expenditures reflected in these entries in the books, wherein somebody paid Mrs. Abel $5,000, and paid to or for the benefit of Thomas, amounts running up into the hundreds of dollars—those are not reflected in the books of the corporation as being a charge against anyone?

A. Well, they are on the books of the corporation—the corporation would be obligated for them.

Q. The corporation is, but over here in these pages where Mrs. Guest and Mr. John S. Phipps, and earlier, Mr. H. C. Phipps, are charged with various items, the books don't reflect how the stockholders contributed to these items, do they?

A. I don't think they have been balanced yet; I am not sure.

Q. Do you know as a matter of fact whether the disbursing agent who actually paid out these sums has ever been reimbursed by anyone for these sums?

A. I don't know as a matter of fact.

Q. Mr. Hawkins, yesterday, you said that you would have prepared for us and produce, a list of the various times when the boat Seminole had been used, and who used it.

A. I think Mr. Underwood has that statement, so far as our records show Captain Baker made a number of charters that individual records were not kept of.

Q. I was going to ask you if you had that, to produce it; and if you didn't, I just didn't want to let that slip.

A. I think Mr. Underwood has it.

Mr. Underwood:

No, I don't. I have not been able to ascertain from the files, the exact number of charters that were made.

Q. I don't mean charters, I meant, use by the owners.

A. You said, charters.

Q. Well, I beg your pardon; I meant for the times when the various owners or stockholders—owners, we will put it—

A. Used the boat?

Q. Used the boat.

A. I didn't check the record on that; but, very few times.

Mr. Underwood:

We will try to get that up.

Q. In letting you go away, I didn't want to waive that particular question.

A. The stockholders would never use the boat if there was any chance of renting it.

Q. Well, they didn't seem to have much chance.

(Thereupon the hearing was recessed until 2:15 o'clock of the same day.)

May 10, 1939, 2:15 P. M.

1768 Thereupon ROY H. HAWKINS, a witness previously called by the Respondent Phipps, resumed the stand and was examined and testified further as follows:

Re-Direct Examination.

By Mr. Underwood:

Q. I show you a photograph. Will you tell me what that is?

A. This is a photograph of the after deck of the Seminole.

Q. Does that fairly represent her condition when you last saw her?

A. Yes.

Q. Is that (pointing) one of the trophies that was mentioned here?

A. Yes.

Mr. Underwood:

I offer that.

Mr. Botts:

I have no objection.

The Court:

Let it be admitted.

(Thereupon the photograph above referred to was marked Respondents' Exhibit 3-M.)

(By Mr. Underwood):

Q. I show you another photograph. Can you identify that?

A. Yes.

Q. What is it?

A. This is the dining room or dining salon of the Seminole.

Q. Does that fairly represent that dining room when you last saw it before the fire?

A. Yes, sir.

Mr. Underwood:

I offer that. That also shows the trophies.

Mr. Botts:

No objection.

The Court:

Let it be admitted.

(Thereupon the photograph above referred to was marked Respondents' Exhibit 3-N.)

(By Mr. Underwood):

Q. Mr. Hawkins, the blueprint that is before you, can you identify that as a substantial accurate representation of the Seminole as of 1935?

A. Yes, sir.

Mr. Underwood:

I offer that. It has previously been marked Respondents' Exhibit A for identification.

Mr. Botts:

No objection.

The Court:

Let it be admitted.

(Thereupon the blueprint above referred to was marked Respondents' Exhibit A.)

Q. Mr. Hawkins, you have testified that you received no salary from the Seminole Boat Company. Do you receive any salary from the Mayaca Corporation or the Miami Shores Corporation or any of these other corporations that you enumerated yesterday?

A. No, sir. Part of my salary for a time was charged to the new Miami Shores Corporation.

Q. And the other part was charged to whom?

A. To the Biscayne Boulevard Company.

Q. Did any part of your salary come from any other source?

A. No, sir.

Q. Notwithstanding you performed functions for many other corporations?

A. That is correct.

Q. Can you illustrate for us some of the duties that you perform and some of the services that you perform for these other corporations and individuals from which you receive no remuneration?

A. Yes. For the Mayaca Corporation I supervise, with the superintendent there, the operations; I negotiate for the sale of the fruit and oranges; negotiate for the rental of land, and consult with our superintendent about the preparation of the land and the care of the grove and its maintenance. For the Miami Shores Corporation, which is now Bessemer Properties, I supervise the sale and management of their properties. I do the same thing for Bessemer Properties interests on the Boulevard. I do a great deal of work for all of the members of the Phipps' family, their sons and cousins and friends, or anybody who may be passing through here who happened to be friends of theirs. For instance, last week one of the younger members of the family was through here, and I arranged a fishing trip on Captain Starke's boat, and arranged transportation for him to and from the boat. I do things for different members of the family. I might buy a dog for them, a bird dog, or bids, or different kinds

of properties. Yesterday I bought 135 bonds for one of the members of the family.

Q. How about the Bocca Raton Company?

A. I don't have anything to do with that company, sir.

Q. Do you have anything to do with the Ocean Island Corporation?

A. No, sir.

Q. Mr. Matteson asked you yesterday if you had been designated manager of the Seminole by an individual, whether your duties would have been the same. I want to ask you whether you were ever designated as manager of the Seminole by Mr. John S. Phipps?

A. No, sir.

Q. I want to ask you whether you were ever designated as manager of the Seminole by Mr. John S. Phipps?

A. No, sir.

Q. I show you an instrument dated March 21, 1930. Can you identify that?

A. Yes. I know Mr. Scott's signature.

Q. That is Mr. Cott's signature?

A. Yes.

Q. That is the Charter of the Seminole between the Seminole Boat Company and Emil J. Stehli, is that correct?

A. That is correct.

Mr. Underwood:

I offer that in evidence.

Mr. Botts:

No objection.

(Thereupon the document above referred to was marked Respondents' Exhibit 3-O.)

(By Mr. Underwood):

Q. Mr. Hawkins, I show you another instrument dated the blank day of March, 1929, which bears only the signature of one party. Do you recognize that?

A. I remember this.

Q. Can you identify that as a copy of the Charter that the Seminole Boat Company entered into with Ann Murdock?

A. I know we made a charter with Ann Murdock, and I presume this is a duplicate of the contract, or a copy of it.

Q. This came from your files?

A. Yes; it came from my files.

Mr. Underwood:

I offer that.

Mr. Matteson:

Of course this copy is not signed. I assume it is a copy of the original which was signed.

The Witness:

I was unable to find the original.

Mr. Matteson:

Do you know whether it was signed or not?

The Witness:

That has been a long time ago, sir. I remember that this woman was the woman who hired the boat; that she just anchored it off shore; she kept it in the bay for a long time; didn't take it down to the Keys or anything like that; she kept it in the bay and was living on it in place of living in the hotel.

(By Mr. Underwood):

Q. Do you remember when the boat was chartered to Ann Murdock?

A. I remember this woman wanting the boat for that purpose, and I am sure it was rented to her. Now the records would show the date.

Mr. Underwood:

I do not think the terms of the instrument are of any importance in this case. We were asked to produce such charters as we had, and these are all that we found in our files. It is immaterial to me whether it be marked in evidence or for identification. I do not care.

Mr. Botts:

Either way suits me.

Mr. Underwood:

I have offered it in evidence. If you gentlemen object to it, then I will offer it for identification.

Mr. Botts:

I have no objection.

(Thereupon the document above referred to was marked Respondents' Exhibit 3-T.)

(By Mr. Underwood):

Q. Mr. Hawkins you testified that you negotiated the sale of the Iolanthe.

A. Yes.

Q. Did you do that on your own initiative or on someone's instructions?

A. Mr. Phipps' instructions as it was his personal boat.

Q. You testified yesterday something about Mr. Riley's lack of connnection with the Seminole Boat Company. Were you present at any time when you heard Mr. Scott, the president of the Seminole Boat Company, talking with Mr. Alley over the telephone?

A. Yes, sir.

Q. Do you remember when that was?
A. It was at the time the boat was sent to Palm Beach.
Q. Did you hear what Mr. Scott said?
A. Yes.

Mr. Matteson:
I object to that—

(By Mr. Underwood):
Q. Don't answer this question until we have legal argument, but I want to put it to you: will you tell us the substance of what Mr. Scott said to Mr. Alley in relation to the Seminole, as to who was to be in charge of her and where she was to go?

Mr. Matteson:
I object to that, if your Honor please—

The Court:
What occasion was this?

Mr. Underwood:
The witness said it was the time that the Seminole was sent to Palm Beach. He has not fixed the year. Can you fix the year?

The Witness:
No.

Mr. Underwood:
Other witnesses can, your Honor. What I am attempting to prove, your Honor, is another verbal act of an officer of a corporation endowing a subordinate with authority. It was consummated in words, it is true, but it is an act and it is an order. I shall have two other witnesses testifying on the same point. This is an extremely important part of our case.

Mr. Botts:

If characterizations of hearsay testimony of that type to prove a verbal act are admissible, there would be no reason for the hearsay rule. In the first place, by the very nature of things, all the witness could say was that he heard Mr. Scott talk into a telephone; he could not, except by hearsay from Mr. Scott later, or what he might have said before, from which he could draw the conclusion, that he was speaking to any particular person, and therefore he may have been speaking to anyone of a hundred or a thousand or ten thousand people; so, he doesn't know the person to whom he was speaking; in the second place, a conversation between Mr. Scott and Mr. Alley or anyone else would not thereby become admissible; it is clearly hearsay testimony, and I submit that it is clearly and totally incompetent.

Mr. Matteson:

The only people competent to testify to that would be the people engaged in the conversation. Certainly this witness cannot testify about that.

Mr. Botts:

I join in that, but I do not want to concede that even Mr. Scott would be competent to testify to that, and certainly it is hearsay from this witness.

Mr. Underwood:

Do you want to hear from me on that, Judge?

The Court:

Yes, I will have to hear from you on that.

Mr. Underwood:

The point is this, Judge: this was an order by the president of this company to the vice-president—

CLERK'S COPY.

Vol. III

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 246

CHARLES CORYELL, ET AL., PETITIONERS,

vs.

JOHN S. PHIPPS AND GEORGE J. PILKINGTON

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 20, 1942.

CERTIORARI GRANTED OCTOBER 12, 1942.

VOLUME III.

TRANSCRIPT OF RECORD

UNITED STATES
CIRCUIT COURT OF APPEALS

FIFTH CIRCUIT.

No. 10185

CHARLES CORYELL, ET AL.,

Appellants,

versus

JOHN S. PHIPPS and GEORGE J. PILKINGTON,

Appellees.

Appeal from the District Court of the United States for the Southern District of Florida.

(ORIGINAL RECORD RECEIVED DEC. 17 41.)

The Court:
Do you want this taken down?

Mr. Underwood:
No.

(Legal argument.)

The Court:
I don't think that is proper. If you want it to go into the record now, so you can assign an error on that—

Mr. Underwood:
Yes, I would appreciate, your Honor, if you would take that and give me the right to argue the point at the conclusion of the case.

The Court:
You may move to re-open the argument on that, but I prefer to rule on it now. As far as the purpose of appeal is concerned, you can put it in the record, and then you may argue it later.

Mr. Underwood:
I would like leave to brief the point when the case is briefed and to argue that this must be considered with the rest of the evidence.

The Court:
Well, if you care to do that at the time of the argument, you may do so.

A. He told Mr. Alley that he was sending the Seminole to Palm Beach, for him to take care of it and have Mr. Riley inspect it regularly, and from "now on it was his baby".

Q. Mention has been made of the insurance policy which you arranged for in the early part of 1935. I show you a paper. Can you identify what that is?

A. Yes; this is a copy of the policy.

Q. It came from your files?

A. Yes, sir.

Mr. Underwood:

I offer that.

Mr. Matteson:

I object to that as incompetent, irrelevant and immaterial.

The Court:

What does it show?

Mr. Underwood:

It is the best evidence within our possession or under our control that the boat was insured.

Mr. Botts:

What does that illustrate?

Mr. Underwood:

The fact that the boat was insured?

Mr. Botts:

Yes.

Mr. Underwood:

It illustrates just exactly this: my friends are contending that the Seminole was improperly constructed and equipped in many respects in violation of regulations made by Underwriters and Underwriters' employees; nevertheless they insured this boat, therefore my argu-

ment is that she could not have been so bad as they say she was.

The Court:

Do you rely upon any of this statement here about who the insuree is, do you?

Mr. Underwood:

No. You mean where it says, "H. C. Phipps, proprietor"?

The Court:

Yes.

Mr. Underwood:

No. I offer it solely for the purpose of proving that the boat was insured by that company at that time, in that amount and so forth, and the details of the policy itself.

Mr. Botts:

If the Court please, does the fact that an insurance company may have, through carelessness or through some other reason, issued an insurance policy,—does that in any way illustrate any reasonable contention that the boat was not defective in condition. It seems to me that such would be a preposterous hypothesis, and the only proper way to prove the boat was proper and safe, if such was the case, is to prove the facts, and then let the Court, with the aid of expert testimony, if necessary, determine that fact, but the fact that a company issues an insurance policy does not illustrate anything with reference to the condition of the boat, and if the boat was unsafe it would only illustrate the fact that some agent of the insurance company was careless.

The Court:
I don't think it is helpful to the Court.

Mr. Underwood:
May I say this, your Honor: this is a leak in the chain. Captain Bernard inspected this boat, and I shall show that that was a basis for the issuance of this policy, that the policy—

The Court:
Do you want this in the record?

Mr. Underwood:
No.

(Legal argument off the record.)

The Court:
I don't think it is proper evidence. The only matter I was considering there is whether Mr. Wright's testimony made it relevant at all.

Mr. Matteson:
Possibly we can mark this for identification at this time.

The Court:
All right; just let it be marked for identification, and I will not make any ruling at this time.

Mr. Botts:
On behalf of the Respondent Pilkington it certainly is not admissible, because Mr. Wright was not our witness.

The Court:
All right; it is refused insofar as Captain Pilkington is concerned.

(Thereupon the document above referred to was marked Respondents' Exhibit 3-Q for identification.)

Mr. Underwood:

In order that the record may be complete, if your Honor please, I will ask the witness one or two questions about this.

The Court:

All right.

(By Mr. Underwood):

Q. You did effect the policy of insurance on the Seminole?

A. I did.

Q. Under the Federal Insurance Company?

A. I did.

Mr. Matteson:

This is taken subject to the objection, I take it?

The Court:

Yes.

Mr. Underwood:

Can I not prove that the boat was insured?

Mr. Botts:

I don't see how it is relevant.

The Court:

I do not see that the last two questions and answers are proper. I think the ruling will be the same as it was in regard to exhibits insofar as it was offered for identification.

(By Mr. Underwood):

Q. Mr. Hawkins, yesterday you testified something to the effect that Mr. J. S. Phipps took a more lively interest in the Seminole than Mr. H. C. Phipps. I am not at all clear just what that means, and if you have any amplification of that, I would like for you to tell us.

A. I guess the best explanation of it is that it is a question of temperament between the two individuals; neither gave me any specific instructions, but if I would talk to H. C. Phipps about a matter concerning the boat or about company business or anything, he would usually accept my judgment, whereas John S. Phipps wants to know the reason why you make the recommendation.

Q. You spoke of having in mind, in connection with the Seminole, a limit somewhere in the neighborhood of $500.00 of expense that you would incur on the basis of your general authority without asking for extra authority. How about the Iolanthe which was owned by Mr. John S. Phipps?

A. I would not spend any amount of money on her, maybe five or ten dollars, without his specific approval.

Q. How about the Dorothy, which was owned by Mrs. Guest?

A. I wouldn't spend one red dime without her approval.

Q. I think it was brought out yesterday that in connection with the cruise in the spring of 1935 Mr. John S. Phipps said he wanted to use the boat and you recognized his authority in that respect. Did you also recognize Mr. H. C.'s authority in that respect?

A. When he owned the boat.

Q. When you say "when he owned the boat" do you mean he was a stockholder of the company?

A. Yes, when he was a stockholder of the company.

Q. And when Mr. John S. Phipps said to you that he wanted to use the boat on a cruise in the early part of 1935, did he tell you anything about what the other stockholder was going to do?

A. Yes; he said that he and Mrs. Guest were going together on the boat.

Q. Did you accept that as authority from both stockholders?

A. Yes, sir.

Q. Yesterday you were asked if you would have paid the personal property tax on the Seminole just the same as if the boat had been individually owned, and you answered in the affirmative. I want to ask you whether or not that personal property tax would have been charged just the same, and by that I mean against some person or corporation if it had been individually owned.

A. All charges are made to the person or company that owned the boat; for instance, John S. Phipps owned the Iolanthe and he had a personal property tax. I did not okay the payment of that tax. On the Seminole I approved it as secretary of the company, after I ascertained that the tax was reasonable and I couldn't get it reduced, and I certainly would not charge John S. Phipps for the tax paid on the Seminole, nor would I charge the Seminole Boat Company for the tax on the Iolanthe or any other boat.

Q. You were asked by Mr. Botts yesterday whether your authority in connection with the purchase of the Prigg boat came from Mr. John S. Phipps, and I believe you answered in the affirmative. I want to ask you whether or not you were advised at that same time about the authority of the other stockholder.

A. He told me that he was going to take Mrs. Guest. You see, there was some indecision there about who was going to buy the boat, whether the company was going to buy the boat or whether he was going to buy the boat.

Q. This is the first conversation with Mr. Phipps?

A. Yes.

Q. On the occasion of the second conversation with Mr. Phipps, as I understand it, you were advised to buy the boat for the company.

A. Yes.

Q. Were you at that time complying with the wishes of the other stockholder, Mrs. Guest?

A. Yes; she said it was all right to go ahead and buy the boat for the company.

Q. You were asked this morning about whether or not you gave instructions to Mr. Riley generally, and I think you answered in the negative, that there were no instructions as a rule but suggestions, and I want to ask you specifically about the Seminole. Did you issue instructions to Mr. Riley about the Seminole?

A. Yes, sir.

Q. I think this morning you also testified that when the books of the Seminole Boat Company were sent to Palm Beach, that that was done at the instance of Mr. Alley?

A. Yes; the letter will show that; it was either Alley or Scott.

Q. Can you refresh your recollection from that letter and tell me which it was?

A. Yes.

Mr. Botts:

As a matter of fact, we do not object to it, but it is not proper for the witness to refresh his memory from a document that he did not produce.

Mr. Underwood:

I think you are wrong about that, Mr. Botts; he can refresh his recollection from the telephone book, if that will refresh his recollection.

Mr. Botts:

All right; if you think that is the law, you can go ahead and do so, but I don't think it is.

A. It was from Mr. Scott. In view of the fact that the Seminole was located at Palm Beach Mr. Scott decided it would be an advantage to have the books kept there.

Q. Now it was brought out this morning that the Minute Book contains no record of any authority from the Board of Directors of the Seminole Boat Company to borrow money from the Boulevard Mortgage Company or to have the Boulevard Mortgage Company or to have the Boulevard Mortgage Company make payments on account of the Seminole Boat Company. Will you tell me whether or not that question was discussed among the directors before that was done?

Mr. Matteson:

If your Honor please, we have here a long string of leading questions. I think the minutes, as far as that is concerned, speak for themselves. I do not think there is any explanation required of them.

The Court:

The question is whether it was or was not discussed. I think he is entitled to answer that.

A. Yes, it was discussed.

Q. Now, Mr. Hawkins, will you tell me whether or not the directors authorized that procedure?

A. Yes.

Mr. Matteson:

If your Honor please, I object to that; it is obvious that the way directors of a corporation authorize any procedure is by formal action which is properly recorded.

(Legal argument off the record.)

The Court:

The objection is sustained.

(By Mr. Underwood):

Q. Mr. Hawkins, did either of the stockholders of the Seminole Boat Company at the time of the beginning, Mr. J. S. Phipps and Mr. H. C. Phipps, ever instruct you to have the bills paid by the Boulevard Mortgage Company?

A. No, sir.

Mr. Underwood:

Now, if your Honor please, I would like to rise to a point of information. I am not advised by the pleadings as to my opponents' position in this case, and even after many, many months since we first met down here and argued some interrogatories. Mr. Botts has just made the assertion that the Seminole Boat Company was a sham, as I understand him, and that it is not and was not a legal entity.

Mr. Botts:

I did not say that.

Mr. Underwood:

That is what I understood. Is it the contention of my adversaries that the Seminole Boat Company was a corporation or was a sham and not a legal entity?

Mr. Botts:

Both, exactly. If you will study the law with reference to sham corporations, you will see that that answer is quite logical.

Mr. Underwood:

You contend that it was a corporation and it was a sham?

Mr. Botts:

I contend that it was in fact a corporation, and for legitimate purposes might be treated as such, but that as between John S. Phipps and these libelants and other claimants it was a mere sham and a shell, and should be ignored. I will say it was for proper and legitimate purposes recognized as a legal entity, but for improper purposes, such as in the present instance, it should be ignored. That is my position.

Mr. Underwood:

May I ask whether the Libelants join in that position?

Mr. Matteson:

If your Honor please, it seems that we are premature here; I don't see what particular purpose is served by discussing this question now. It is one of the things to be argued on the evidence at the conclusion of the case.

The Court:

Do you want this on the record?

Mr. Matteson:

Not necessarily.

(Legal discussion off the record.)

Mr. Underwood:

The purpose of the question is really to amplify the pleadings. I might have perhaps made a motion in advance of the trial to clarify the pleadings, something we rarely do in Admiralty. Mr. Botts' statement seems to be a departure from the pleadings. (Perhaps it is not), and that is what led me to propound the question. I do think it is only fair that I should know my opponents' position at least at the time I began my case. They must have a position by this time.

Mr. Botts:
I have told you mine.

The Court:
I think we had better go on with the evidence. I do not see that anything can be accomplished by a discussion of this kind at this time.

(By Mr. Underwood):
Q. One further thing: something was brought out this morning about your causing certain entries to be made in the books of the Seminole Boat Company on instructions from Mr. Weiss in New York.
A. Yes.
Q. I am not clear whether those were charges against the Seminole Boat Company or credits to the Seminole Boat Company. Will you tell me which they were?
A. Credits to the Seminole Boat Company.

Mr. Underwood:
I think that is all.

Re-Cross Examination.

By Mr. Matteson:
Q. Mr. Hawkins, I would just like to ask you about this book, for instance, this voucher Number 52 which we discussed this morning. This is a record of a charge against the Seminole Boat Company on the Seminole Boat Company's books?
A. That is correct.
Q. And that is based on a statement which comes from the auditors' office in New York, is it not?
A. That is right.
Q. Now the point you make is that that was before the time of Mr. Weiss and the time of his predecessor?

A. No; he asked me the question what instructions I had from Mr. Weiss, and that was to credit the account of Seminole Boat Company, and that is what I did.

Q. Mr. Weiss is the present auditor in New York.

A. Yes.

Q. How long has he been there?

A. I think he has been the active head about two years.

Q. Before that who was the auditor?

A. Mr. Fowler.

Q. Did this charge come from Mr. Fowler?

A. I don't know anything about that charge. The correspondence was had with the bookkeeper.

Q. You have received statements of charges from the auditor in New York?

A. Yes.

Q. Whether it was from Mr. Weiss or somebody else?

A. I don't know whether there was any charges from New York to the Seminole Boat Company, or whether they were all credits.

Q. You don't know?

A. The books would reflect that.

Mr. Matteson:
That is all.

Mr. Underwood:
That is all.

(Witness excused.)

1790 Thereupon PAUL R. SCOTT was produced as a witness in behalf of the Respondent Phipps, and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Underwood:

Q. Your name is Paul R. Scott?

A. Yes.

Q. You are the president of Seminole Boat Company?

A. I am.

Q. A member of the bar here?

A. I am.

Q. When did you first become associated with the Phipps interests in Miami?

A. About January 1st of 1926.

Q. And there came a time when you were in charge of the Miami office?

A. Yes, sir.

Q. And when did you relinquish your local residence and your charge of the Miami office?

A. In 1936.

Q. Prior to that time was there a period when you were here part of the time and not here part of the time?

A. Yes.

Q. When did that begin?

A. The summer of 1932.

Q. And from that time on what was the situation?

A. I spent considerable periods of time in the north in the years 1932, 1933, 1934 and 1935, and the rest of the time I spent here.

Q. In your absence who was in charge of the Miami office?

A. Mr. Hawkins.

Q. Do you remember Captain Nelson who was at one time captain of the Seminole?

A. I do.

Q. Do you remember when he left that position?

A. In the summer of 1928; I think in July.

Q. Prior to his departure from the Seminole who was it that gave him orders and made the decisions about what was to be done on her?

A. The owners gave them to Nelson.

Q. When was the Seminole Boat Company incorporated; in the fall of 1928?

A. In the fall of 1928, yes.

Q. What did you have to do with the origin of that corporation?

A. After I discharged Nelson I talked to various charter boatmen that I knew here about the feasibility of chartering the Seminole, and I discussed it with the owners, and they were willing to operate the Seminole as a charter boat but did not wish to go into the charter boat business themselves, and it was decided to incorporate a company and sell the Seminole to this company, and that was done.

Q. You have been president and director of the Seminole Boat Company from the beginning down to the present time?

A. I have.

Q. From the time of Captain Nelson's discharge until the formation of the corporation what did you have to do with the operation and management of the Seminole?

A. I was responsible for it.

Q. Did you have anyone in your office who attended to the details?

A. I turned it over to Mr. A. A. Simon who was in our office and who acted as purchasing agent for the company.

Q. During that interval from whom did Mr. Simon get his instructions?

A. From me.

Q. Following the formation of the corporation who was in charge of the management and control of the Seminole?

A. The directors of the Seminole—

Q. Who made the normal decisions in her operation?

A. To begin with I did, and then before very long I delegated Mr. Hawkins to have direct charge.

Q. From that time on who has made the decisions as to the management and operation of the Seminole?

Mr. Botts:

That is objected to as calling for the conclusion of the witness, and it is not the best evidence. He can state what he did.

The Court:

I think you can develop that on cross-examination. I will overrule the objection.

Q. In April, 1931, did you issue any instructions to change that situation?

A. I sent the boat to Fort Lauderdale and directed Mr. Alley to take direct charge and instructed him to have Mr. J. F. Riley make regular inspections of the boat while she was in storage.

Q. It has been brought out, Mr. Scott, that the Seminole Boat Company's bank account was closed out, I believe, in 1931. Will you tell us whether or not you decided on that course?

A. I decided it after discussion with Mr. Hawkins and Mr. Alley. We had a large number of bank accounts and unless we kept certain balances we would have to pay service charges, so we closed out all balances except those that were very active and paid the bills of those less active companies through the Boulevard Mortgage Company.

Q. Since the time of the formation of the corporation has Mr. John S. Phipps given you any instructions as to the maintenance and upkeep of the Seminole?

A. No, sir.

Mr. Botts:

If the Court please, practically every question that he asks this witness is a leading question. I realize that when the trial is before the Court that that is not as pernicious as it is before a jury, but I think that counsel might let the witness do a little of the testifying, and I object to these leading questions.

Mr. Underwood:

I still remember the very forceful remark that Mr. Botts made in March to the effect that the law of Florida is that a question is not leading just because it can be answered yes or no.

Mr. Botts:

And that is the law everywhere.

Mr. Underwood:

True, and this is that kind of a question, I thought.

Mr. Botts:

Maybe it is.

Q. Mr. Scott, are you familiar with the corporate set-up of the several companies that the Phipps family are interested in?

A. I am.

Q. I show you three charts. Were these made up under your direction and supervision?

A. They were.

Q. Can you tell me whether they accurately reflect the ownership of the various companies thereon named during the periods of time indicated thereon?

A. They do with this one comment; on the third chart which covers the period from 1932 to 1936, it shows John S. Phipps and Henry C. Phipps as the owners of the stock of the Seminole Boat Company, which was true in 1932, but in 1936 Henry C. Phipps transferred his stock to Mrs. Guest; otherwise they are correct.

Q. These lines thereon, do they indicate the ownership of all the stock except where otherwise indicated?

A. Yes, sir.

Q. I call your attention to the first chart, from 1924 to 1930: Boca Raton Company—designated by the initials D. T. L., Jr. and H. C. Martholomew. Does that mean that those persons also owned stock in the company?

A. Yes.

Q. Where such other lines appear, for instance, Ocean Island Corporation—the persons whose names appear in the box also own stock, is that correct?

A. That is true.

Mr. Underwood:

I offer these in evidence.

Mr. Botts:

I don't think, under the testimony, that they are admissible, and it may be that we won't object to them at all, and I am going to suggest that they be filed subject to our objection later, your Honor, should we want to interpose objections, and in that way we can make some progress.

The Court:

They are admitted subject to being moved against hereafter.

Mr. Underwood:

Perhaps I should ask one further question at this stage.

The Court:

All right.

Q. Are you familiar, Mr. Scott, with the stock ownership of these companies during the periods in question?

A. Yes.

Q. Do you know who owns the stock?

A. Yes.

(Thereupon the charts above referred to were marked Respondents' Exhibits 3R-1, 3R2 and 3R-3, respectively.)

Mr. Botts:

Suppose, for the purpose of the record, I ask Mr. Scott a question or two about these tabulations, if you don't mind.

Mr. Underwood:

I am almost through, Mr. Botts. Will you restrain yourself?

Mr. Botts:

On that particular point I was going to ask him some questions as to his actual knowledge about these.

Mr. Underwood:

All right, go ahead.

(By Mr. Botts):

Q. These documents were prepared by accountants acting under your direction, were they?

A. Yes.

Q. You are personally sufficiently familiar with the actual stock set-up of these various corporations to know that the set-up as indicated by those charts are correct or substantially so, without having in mind the actual details; is that correct?

A. Yes, sir.

Q. And from your knowledge of these and your examination of them you believe that they do correctly set up the stock situation?

A. Yes, I do.

Q. And it was your instructions to these men to prepare them so that they would correctly reflect the stock set-up?

A. It was.

(By Mr. Underwood):

Q. On Exhibit 3-R-3 I notice a reference by asterisks in the box for Potomac Corporation a legend which relates to a trust or several trusts. Will you tell me whether or not from the time that speaks of, June, 1932, Mr. John S. Phipps owned any beneficial interest in the stock of the Potomac Corporation?

(Legal discussion.)

Mr. Underwood:

That is all.

Cross Examination.

By Mr. Matteson:

Q. Mr. Scott, I understand that Mr. Simmon's connection with the Yacht Seminole was during the period before the incorporation; is that right?

A. Well he continued to do things in connection with the Seminole after the incorporation, and as long as he was up there in the office.

Q. Well he had of course no connection with the Seminole Boat Company other than the fact that you asked him to do certain things?

A. He had no official title.

Q. And he was in the employ of the Biscayne Boulevard Company, was it, then?

A. Yes, sir.

Q. And no part of his pay or salary was charged in to the Seminole Boat Company, was it?

A. None.

Q. I understand that you had charge of this boat for the owners before the incorporation?.

A. After Nelson was discharged.

Q. And it was you that discharged Nelson, I understood?

A. Yes, sir.

Q. I think you probably heard this morning Mr. Hawkins' testimony with respect to his position as head of the Miami office; that he was continually at the service of and called upon frequently to perform various personal services for the members of the Phipps family?

A. Yes.

Q. And I take it that his testimony in that respect corresponds to the situation that existed when you were head of the Miami office?

A. Yes, sir.

Q. Was it your understanding that Mr. H. C. Phipps had an interest in this Boat Seminole from the beginning of the ownership by any member of the Phipps family?

A. That has always been my understanding.

Q. As a matter of fact did you yourself arrange for the certificate of enrollment and license for the Boat Seminole—did you not?

A. Yes, sir.

Q. Now referring to a certificate of enrollment and yacht license dated February 16th; you are aware of the fact, are you not, that the Seminole up to the time of the certificate which was issued on February 16, 1929, was registered in the name of John S. Phipps as sole owner?

A. Yes, sir.

Q. I understand the bank account of the Seminole Boat Company was closed because it was so inactive; is that right?

A. Yes, sir.

Mr. Matteson:

No further questions.

(Witness excused.)

1798 MR. R. A. ALLEY was recalled and further testified as follows:

Direct Examination.

By Mr. Underwood:

Q. Mr. Alley, you are a member of the bar of this Court?

A. Yes, sir.

Q. When were you first associated with the Phipps interests in Miami?

A. On August the first 1925, I became associated with companies of which the Phipps interests were creditors. That was my first connection.

Q. And were you connected with them here for some time?

A. Yes; until November 20, 1927.

Q. During that interval, did you have anything to do with the Seminole?

A. Nothing at all, sir.

Q. In November 1927 you went to Palm Beach?

A. Yes, sir.

Q. And did you then become manager of the Palm Beach Company?

A. Yes, sir; Palm Beach office, I would say.

Q. Palm Beach office, of the Palm Beach Company?

A. That is right.

Q. And from that time on, how long did you remain such?

A. Until about the first of June 1935.

Q. What happened then?

A. I opened up a law office in West Palm Beach.

Q. Did you retain any connection with the Palm Beach Company?

A. I did.

Q. What was it?

A. I continued to act as legal counsel, and performed administrative duties in connection with the business in Palm Beach County.

Q. From the beginning you have been vice president and one of the three directors of the Seminole Boat Company?

A. Yes, sir.

Q. From the time of the incorporation of that company?

A. That is correct.

Q. Down to date?

A. That is correct.

Q. In a general way what is the business of the Palm Beach Company?

A. It holds and operates real estate,—both unimproved and improved real estate in Palm Beach and adjoining areas.

Q. When you began your association with the Palm Beach Company was Mr. Riley there?

A. He was.

Q. What was the nature of his work at that time?

A. Mr. Riley was what I guess you would call an outside man. He took care of the physical properties of the company and other companies managed by the same office, and of the personal estate of individual members of the family.

Q. Did his status change?

A. Yes, as time went on he took more hand in the internal business affairs of the company and when I left the office why he took charge.

Q. What was his status or position in the office before you left?

A. He was, I suppose, my first assistant.

Q. Was he substantially assistant manager there?

A. Yes.

Q. Of the office?

A. Yes.

Q. How long had he done that?

A. Well, it was a process of gradual evolution; there was no distinct time on which I could say that he did that. Probably there about 1929 I should say.

Q. When did you first begin to have anything to do with the active management or control of the Seminole?

A. Actively?

Q. I mean, apart from your position as director and vice president.

A. Yes, sir, from the late spring, I would say, I think it was in April, 1931, on, whenever the boat would be on the waters adjacent to Palm Beach, particularly if she was at Ft. Lauderdale.

Q. Did you receive, about that time, any instructions from the president of the corporation?

A. I did. I received instructions from Mr. Scott.

Q. What were those instructions?

A. That he was sending the Seminole to Ft. Lauderdale, and for me and the office to take over the charge,—physical custody and control of the boat. He suggested that I turn that over to Mr. Riley, who was as I said,—his duties were the management of the physical properties; and I did that immediately.

Q. Did you issue any instructions to Mr. Riley?

A. I told Mr. Riley to take over control and management of the Seminole and to inspect her regularly while she was at Ft. Lauderdale.

Q. That you say was about April, 1931?

A. Yes, sir.

Q. Were those instructions ever countermanded?

A. No, they were not.

Q. From that time on who was it that made the routine decisions as to maintenance and upkeep of the Seminole while she was in your bailiwick?

A. Mr. Riley would make them; he would confer with me at times; he made them in the ordinary course.

Q. Did Mr. John S. Phipps have a secretary at Palm Beach?

A. No, sir.

Q. Did Mr. Riley have a secretary?

A. No, sir.

Q. Mr. Riley was paid by whom?

A. He was paid by the company, Palm Beach Company. He was paid directly by me up until just before I opened up my own office,—I think about two months before; when I was aware that I was going to make a change, I made other arrangements, and Mr. Hawkins paid him from that time on. That is, I say he was paid directly by me. All of the salaries were paid by the company, by one large check of sufficient size to include all salaries of the company except my own; which I deposited in the pay-master account of my own, and I paid the salaries for the employes, the office employes.

Q. You were in effect the pay master of the Palm Beach Company's Palm Beach office?

A. That is right.

Q. Something has been said here this afternoon or this morning, about two small expenditures, I think of $10.00 each, in connection with bonds for the estate of R. C. Abel. Do you know what those were?

A. I do.

Q. Will you tell us?

A. They were premiums on the bond that Mrs. Abel had to file in the Probate Court of Palm Beach County, and she became administratrix of Abel's estate. I think it was one original premium and one renewal.

Q. When disbursements were made in connection with the Seminole at Palm Beach, after April, 1931, who paid the bills?

A. The Palm Beach Company.

Q. And were the books of that company in that office kept under your general supervision?

A. Not at first; they weren't kept there until the first of 1934,—you say the books of the Seminole Boat Company?

Q. Books of the Palm Beach Company, in the Palm Beach office.

A. I misunderstood you; I was anticipating.

Q. Perhaps I did use the wrong company.

A. There were books kept there; they were not the actual final books of account of the Palm Beach Company.

Q. Where are those books kept, in the north?

A. They are kept in the north, yes, sir; Jersey City, I believe; I am sure they were kept at number 17 Exchange Place, Jersey City.

Q. Will you tell me whether or not the Palm Beach Company paid the bills of any other companies during that period?

A. Many.

Q. Individuals?

A. And of individuals, yes, sir. That was a custom that was in effect when I came there,—of long standing.

Q. Was there any charge made for that service?

A. No, sir.

Q. Have you prepared a—

A. Only for a short time, there was a period in which the main members of the family did pay a certain charge, and then it was abandoned.

Q. Do you remember approximately when that was?

A. Oh, it must have been in 1932, see, somewhere along there.

Q. Do you know whether that has been continued prior to the time of this fire?

A. It has.

Q. Many months before?

A. It was found impracticable.

Q. That arrangement was not in effect at the time of this fire?

A. No.

Q. Have you prepared a list of accounts for which the Palm Beach Company made disbursements?

A. Yes, sir.

Q. Is that the list?

A. Yes, this is a list of accounts that we—for which disbursements were made. The first column is the list of accounts and the other column is the name of the person against whom that charge for that account would be made.

Mr. Underwood:

I offer this.

Mr. Botts:

Objection from—

A. May I add, that the matter went farther than this sheet reflects, in some instances. For example there is the item of Boca Raton Company, as stated on here, charged to Boca Raton Company; that company was not owned entirely by members of the Phipps family; it was also owned in part by a man by the name of H. C. Bartholomew.

Q. You mean that the charges incurred in respect to the Boca Raton Company were charged both against Boca Raton Company and Mr. Bartholomew?

A. No, they were charged to the Boca Raton Company, but the interest in Boca Raton Company was divided up as well, and by reason of the fact that part of the stock was held by a person outside of the Phipps family. The same thing is true of Jupiter Island Company; that stock was not held entirely by members of the Phipps family.

Q. How about the Ocean Island Company?

A. Well, that is shown here to be owned half by Mr. Speidel, half by the Palm Beach Company. In addition to these accounts the office handled without making any service charge, or charge, as you wish to call it, a large number of bond accounts for individual members of the Phipps family, municipal bonds,—Florida municipal bonds, which were under my jurisdiction partly.

(The said paper was admitted in evidence and marked Respondents' Exhibit 3-S.)

Q. From the time of your instructions from Mr. Scott, in April, 1931, did Mr. J. S. Phipps ever give you any instructions as to the maintenance or upkeep of the Seminole?

A. No, sir.

Q. Did you ever hear Mr. John S. Phipps give Mr. Riley any instructions as to the maintenance or upkeep of the Seminole?

A. There was one time I recall that Mr. Riley submitted to him the letter of some fairly extensive repairs on the motors; he submitted them to Mr. J. S. Phipps and Mr. H. C. Phipps; I remember that one instance in which both the stockholders were consulted.

Q. Are those the only instructions you can recall, from stockholders to Mr. Riley?

A. Yes, sir.

Q. On the day of the fire, June 24, 1935, did you have a conversation with Mr. Riley about the hospital expenses of John Thomas?

A. I did.

Q. Did you give him any instructions about that?

A. I told him to go ahead and guarantee the expenses at the hospital.

Q. Did you have any instructions from Mr. John S. Phipps about that?

A. No, I did not.

Q. Or, from the other stockholder, Mrs. Guest?

A. No, I didn't.

Q. Were either Mr. John S. Phipps or Mrs. Guest in Florida at that time?

A. No, they weren't.

Mr. Underwood:

You may cross examine.

Cross Examination.

By Mr. Matteson:

Q. Mr. Alley, you were head of the Palm Beach office for a number of years, and in that capacity you were known as the representative of the Phipps interests in that place?

A. Well, I don't know what I was known as. I had the title of manager of that office.

Q. Well, you heard Mr. Hawkins' description this morning of the various functions that were placed on him as head of the Miami office. He was at the call and service of all members of the Phipps family at frequent intervals.

A. Yes, sir.

Q. I suppose that that condition existed in Palm Beach in respect to the office that you held?

A. That is right; I am afraid it was more so, because members of the family lived there.

Q. The Phipps family have one or more estates in Palm Beach, have they?

A. Yes, sir.

Q. What estates are they, there?

A. Mr. John S. Phipps has his residence there, his brother Mr. H. C. Phipps; his sister, Mrs. Guest. The other brother, Mr. Howard Phipps, has his home at Gulfstream, which of course is the other way; it also is in Palm Beach County.

Q. And are those fairly large estates?

A. Yes.

Q. And for that reason the calls on your office are fairly onerous in connection with the affairs of the estates; is that true?

A. Considerable work done in connection with the estate, that is true; payrolls for the estates. Each estate however, has its own superintendent.

Q. And your salary was received from the Palm Beach Company, I think you said?

A. I don't really know. For that particular period I received my salary from Mr. Fowler.

Q. And Mr. Fowler was the auditor in the Phipps estate,—or treasurer?

A. He was auditor of the books of the various companies owned by the members of the Phipps family.

Q. Well, there is an organization in New York known as the Henry Phipps estate, isn't there?

A. I understand there is.

Q. I haven't studied this schedule here.

A. May I amplify my answer to one of your questions, Mr. Matteson?

Q. Yes.

A. I am quite sure that my salary was charged to the Palm Beach Company, because I did receive copies of the statements given to the Federal government pertaining to salaries in connection with the income tax laws, in which it was stated that my salary was paid by Palm Beach Company; so I assume that it was.

Q. Mr. Riley worked under you, I think you said that he had a good deal to do with the personal estates of members of the family?

A. That is true.

Q. So I take it that he would visit those estates at frequent intervals?

A. He did.

Q. So that there would be frequent occasions for him to visit the estates of John S. Phipps and Henry C. Phipps, for that matter?

A. That is true.

Q. And he, as you, I suppose would transact considerable personal business for those two members of the family, as well as others?

A. As well as the others; yes, sir.

Q. Mr. Scott, in speaking of his conversation with you with respect to Mr. Riley's connection with the Seminole, I believe said that he told you that Mr. Riley was to make regular inspections of the Seminole. Do you recall that?

A. Yes, sir.

Q. And did you so instruct Mr. Riley?

A. I did. I did, and he did.

Q. You mean he did make inspections?

A. Yes, sir.

Q. Mr. Alley, I think you said that you told Mr. Riley that it would be all right to guarantee the hospital bills of John Thomas. Was that the only thing that you had to do in connection with the payments that have been made to Thomas?

A. No, not entirely.

Q. Well when you authorized him with respect to the hosiptal bills, I assume that you had a limited sum in mind? That is, you didn't have the idea it was going to run to thousands of dollars, at that time, I assume?

A. There was a discussion at that particular moment applied to the bills of the hospital at Fort Lauderdale. Mr. Thomas had been taken there that afternoon, and there was no other arrangement made for the payment of those bills. Without consulting anybody else I told Mr. Riley to go ahead and arrange to pay those bills.

Q. Well now it appears from the records here that a great deal more was paid to Thomas after that time, for expenses and for other items, that are in the records as Attendants?

A. Yes, sir.

Q. Did you have anything to do with that?

A. Yes. I took that subject up with Mr. Scott and consulted with him about it. As the result of those consultations we continued to pay Mr. Thomas' expenses as they continued, as expenses for quite some time. He was in the hospital at West Palm Beach for a considerable period, and after he was discharged from the hospital he was taken to his home, and he had to have an attendant there for a while; that is, he had an attendant, and somebody to help his wife, at the time she was pregnant. And the account was set up and charged there, Attendant-Thomas. That is it largely. It was reduced at a subsequent time, and it still continued in a certain sense as an attendant payment, as Thomas was employed on a boat, and because of his incapacity it was necessary for him to employ somebody else to help him on the boat. I don't think that is true any more, but the bookkeeper has continued marking the charge there as Attendants.

Q. Those payments continued for some time after there was any necessity for Abel's having any assistants?

A. Thomas?

Q. For Thomas having any assistants?

A. That is true.

Q. And as a matter of fact they have been continued down to the present time, haven't they?

A. Yes. I don't know whether Thomas still must have somebody on the boat or not; his leg is stiff. I couldn't answer that question. Mr. Riley probably knows.

Q. Now on Thomas alone the expenses have mounted up to quite a substantial sum, haven't they, say about six or seven thousand dollars?

A. I don't recall the amount. They are all there in the books. I think we gave you a memorandum of them.

Q. I think we have it here; we put it in the record this morning. It is a substantial sum of money.

Mr. Underwood:
Do you want the figures?

Mr. Matteson:
Yes, what was the total?

Mr. Underwood:
The figures I gave Mr. Botts in March were payments to others on account of Thomas' injury; through 1937, when they ended, was $3463.93.

Mr. Botts:
That was Thomas direct?

Mr. Underwood:
No, that is the payments to others on account of Thomas' hospital bills, doctors' bills, and so on; the last one of those was August 9, 1937, according to this. And the payments to Thomas, themselves, concluding on February 28, 1929, amounted to $3775.

Mr. Matteson:
And the two added together come to something over $5,000?

Mr. Underwood:
Over seven; $7100 or $7200.

Q. Now you don't want us to understand that this substantial expense has been incurred on behalf of the Seminole Boat Company in the financial condition in which the Seminole Boat Company is, without the knowledge and consent of the stockholders, do you?

A. Well I don't know. I assume they know about it, yes. Mr. Scott was in New York and discussed it with them. I wouldn't make a payment of that size on my own authority. I would if it was such a thing as fur-

nishing expenses there at the hospital at Fort Lauderdale; anything that is an emergency; but no expenditure of that amount without securing authority from somebody—higher authority than myself.

Q. Why do you consider Mr. Scott a higher authority than yourself?

A. He is.

Q. Well, in what way?

A. Well, in the affairs of the Seminole Boat Company; he is the president of the company.

Q. You were the vice-president, were you not?

A. That is right.

Q. And in his absence you were performing the functions of the president, weren't you?

A. That is right; that is what I did when I authorized the expenditure at Fort Lauderdale.

Q. The board of directors hasn't ever authorized these expenditures, has it?

A. Oh, in any formal meeting, the records preserved in the minute book, no.

Q. The only person you talked to about it was Mr. Scott?

A. We consulted about it, and I assume he has secured authority from the stockholders; I don't know.

Q. You yourself didn't have any direct communication with the stockholders?

A. I didn't.

Q. Now with respect to the payment of $5,000 to Mrs. Abel, did you have anything to do with that?

A. Yes.

Q. What did you have to do with that?

A. I gave her the check.

Q. Did you have anything to do with the arrangements?

A. Yes.

Q. How did that come about?

A. That came about also as a result of discussions with Mr. Scott.

Q. You mean you were instructed by Mr. Scott to make that arrangement?

A. That is right.

Q. And of course $5,000 is a substantial sum; I assume again that you wouldn't expend any such sum on behalf of the Seminole Boat Company, in its present financial condition, without the authority of the stockholders; is that correct?

A. No, not for any other company without authority of the stockholders.

The Court:

Whose check was it?

A. Palm Beach Company's check.

Q. In other words, the money was advanced by the Palm Beach Company and charged to the Seminole Boat Company, is that it?

A. That is right.

Q. Did you obtain a release from Mrs. Abel?

A. Yes.

Q. Have you that release?

Mr. Underwood:

I don't think I have it in Court.—No I don't have a copy of it in court.

Q. Well will you obtain that release for us and let us see it?.

A. I think Mr. Underwood can promise that.

Mr. Underwood:

Yes, I will get it and produce it in Court. I don't know where it is, but I will find it.

Q. Did you obtain a release from John Thomas?

A. No, sir.

Q. Did you discuss with John Thomas, yourself, the arrangements for his compensation?

A. I have had very little discussion with John Thomas, except about the accident itself.

Q. You did discuss the circumstances of the accident with him?

A. That is right.

Q. Do you know who actually made the arrangements directly with Thomas?

A. Mr. Riley.

Q. And did you have charge of the negotiations with Mrs. Abel?

A. That is correct.

Q. In other words, you, yourself negotiated the settlement with her of any possible claim, for $5,000? Is that the substance of that?

A. You can call it a settlement, yes; we gave her $5,000.

Q. And obtained a release of any claims?

A. Yes, sir.

Q. On this payment to Mrs. Abel, did you obtain more than one release? Was there one document or more than one document signed by her?

A. I don't know, it seems to me there was only one. I don't know why I should obtain more than one. I am sure there was only one.

Q. You spoke of an occasion where there were fairly extensive repairs on the motors recommended by Mr. Riley; what were those repairs; do you recall?

A. I think, a general overhauling, something like that. Probably the word 'repair' was used inaptly; perhaps I used the word 'repair' inaptly; it was an overhauling.

Q. And did Mr. Riley at that time submit a report as to what he thought was required?

A. He told me he thought that the work ought to be done. I told him I didn't want to pass on it, and suggested

he talk both to Mr. H. C. and to Mr. J. S. Phipps about it, and secure their authority.

Q. How much was involved?

A. I think about $400.

Q. Were those repairs made, do you know?

A. Yes; the overhauling was done.

Q. That was overhauling of the engines?

A. That is correct.

Q. When was that, do you know?

A. No, I can't recall. I couldn't possibly say. Some time before the fire, though; I mean a matter of a year or two before the fire.

Q. Well was it as early as 1932, do you think?

A. It is too long ago for me to remember.

Q. Would you say at least two years before the fire? Would that be a fair statement?

A. You see it is already four years since the fire—

Q. You couldn't state that?

A. No, I couldn't say.

Q. Was $400 the cost of the actual work that was done?

A. I don't know; I remember there was one item of about $400 which we considered we couldn't decide ourselves, and submitted it to the stockholders of the company.

Q. I am not sure whether you answered—

A. That is the only one I happen to remember of; I don't know I happened to remember that particular one.

Q. I don't know whether you answered this specifically or not: was there any written report submitted by Riley at that time, covering that subject matter?

A. I think so; I think he made a memorandum.

Q. What became of that memorandum, do you know?

Mr. Underwood:

I have it right here. (Paper to witness.)

Q. Then do I understand that the books of the Seminole Corporation were in your office after the beginning of 1934?

A. That is correct.

Q. And in general their keeping was then under your supervision?

A. I would think that was it, yes. Mr. Anderson of that office kept the books himself, under my direction.

Q. Then in effect, the functions of the treasurer of the Seminole Boat Corporation had been delegated to you; is that right?

A. You will have to draw your own conclusion about that, Mr. Matteson. That is what took place.

Q. There was never any action of the directors recorded, authorizing that transfer of functions, was there?

A. Not in a direct sense, no. There was no resolution that has been recorded in the minute book about it. It was agreed among the directors however that that be done.

Mr. Matteson:

I move to strike out the statement that it was agreed by the directors outside.

The Court:

Yes, that is a voluntary statement. (Last question and answer read.) The question was whether it had been recorded. I think it is a voluntary statement; I will grant the motion to strike it.

Q. I take it Mr. Anderson is the man who can enlighten us as to the records that were actually kept in your office?

A. I think he can do far better than I can. I know about it in a general way, not as accurately as he does.

Q. And you will be here later in the trial if we want to ask you anything about that?

A. Yes, sir.

Mr. Matteson:

That is all I have at this time, if your Honor please.

By Mr. Botts:

Q. With respect to these payments of $3463.93 for the benefit of John Thomas, and $3775 directly to him, these disbursements were made actually by checks of the Palm Beach Company, were they?

A. Yes, sir.

Q. And do I understand you to say—

A. Let me add to that, they were made by checks of the Palm Beach Company up until Palm Beach Company became consolidated with Bessemer Properties, Inc.; and thereafter by the latter company.

Q. Now did I understand you correctly to say that you had no agreement whatever with Mr. Thomas with reference to these payments that were made?

A. Mr. Botts, that is absolutely so: there isn't any now.

Q. And then so far as you are aware, and so far as any written record of which you have any cognizance, there is no reason now why John Thomas couldn't come in and sue anybody that he conceived might be liable?

A. That is right. He can sue us tomorrow, unless he lets too long a time go by. He has not given us any release.

Q. Mr. Alley, you are a lawyer, and this seems such an astounding situation to me from a legal standpoint, that you would make these enormous payments and get no release directly or indirectly, express or implied, I would like to ask you if there is any explanation of such payments being made under these circumstances, which I think you as a lawyer will concede are at least most unusual?

A. Any explanation?

Q. Yes.

A. Well, I don't think Mr. Thomas will sue us.

Q. Well have you any reason for thinking that?

A. No, except that I know the man, and he has been treated decently, very decently; his expenses were paid. He hasn't been paid what you might call damages, but he was taken care of when he was in desperate plight. We have confidence in lots of people; we do it.

Q. Well isn't it rather customary even in cases where you make voluntary payments, to at least take the precaution to get some sort of a release in return for them?

A. That is true, but it wasn't done in this case though.

Q. So I will ask you again if, being a lawyer, knowing the dangers of this sort of thing, can you offer us any explanation as to the unusual, out of the ordinary procedure in this case?

A. Well I don't know whether it is entirely unusual. The payments have been made from time to time; there has been no lump sum paid to him; we paid his hospital bills, when he was in the hospital; and paid his nurses' bills when he was in the hospital at Fort Lauderdale; his doctors' fees. He is the kind of a man that all he is concerned about is to get tided over in his dire distress, you might say.

Q. Have you any agreement with Mr. Thomas, or understanding, by implication or otherwise, how long you will continue to make these payments to him?

A. No, we haven't.

Q. He as been on the witness-stand now and pretty well precluded himself from a legal action against any of you. Do you have any impression now as to how long you have in mind to continue these gratuities?

A. I have no impression at all; I don't think that is a matter that I could decide.

Q. That is a matter to be decided by the principals of these various corporations; is that right?

A. I should say, by the stockholders of the Seminole Boat Company. I don't know what is in their minds, and neither does Mr. Thomas.

Q. I understood you to say that you had never personally discussed these gratuities with the stockholders of the Seminole Boat Company?

A. No, I haven't.

Q. As a matter of fact, Mr. Alley, isn't it true that these payments are like all other matters with reference to the Seminole Boat Company, previous to and subsequent to the fire, are made at the will of the stockholders, or whom the nominal officers were merely the delegated representatives?

A. Your question is a little too complicated, Mr. Botts. Prior to the destruction of all the assets of this corporation, routine expenditures were made by the directors without consultation with stockholders. The major expenditures were in the case of all corporations discussed with the stockholders where it is possible to do so. The operations of the company of course were for the benefit of the stockholders; I don't know of any company in which the operations are not for the benefit of the stockholders; they are supposed to be, at any rate; and that was true in this company. Now as to the expenditures which are to be made in the future, when the assets of the corporation are all gone, certainly we wouldn't spend any without taking it up with the stockholders, I think; that would be my surmise, at any rate. However, I didn't take it up with the stockholders; I took it up with Mr. Scott.

Q. Now then these two items of expenditure totaling over twelve thousand dollars, made by the Palm Beach Company or its corporate successor, at a time when the Seminole Boat Company had no assets at all except a little junk; from whom did the Palm Beach Company—or by whom was the Palm Beach Company reimbursed?

A. I don't believe it has been. I think those are still outstanding on the accounts of the Seminole Boat Company, accounts payable, to the Palm Beach Company, by

Bessemer Properties—I believe. I don't know whether that is wholly true or not, but that is my impression.

Q. As head of the Palm Beach office of the Palm Beach Company and the person responsible for the expenditures, did you go ahead and make these expenditures without any assurance at all as to reimbursement?

A. Yes, sir. Mr. Scott's approval was sufficient for me. I knew he wouldn't give me his approval unless it was carried out.

Q. You then went on the assumption that Mr. Scott was authorized by the stockholders and that your company would be ultimately protected from these stockholders?

A. I went on the assumption that Mr. Scott had either obtained authority from the stockholders or had assumed to act without obtaining it; in either case I would act under his instructions. I never questioned Mr. Scott's authority.

Q. This release from Mrs. Abel, did you prepare that release?

A. I am not sure about that.

Q. You were asked a question as to whether or not there was more than one release and you have agreed to bring in the release. I am interested to know whether there was more than one release, because there may be a release running to the Seminole Boat Company and another release running to some other party. I am just interested to know whether or not that is true, so that when we have the release we will have evidence of all the persons that were released.

A. I am quite sure, Mr. Botts, there was only one document.

Mr. Botts:

I just want to state in the record that there are some matters covered by this ledger that I might want to question Mr. Alley about. I understand that the man who actually kept the book is coming tomorrow, so I will re-

serve the right to recall Mr. Alley for further cross-examination in the event the bookkeeper's testimony doesn't cover the points I have in mind. It may be that I will have no further questions of Mr. Alley.

Mr. Underwood:

If your Honor please, the bookkeeper who kept the books after the books were sent to Palm Beach will be here tomorrow, I believe, and Mr. Alley will not leave the jurisdiction.

The Court:

All right.

Re-Direct Examination.

By Mr. Underwood:

Q. Mr. Alley, was John Thomas ever employed by the Palm Beach Company or the Seminole Boat Company at or prior to the time of the fire?

A. Not to my knowledge.

Q. Is there a negro of the same name, John Thomas, who appears on the payrolls of the Palm Beach Company?

A. There is.

Q. And is that a different person?

A. It is. As a matter of fact when I first heard of the fire that is who I thought it was.

Q. Who were asked by Mr. Matteson whether or not the directors of the Seminole Boat Company ever recorded any resolution in the minute book about moving the account books of the Seminole Boat Company to Palm Beach. Can you tell me whether or not the directors ever discussed and reached a decision about that?

Mr. Matteson:

If your Honor please, I object to that on the same ground that we objected to similar testimony of the other

witness, and my recollection is that your Honor ruled that that was inadmissible.

The Court:

This is the same matter, is it not?

Mr. Underwood:

I think it is, your Honor. I think it is competent and admissible. If Mr. Alley answers the question in that way it will appear that the directors met or without meeting discussed and acted upon this situation. I know of no rule of law to the effect that a valid decision made by a board of directors of a corporation must be recorded in a minute book. It strikes me that it is a perfectly valid act of the directors.

The Court:

The objection is sustained.

Q. You were asked, Mr. Alley, about some overhauling of the motors of the Seminole Company. I show you a paper with some triplicate vouchers and a bill attached. Can you refresh your recollection as to the time from those?

A. After looking at these I am quite sure that the time I mentioned was January, 1933.

Q. Do these papers refer to the incident that you spoke of?

A. I believe so. It corresponds substantially and this is for work of the same nature. I am reminded of it by the memorandum of H. C. Phipps which accompanies the vouchers.

Q. Do you recognize this yellow slip of paper as a part of any record with which you are familiar or as coming from files with which you are familiar?

A. I can't quite go that far. It is typical or copy of memoranda kept in the Palm Beach office.

Q. Did you ever see the original of that memorandum?

A. Yes.

Q. Do you know whether the original of which this appears to be a copy was ever sent to the person to whom it is addressed?

A. It was and it was initialed by him.

Q. Do you recognize these two documents marked "Triplicate Paymaster's account" as anything with which you are familiar?

A. Yes.

Q. What are they?

A. Checks of the Palm Beach Company and similarly of the Bessemer Properties. They are made up in triplicate; one is the original check; the second is a duplicate identical with this triplicate, and the third is the triplicate, as appears here. The original of course is given to the payee of the check; the duplicate is sent to the out of State office and the triplicate is kept in the files of the office issuing the check.

Mr. Underwood:

May we have these marked for identification?

(The documents above referred to were marked Respondents' Exhibits 3T-1, 3T-2, 3T-3 and 3T-4, respectively, for Ident.)

Mr. Underwood:

That is all I have from Mr. Alley now.

Mr. Botts:

I have no further questions of Mr. Alley at this time, and probably will not have any at all.

The Court:

All right; we will quit for the day. We will meet at 9:30 in the morning.

(Thereupon adjournment taken to 9:30 A. M., May 11, 1939, the next day.)

1829

Miami, Florida,
May 11, 1939,
9:30 A. M.

Reconvened pursuant to adjournment.

Appearances same as heretofore noted.

Morning Session.

Thereupon, JAMES F. RILEY, JR., was produced as a witness in behalf of the Respondent Phipps, and having been previously sworn, was examined and testified as follows:

Direct Examination.

By Mr. Underwood:

Q. Your full name, please?

A. James F. Riley, Jr.

Q. R-i-l-e-y?

A. Yes.

Q. Where do you live?

A. Palm Beach.

Q. By whom are you employed at the present time?

A. By Bessemer Properties, Inc.

Q. When did you first obtain employment with any of the companies in which the Phipps family is interested?

A. In September of 1924 I was employed by the Palm Beach Company.

Q. That is the predecessor of Bessemer Properties?

A. Yes.

Q. What was the nature of your work in the beginning?

A. Timekeeper and paymaster.

Q. Did the nature of your work change?

A. Yes, it changed in 1925, when I was made purchasing agent; I also retained, however, the job of timekeeper and paymaster.

Q. Were there subsequent changes after 1925?

A. In 1926 I was put in charge of maintaining the properties that the company owned; also maintaining estates that were owned by the stockholders and principals of the company.

Q. Was there any subsequent change?

A. In 1935 I was made property manager and put in charge of the Palm Beach office.

Q. What month was that?

A. It was in May, 1935.

Q. Who had been in charge of that office prior to that time?

A. Mr. R. C. Alley.

Q. For quite some years?

A. Since 1928, I believe.

Q. During all of that time who paid you?

A. The Palm Beach Company.

Q. Did Mr. J. S. Phipps ever pay you?

A. Not a cent.

Q. Were you ever Mr. J. S. Phipps' secretary?

A. No, sir.

Q. Were you ever anybody's secretary?

A. No, sir.

Q. What was your earliest connection with the Seminole?

A. In 1924 and 1925 I kept the time of the crew on the Seminole and paid them off on the payroll.

Q. Between that time and the time of the incorporation of the Seminole Boat Company, did you perform any other duties in connection with the Seminole?

A. No, sir.

Q. Did you at any time after the incorporation of Seminole Boat Company, receive any instructions from anybody as to duties to be performed in connection with the Seminole?

Mr. Matteson:

Would it not be advisable to mention it by date rather than the general reference to the incorporation?

Q. All right. Any time after the fall of 1928.

A. In 1931 I as given some instructions.

Q. By whom were you given those?

A. Mr. R. C. Alley.

Q. And what were they?

A. He advised me that Mr. Scott, who was then in Miami, I believe, had told him that the Seminole—

Mr. Botts:

We object to that; I object to what Mr. Alley said Mr. Scott told him.

Q. Don't tell us what somebody else said to somebody else. Just tell us what Mr. Alley said to you in the way of instructions.

A. Mr. Alley said that the Seminole was being moved to Palm Beach and that I was to have charge of it.

Q. Did you have anything else in the way of instructions at that time?

A. He said that the boat was then coming up, and would later be moved to Ft. Lauderdale for storage, and that I was to make inspections during the summer from time to time to see that the boat was in condition.

Q. From that time down to the time of the fire, Mr. Alley who was it as Palm Beach that made the ordinary decisions about the upkeep and maintenance of the Seminole?

A. I did.

Q. Did you ever receive any instructions from Mr. John S. Phipps as to these matters?

A. Not in the ordinary course of business; no, sir.

Q. Did you have any limit as to amount of money you could spend on the Seminole without receiving instructions from somebody else?

A. There wasn't any limit set, but I had a limit in my own mind, something like a couple of hundred dollars or three hundred dollars, depending on what the repairs was.

Q. How did you get your information as to what work was necessary on the boat from time to time?

A. Through the Captain, who would get it from other members of the crew, I suppose.

Q. Was there any occasion when something was called upon to be done in excess of the mental limit that you had?

A. Yes.

Q. Do you remember whether that happened once or more than once?

A. I only remember one time.

Q. Will you tell us what transpired?

A. On that particular occasion the Captain of the boat told me that he thought the motors, the main motors, should be overhauled, and that the generator in it also needed some overhauling, and I took the matter up with Mr. Alley, and also with Mr. John S. Phipps and I also wrote a memorandum to Mr. H. C. Phipps, asking their permission, and received their permission to have the work done.

Q. I show you a paper which has been marked Exhibit 3-T-1 and ask you if that is the memorandum you speak of, or a copy of it.

A. Yes, that is a copy of it.

Q. What did you do with the original of that memorandum?

A. I gave it to—either handed it to Mr. H. C. Phipps or put it on his desk.

Q. Did you get any response from him?

A. Yes, sir.

Q. What was the response?

A. He approved the expenditure, I think, verbally; I don't remember getting the original of this letter back.

Q. What year was that?

A. That was in 1933.

Q. You will find some bills attached to that. Will you tell me whether they have any reference to that matter?

A. Yes; here is one of the Railway Express Agency for express charges on motor parts from the Winton Engine Corporation, and then there is a bill from the Winton Engine Corporation for $168; that, however, is included in the Railway Express Agency charges. Then there is a check to H. Johnson of Ft. Lauderdale for $325 for labor in making the repairs and overhauling the motors.

Q. These checks that you speak of; will you tell me what they are; in the first place, they are Palm Beach Company vouchers—

A. Yes; triplicate paymaster vouchers.

Mr. Underwood:

I offer these in evidence.

Mr. Matteson:

No objection.

The Court:

Let them be admitted in evidence.

(Thereupon the documents above referred to were marked Respondents' Exhibits 3-T-1, 3-T-2, 3-T-3 and 3-T-4, respectively.)

Q. Mr. Riley, you have spoken of instructions that you received from Mr. Alley in 1931. Will you tell me, please, whether those instructions were ever countermanded or rescinded prior to the time of the fire?

A. No, sir.

Q. Did Mr. John S. Phipps ever give you any instructions as to doing a particular thing or not doing a particular thing concerning any part of the engineroom of the Seminole?

A. No, sir.

Q. Have you been on the Seminole when Mr. Phipps was on the Seminole?

A. Yes, sir.

Q. Did you ever see him in the engineroom?

A. No sir.

Q. Do you remember how you first met Captain Pilkington?

A. Yes, sir.

Q. Will you tell us?

A. I was introduced to Captain Pilkington in 1931 by Captain Bryant, who was then Master of the Seminole.

Q. Was anybody else there?

A. No, sir.

Q. Have you ever met Captain Pilkington at his yard with Mr. Phipps?

A. Yes, sir.

Q. How many times did you and Mr. Phipps go down to Pilkington's yard together?

A. I remember twice; twice is all that I remember ever being there with him at Captain Pilkington's yard.

Q. Can you fix the time?

A. One of them, I think, was in the spring of 1932.

Q. Tell us what transpired on that occasion.

A. On that occasion there was a trip planned during the summer by Mr. J. S. Phipps and Mr. H. C. Phipps and other members of the family, and Mrs. J. C. Phipps and I went there to look at the boat, and he went through it with me, looked at the mattresses and the painting and so forth, see that the boat was in good shape from that standpoint and found that it was, and when we had finished our inspection of it, the only request that he made was that I have the radio repaired.

Q. Did he inspect the engineroom at that time?

A. No, sir.

Q. Did he have any conversation with Mr. Pilkington in your presence?

A. No.

Q. You spoke of the second occasion; when was that?

A. That was in the spring of 1934.

Q. You and Mr. Phipps went together to Pilkington's yard?

A. Yes.

Q. What transpired on that occasion?

A. We went there to look at the Iolanthe which was owned by Mr. Phipps, and he was planning a trip at that time on the Iolanthe, and he was wondering whether it was in good condition, and how long it would take to get it ready. When we arrived there we saw Captain Pilkington and he gave us the keys to the Iolanthe and we went through the Iolanthe. He came off of the boat last; I came off the boat first, and I saw Captain Pilkington, and started talking to him about the rate on the Seminole. We had been paying during the past year $50 a month, and he had advised me that he was going to raise the rate to $75 a month. I talked to him along the lines that at that time times had not improved any, and I didn't see why the rates should be raised to $75 a month, and also that there was a number of boats kept there, the

Iolanthe and the Clip and the boat owned by Mrs. Guest, The Dorothy, and that with all of those boats being stored there I thought he should keep the rate on the Seminole the same. He said that he didn't think he could do it. About that time Mr. Phipps came by and heard him talkink, heard the gist of the conversation, and he told Captain Pilkington that he just couldn't afford to pay high rates for storage of the boat, and unless the rates remained the same that year, that I (meaning me) planned to move the boats to the Gulfstream in a little yacht basin we have there. Captain Pilkington said that he didn't think he could do any better, and as we walked off I just told him to do the best he could and let me know.

Q. Was that the entire conversation, the substance of the entire conversation, as you recall it?

A. Yes, sir.

Q. Have you told us the substance of everything that Mr. Phipps ever said to Captain Pilkington in your presence?

A. Yes, sir.

Q. Did Mr. Phipps ever say to Captain Pilkington in your presence that you were Mr. Phipps' secretary?

A. No, sir.

Q. Did Mr. Phipps ever say to Captain Pilkington in your presence in words or substance that Captain Pilkington would take your orders with respect to the Seminole?

A. No.

Q. Did Mr. Phipps ever say to Captain Pilkington in your presence that what you did in respect of the Seminole was with Mr. Phipps' authority?

A. No, sir.

Q. Do you remember when Schlappi was first employed by you?

A. It was either in 1932 or 1933; I am not positive about the year.

Q. How did that come about?

A. We had an engineer, a brother of J. W. Bryant, and he had got a job for the summer and had gone north and stayed there, and we needed another engineer on the Seminole, so Bryant recommended Schlappi and upon his recommendation I employed him.

Q. For what boat?

A. For the Seminole.

Q. Did you have any conversation with Mr. John S. Phipps before you employed Schlappi?

A. No, sir.

Q. Did you submit to Mr. John S. Phipps the question of whether you should employ somebody instead of Schlappi?

A. No, sir.

Q. Who fixed the rate of Schlappi's pay?

A. I did.

Q. What was the course of Schlappi's employment from that time on?

A. Well, he was employed off and on for the next three years, both for the Seminole and for some of the other boats, the Iolanthe, and Mrs. Guest's boat. He not only worked as an engineer but worked as a mechanic, doing repair work on outboard motors and motors in other boats.

Q. How was he paid?

A. He was paid by check, I believe, in almost every instance.

Q. What was the routine of preparing the check?

A. Well, Schlappi would let his pay run along for two or three weeks at a time, and he would come in and he and I would work it out, telling me just where he worked and who he worked for, and we would draw a check for that amount.

Q. What was the importance of finding out where he had worked and who he had worked for?

A. To make proper charges on these checks.

Q. How were these charges made?

A. They were written on the duplicate and triplicate of the vouchers that I gave him.

Q. And when he was employed on the Seminole who determined how the charge should be made?

A. I did.

Q. How was it made?

A. It was made to the Seminole Boat Company.

Q. For any work done on the Iolanthe, who determined how the charge was to be made?

A. I did.

Q. When he was on the Iolanthe.

A. How was his pay charged?

A. To "John S. Phipps Boat."

Q. Is that phrase "John S. Phipps Boat" the name of one of the accounts on your books at Palm Beach?

A. Yes.

Q. When he worked on the Dorothy, Mrs. Guest's boat, how was he paid or how was the pay charged?

A. Charged to "Mrs. F. E. Guest Boat."

Q. That is the name of another account on the books of Palm Beach Company?

A. Yes, sir.

Q. I show you a file of a duplicate Palm Beach Company vouchers, at least that is what I call them. Will you tell me whether that is what they really are?

A. Yes, that is what they are.

Q. Will you look through those and tell me whether these when issued, were first approved by you?

A. Yes, sir.

Q. Those were all to Schlappi?

A. Yes, sir.

Q. And covered the period between April 1934 and November 1935; is that correct?

A. Yes, sir.

Q. Now, for illustration, the first one is numbered 5969, and I observe that a part is charged to one and a part charged to another person or corporation. Will you tell me how that came about?

A. Well, Schlappi had worked from April 2nd to April 21st, which figured twenty days. Before that time he had worked for the Seminole Boat Company $101. worth and for J. S. Phipps Boats, $35.50, making a total of $136.50.

Mr. Matteson:

I take it that what the witness is saying is that these are the amounts that were charged to the Seminole Boat Company.

Mr. Underwood:

I will put them in.

Mr. Dyer:

Let's get them in evidence now.

Mr. Underwood:

I offer the file of vouchers referred to.

Mr. Matteson:

No objection.

(Thereupon the file of vouchers above referred to was marked Respondents' Exhibit 3-U.)

Mr. Underwood:

So that the record may be clear Exhibit 3-U includes vouchers numbered 5969, 6171, 4289, 6349, 6447, 8032, 8444 and 3020.

Q. Is that all that you could find in your records covering the period in question?

A. Yes, sir.

Q. Now getting back to this first one which we discussed a minute ago, number 5969: Why was it that part of that was charged to the Seminole Boat Company?

A. Because he was working on the Seminole for the Seminole Boat Company.

Q. Why was it that part of it was charged to "Mr. John S. Phipps Boat"?

A. Because he was working on the Iolanthe at that time; either the Iolanthe or the Clip.

Q. The little support attached to the voucher duplicate does not show which of Mr. P. S. Phipps' boats he was working on at that time?

A. No, sir.

Q. Now in looking at voucher 6289, I notice that a portion of that charge is made to Mr. John S. Phipps' Boat and a portion Mrs. F. E. Guest Boats. Why was part of that charged to Mr. J. S. Phipps Boat?

A. He worked fourteen and one half days on the Iolanthe, which was Mr. Phipps' boat.

Q. Why was part of it charged to Mrs. Guest?

A. He worked four and a half days on the Artemis, a boat which belonged to Mrs. Guest.

Q. Is that the same as the Dorothy?

A. Yes.

Q. Will you tell me, without my going into too much detail, whether or not that was the regular routine of charges in your office?

A. Yes.

Q. Do you remember the Seminole's being put in commission in 1935?

A. No, sir.

Q. Do you remember her being moved from Pilkington's?

A. Yes, I remember that she was moved.

Q. Did you have anything to do with that?

A. No.

Q. Did you have anything to do with the employment of an engineer for her at that time?

A. Well, after she was moved to Miami, I did.

Q. Tell us how that came about.

A. I think about two weks after the boat was moved to Miami, Mr. Hawkins, of the Miami office, called me and said that Captain Baker, who was then looking at the boat, had a charter and he had to leave—

Q. That was a charter to Baker's own boat?

A. Yes. And he asked me if I could get an engineer and a sailor to stay on the boat and look after it.

Q. What did you do?

A. I employed Schlappi and Elliott Bryant.

Q. Did you consult with Mr. J. S. Phipps before you did that?

A. No.

Q. Who fixed the rate of Schlappi's and Bryant's pay at that time?

A. I did.

Q. Do you remember when Schlappi's was paid for the work he then did?

A. He received two checks, as I remember it; one along about the first of April and another one in May.

Q. I show you duplicate voucher 8032, which is a part of Exhibit 3-U, and ask you whether or not that includes the time that Schlappi spent on the boat when you engaged him and sent him to Miami.

A. Yes.

Q. In whose handwriting is that yellow slip attached to that paper?

A. It is my handwriting.

Q. When did you make that up with reference to the date of the voucher?

A. Well, either the same day the voucher was made or the day before.

Q. I notice that of the total sum paid to Schlappi, part of it is charged to the Seminole Boat Company, a part to Mr. J. S. Phipps, and a part to Mrs. F. E. Guest Boats. Will you tell me how that came about and why?

A. Well, the part that was charged to the Seminole Boat Company was the time that he was on the Seminole when it was at the Royal Palm Dock, and the part that is charged to J. S. Phipps Boats—there is a part of that charge due to the trip that was taken that spring, and I believe that some of this also includes a trip that was taken on the Iolanthe later. I am just trying to see whether there is another voucher here on that. No, there isn't.

Q. In the ordinary routine of your office when those vouchers were prepared, did the charges appear on them?

A. You mean on the original check?

Q. Yes.

A. No, they didn't.

Q. I show you another piece of paper; can you identify that?

A. This is the original voucher of the duplicate voucher paid to Schlappi on May 6th.

Q. That is number 8032?

A. Yes.

Q. In other words, this is the top half of the original part of the check that went to Schlappi?

A. Yes, sir.

Mr. Underwood:

I offer that and ask leave to include it in Exhibit 3-U.

Mr. Matteson:

No objection.

Mr. Botts:

No objection.

The Court:

Let it be included.

Q. Now, Mr. Riley, how did the employment of R. C. Abel first come about?

A. I employed him in 1933, in June I believe it was, and I employed him to run Mrs. Guest's boat to take Mr. Townsend Martin to Bimini.

Q. Was that Abel's first employment by anyone in the Phipps family at Palm Beach?

A. Yes, sir.

Q. And from that time on how was he employed?

A. Well, he was employed in that particular job for about two or three weeks. Then in the fall of the same year I employed him to run another fishing boat, the Clip, which belonged to Mr. J. S. Phipps; and then from then on he worked more or less steadily for the various members of the family and the companies until 1935, at the time of the fire.

Q. Have you obtained from the files of the Palm Beach Company all the checks and vouchers to Abel?

A. Yes, all that I could find.

Q. Are those they?

A. I see that he was employed a good deal longer than the two weeks I said; also, I remember that he was employed after Mr. Martin took his trip; he was employed for general work on the Dorothy, Mrs. Guest's boat, as it was then known.

Q. At the moment just tell us those are all of the Palm Beach Company's checks to Abel?

A. These are all of the checks that I could find payable to Abel.

Mr. Underwood:

If your Honor please, I offer the checks, and I think it may be well for me to read the numbers into the record so we will know what the exhibit includes.

The Court:
All right.

Mr. Underwood:
Numbers 4206, 4247, 4365, 4383, 4453, 4511, 4757, 4836, 4837, 4861, 4973, 5009, 5169, 5244, 5292, 5320, 7735, 7950 and 8320 to some of which are attached supporting memoranda.

Now, as a convenient summary of those, I have made an analysis which I shall offer merely as a convenient summary, with the understanding that if is not binding on anybody.

Mr. Matteson:
I suggest that it be attached to the exhibit, with the understanding that the analysis itself is not binding on anybody.

Mr. Underwood:
That is quite all right. It is in fact my statement of what the exhibit shows.

The Court:
That is all right.

(Thereupon the checks numbered above, together with supporting data and the analysis above referred to, were marked Respondents' Exhibit 3-D.)

Mr. Matteson:
If your Honor please, I simply would like to make this statement on the record: That all of these various documents that are being introduced might possibly be objectionable on the ground that they are self-serving declarations. I am not going to object to them on that ground because we do want to have all of the documentary evi-

dence here. I want to simply make the comment that I am going to argue that as going to the weight of the evidence rather than to its admissibility.

Q. Will you tell us, Mr. Riley, whether or not these were made in the ordinary course of business?

A. They were.

Q. Now referring to Exhibit 3-D, voucher number 4206, I notice that charge appears as against Townsend Martin. Will you tell us how that came about?

A. Abel was working for Townsend Martin at that time for that week.

Q. I observe that voucher number 4453 is charged to Mrs. F. E. Guest Boat. How did that come about?

A. Abel was working for Townsend Martin at that time for that week.

Q. I observe that Voucher Number 4453 is charged to Mrs. F. E. Guest Boat. How did that come about?

A. Abel was working on the Boat Dorothy which belonged to Mrs. Guest.

Q. On Voucher Number 4757 I notice that Abel's pay was charged to Mr. Bradley Martin. How did that come about?

A. Abel was working for Mr. Bradley Martin.

The Court:

Who is Mr. Bradley Martin?

The Witness:

Mr. Bradley Martin is the son of Mrs. Martin, who was a Miss Phipps.

(By Mr. Underwood):

Q. He would be a nephew of John S. and H. C. Phipps?

A. That is right.

Q. I notice on Voucher Number 5320 the charge is against Mr. John S. Phipps Boat. Will you tell me how that came about?

A. He was working on a boat that belonged to Mr. John S. Phipps, the Clip.

Q. Here again Voucher Number 7735 the charge is against Mr. J. S. Phipps Boat. How did that come about?

A. Because he was working on the boat Clip which belonged to Mr. J. S. Phipps.

Q. Now on Voucher 7950 there is a portion of the charge to Mrs. F. E. Guest Boat and a portion to Mr. J. S. Phipps Boats. How did that come about?

A. Part of the time he was working for Mrs. F. E. Guest and part of the time for Mr. J. S. Phipps on one of his boats.

Q. I notice that on Voucher 8320 the division is made in three parts: Seminole Boat Company, Mrs. F. E. Guest Boat and Mr. J. S. Phipps Boat. How did that come about?

A. He worked for the Seminole Boat Company—

Mr. Matteson:

I object to the statement that he worked for the Seminole Boat Company. I think the point is that he worked on the Seminole on that date. Isn't that what the witness means to say? I think that the statement that he worked for the Seminole Boat Company is a conclusion, and I move to strike that out.

The Court:

I understand the point you make. I think it is proper to go in, however.

Mr. Underwood:

Will you go back and read the answer, so much of the answer as you have—

(Thereupon the answer was read as above recorded)

(By Mr. Underwood):

Will you continue your answer, please?

A. He also worked for Mrs. F. E. Guest and for Mr. J. S. Phipps.

Q. Attached to the duplicate voucher is a yellow sheet of paper. In whose handwriting is that?

A. Mine.

Q. Do you remember when you made that?

A. The day that the check was drawn, June 29th, 1935.

Q. And who decided how much was to be charged to each of those three?

A. I did.

Q. On what basis did you reach that decision?

A. On the same basis that we always used; we divided the time according to who he was working for.

Q. And that check was made payable to Mrs. Abel?

A. Yes.

Q. For wages that were due Mr. Abel up to the time of his death?

A. That is right.

Q. Now in looking at this voucher 7950 I notice the total amount is $36.45, of which $32.62 is charged to Mrs. F. E. Guest Boat and $3.83 is charged to Mr. J. S. Phipps Boat. Can you tell me what that $3.83 was for?

A. This is reimbursement for expenses of $3.83. There is some items listed—for expenses of 95 gallons of gasoline bought—

Q. For what boat?

A. For the Clip that Mr. J. S. Phipps owned. And I suppose "repairs to water pump"—

Q. What boat?

A. To the Clip.

Q. All right.

A. Five dollars for some work on a Plymouth car for Mr. Phipps, and then deducted from that $23.83 is $20.00 that had been advanced to Abel, leaving a balance of $3.83.

Q. The advance to Abel of $20.00 was by whom?

A. From Mr. Phipps.

Q. Was any part of that $3.83 in connection with the Seminole?

A. No, sir.

Q. In giving your answers to the last few questions you had before you one of the supports attached to the duplicate of that voucher?

A. Yes, sir.

Q. Does that bear your initials?

A. Yes, sir.

Q. When were those initials put on with respect to the date of the check?

A. Probably the same day that we drew the check.

Q. Abel wasn't always paid by check, was he?

A. No.

Q. How otherwise was he paid?

A. Paid by Palm Beach Company payroll.

Q. Mr. Riley, I show you a number of documents here which have heretofore been marked Libelants' Exhibits for identification Nos. 70, 74, 71, 69, 68, 73 and 72. Do you recognize these?

A. Yes.

Q. What are they?

A. They are payrolls of the Palm Beach Company.

Q. Have you looked through the Palm Beach Company Payrolls to pick out all of those reflecting payments to Abel?

A. Yes.

Q. Is that all?
A. This is all.

Mr. Underwood:
I offer these several payrolls in evidence.

Mr. Botts:
Under the same conditions heretofore stated, we have no objection.

The Court:
Does that mean that at the conclusion of the taking of the testimony these are to be withdrawn, just leaving the memorandum in?

Mr. Botts:
After we examine them and we find anything in them which we think is not admissible, we can object to it at that time; further, if we have no objection to them, then at the end of the testimony we will probably agree to substitute this or some other summary, if we happen to find any errors in this summary.

Mr. Underwood:
That is satisfactory.

The Court:
Is that agreeable?

Mr. Botts:
Yes.

The Court:
They are admitted subject to your right to make any objections and also, unless it is otherwise made to appear that there is some reason why it should not be concluded

in that manner, the originals will be allowed to be withdrawn and the summary substituted in lieu of the originals.

Mr. Matteson:
That is all right.

The Court:
Let them be admitted under the identification numbers under the ruling that I have just made.

The Reporter:
Mr. Underwood, are you offering them. You will notice that they were offered for identification under Libelants' exhibit numbers.

Mr. Underwood:
I am offering them under their identification numbers.

(By Mr. Underwood):
Q. Now did Mr. Anderson at your and my request prepare an analysis of those showing the dates of the payroll, the amount paid to Abel and the persons to whom charged?
A. Yes.
Q. Is this a photostatic copy of it?
A. Yes, sir.

Mr. Underwood:
Now I will offer this as a convenient summary, with the understanding that it is not binding in any particular where it may differ from the payrolls themselves.

Mr. Matteson:
Just attach it to the exhibit, it being agreed that the summary is not in evidence.

Mr. Underwood:

That is right. It is simply for convenience, so that these gentlemen and your Honor will not have to wade through these payrolls.

(Thereupon the summary above referred to was attached to Libelants' Exhibit 68 for identification, as per above arrangement.)

(By Mr. Underwood):

Q. Now, Mr. Riley, we will take this top payroll, marked Exhibit 70. I will ask you to explain to us the ordinary course of business as to making up these payrolls and obtaining information as to the charge and to whom they were charged.

A. We had one man delegated in our office to make up the payroll, and at the end of the week the various foremen on the various jobs came in and reported to him on what jobs their men were working the preceding week. We also had a method of keeping a day by day record that these foremen used, and in most cases they turned in that record and this man made up the payroll. In some cases where a man was working by himself, such as a painter or a carpenter, he kept his own time and at the end of the week he came in and gave this man the information so that he could properly charge out his work for the preceding week.

Q. Now on this Exhibit 70 can you find a place indicating where Abel was paid?

A. That is where he signed for his money (pointing).

Q. That sheet is dated at the top "week ending June 13, 1935", and the line to which you point says, "Abel, R. C. Cap. (meaning captain), $35.00". Is that Abels' signature in the left-hand column?

A. Yes.

Q. Will you just show us how that was charged; against whom?

A. It was charged to H. Bradley Martin.

Q. Does that appear on some paper?

A. Yes, it appears on the distribution sheet, as we call it.

Q. Is there such a sheet for each payroll?

A. Yes.

Q. And that appears on the first distribution sheet, which is the second sheet following the one you just referred to?

A. Yes, sir.

Q. Will you read that?

A. Read this?

Q. The entry insofar as it refers to "Abel".

A. It has shown at the top, "H. Bradley Martin"; then at the side, under the caption "employee" is "Abel, R. C." Under classification "Captain", and then it shows Thursday, Saturday, Sunday, Monday, Tuesday, Wednesday, Thursday, eight hours each". And then it says, "week" instead of "hours", and the number of hours and $35.00.

Q. Under "rate"?

A. Under rate, and the amount $35.00.

Q. Was that made in the regular course of business?

A. Yes, sir.

Q. Will you tell me whether or not the same routine was followed as to the other employees?

A. Yes, it was.

Q. I notice charges up here to business expense—Plaza grounds; West Plaza Building No. 1; West Plaza Building No. 2, and so on. Will you explain how that was done, and whether there was any difference between the way the other men and Abel were dealt with?

A. What is the question.

Q. I just want to know the routine as to charging the pay of these other accounts; how they compared with the routine as to Abel?

A. Just exactly the same; that is just what I explained; that the man who made this payroll had a report from the foremen of the various men who worked for us, as to where they worked the preceding week, and from that he made up this distribution sheet, as we call it. This particular one has twenty-five different accounts on this payroll.

Q. That is, the pay to the men employed during that week was charged to twenty-five different accounts?

A. Yes.

Q. Of which Abel was one, and the sheet shows the charge to Bradley Martin?

A. Yes.

Q. Look on the following week; do you find Abel there?

A. Yes.

Q. That is on the yellow sheet for the week ending June 6, 1931?

A. Yes.

Q. It shows the same that it did before?

A. That is right, and the same amount—$35.00.

Q. Will you show us the charge for that?

A. The charge is here on the distribution sheet.

Q. Against whom?

A. H. Bradley Martin.

Q. Why?

A. Because Abel was working for him that week.

Q. Let's look at the following week or the preceding week, whichever it is. Take the preceding week. Do you find Abel on that?

A. Yes.

Q. To whom is his pay charged there?

The Court:

He didn't sign that, did he?

A. No, he didn't.

Q. Who did sign for it?

A. The pay-master signed "holding"; Abel was probably out of town and the pay-master held it out for him, so as to send—

Q. Whose initials are these following the word "holding"?

A. J. M. Goring.

Q. That stands for the name of one of the men in your office?

A. Yes.

Q. To whom was that charged?

A. It was charged to Mr. J. S. Phipps Boats.

Q. Why was that?

A. Because he was working on one of Mr. J. S. Phipps' Boats.

Q. Do you remember which one?

A. I believe on the Iolanthe.

Q. Will you look at the next week?

A. Yes; on the week of May 23rd.

Q. Show us how that was charged.

A. That was charged to Mr. J. S. Phipps Boats.

Q. Why was that?

A. Because he was working on one of Mr. J. S. Phipps' boats.

Q. Which boat?

A. It is awfully hard to remember exactly; I think it was the Iolanthe that he was doing some work on during that time.

Q. Is there any memorandum you have from which you could refresh your recollection as to exactly which boat he was working on?

A. No, sir.

Q. I notice under this charge the name "C. Hart, boatman"; who was he and what was he doing at that time, if you remember?

A. Now, I am sure that Abel was working on the Iolanthe, because he and Hart did some painting on the Iolanthe together.

Q. So he was working on the Iolanthe that week?

A. Yes.

Q. His pay was charged to whom?

A. To Mr. J. S. Phipps Boats.

Q. Why was that?

A. Because he was working on the Iolanthe; he did some maintenance work on the Iolanthe.

Q. Now on this summary, on the first page as well as on the second page, I find charges in September and October, 1934 to the Seminole Boat Company and others, Townsend and Bradley Martin, and one to Palm Beach Building Number 50, and one to Mrs. F. E. Guest Boats, and on the second page, a charge to Townsend Martin and Bradley Martin. Will you tell me what the routine was as to these and how it came about, and why the pay was so charged?

A. He kept his own time, and he came in and told this paymaster Goring at the end of each week who he had been working for, and Mr. Goring made up the payroll according to what Abel told sim.

Mr. Matteson:

If Your Honor please, I object to the statement that he was working for the Seminole Boat Company. I take it that the witness means—

The Court:

It is a technical objection. I will sustain the objection. You can bring that out later.

(By Mr. Underwood):

Q. I will ask him the question directly, if I may: who kept Abel's time?

A. He kept it himself.

Q. In the making up of the payrolls, in the ordinary course of business, here did the paymaster get his information as to the person for whom Abel was working?

A. From Abel.

Q. Now will you see if you can find the payroll for the week of September 20th, 1934.

(Informal recess was taken for three minutes.)

Q. Mr. Riley, have you found the payroll for the week of September 20th?

A. Yes, sir.

Q. Does Abel appear there?

A. Yes, sir.

Q. Will you indicate the place? The name is in typewriting, Rupert Abel.

A. Yes, sir.

Q. Is that his first name?

A. Yes, sir.

Q. And did he sign there?

A. Yes, sir.

Q. Now will you show how that was charged?

A. It was charged to Seminole Boat Company.

Q. Does that appear on the distribution sheet?

A. Yes, sir.

Q. Was that made in the ordinary course of business?

A. Yes, sir.

Q. Do you recollect what work he was doing at the time?

A. Can't be positive about it; I think though that he was doing some painting in the bilges.

Q. On what boat?

A. On the Seminole.

Q. And now can you find the week—

Mr. Matteson:

Are these entries in the book, in his handwriting?

Q. Are those in your handwriting?

A. No, sir.

Q. Do you know whose handwriting it is?

A. This is the handwriting of J. M. Gorham.

Q. And who is J. M. Gorham?

A. He is an employe, or was then, of the Palm Beach Company office.

The Court:

Why did Captain Abel get a different rate of pay on that week?

A. Well, I think you will find that during that summer he got $20 a week straight through.

The Court:

But he didn't work every day?

A. No he didn't work on Sundays. During the winter he got $35 a week, working seven days.

The Court:

And in the summer $20 a week?

A. And in this particular summer I think he got $20.

Mr. Underwood:

If your Honor please, that is reflected on the summary; in that column you see a string of $20, one above the other; one week apparently he got $40; no reason for that.

Mr. Matteson:

May I ask all the captions on that page are in the same handwriting?

A. Yes, sir.

Q. All the captions are?

A. Yes, sir.

Q. Now, will you turn to the week of September 27; did he sign that payroll?

A. Yes, sir.

Q. As Captain?

A. Yes, sir.

Q. Will you show us how that was charged?

A. That was charged to Seminole Boat Company.

Q. He worked four days that week?

A. Yes, sir.

Q. Do you remember why that was?

A. Well, he drew only two, so he must have worked somewhere else for the other two days. He worked the other two days on Palm Beach Company's building number 50.

Q. And against whom was his work on these two days charged?

A. To Palm Beach Company; we have separate charges for our various buildings, so it was charged to the Palm Beach Building number 50, maintenance.

Q. Why building number 50?

A. Because that is the building he was working on.

Q. Were those entries with reference to that week, made in the usual course of business?

A. Yes, sir.

Q. Now will you turn to the week of October 11th?

A. Yes, sir.

Q. He got a full week's pay, $20, that week?

A. Yes, sir.

Q. How was that charged?

A. It was charged, $5 to J. S. Phipps Boats.

Q. The other $15.

A. And $10 to the Seminole Boat Company, and $5 to Mrs. F. E. Guest Boats.

Q. Why was that pay split up that way?

A. Because those—he worked on J. S. Phipps Boats two days, he worked for the Seminole Boat Company three days, and for Mrs. F. E. Guest one day.

Q. Were those entries made in the regular course of business?

A. Yes, sir.

Q. I think that is enough for the moment, at least. Now who was it, over a period of years prior to the fire, who paid the bills for storage of the Seminole?

A. The Palm Beach Company.

Q. On whose authority?

A. On my authority.

Q. And who approved the bills?

A. I did.

Q. Did Mr. J. S. Phipps ever approve a bill for the storage of the Seminole?

A. No, sir.

Q. Are you familiar with the course of business in the payment of storage charges on the Iolanthe?

A. Yes, sir.

Q. Will you tell what that was?

A. Well, in the first instance I would approve the bill and then if Mr. Phipps was available I would submit that bill to him and he would approve it. In some instances he paid the storage with his own, his personal check; but in most instances it was paid by Palm Beach Company check.

Q. How about the Dorothy, Mrs. Guest's boat?

A. That followed the same course; I approved the bill, and I had an understanding with Mrs. Guest that,—what I mean is, that she knew what the rate was per month, and that I approved the bills and go ahead and pay them through the Palm Beach Company.

Q. I show you a file of four of Pilkington's bills and four checks, each covering storage on the Iolanthe. Will

you tell me whose checks that are, if the signatures—if you recognize the signatures.

A. Those are personal checks of Mr. John S. Phipps.

Mr. Underwood:

I may say for the record that those four have previously been marked Respondents' Exhibit K for identification.

Q. Then on those four instances Mr. John S. Phipps paid storage bills on the Iolanthe?

A. Yes, sir.

Mr. Underwood:

I offer these in evidence.

(The papers comprising Respondents' Exhibit K for identification were admitted in evidence and filed as Respondents' Exhibit K.)

Q. As far as you know, did Mr. John S. Phipps ever pay any storage bills on the Seminole, personally?

A. No, sir.

(Discussion was had off the record.)

Q. Mr. Riley, here are a number of Pilkington's bills which apparently include Palm Beach Company's vouchers. Will you look through those and see if you can identify those as Palm Beach Company's vouchers? I mean, the whole pile; that top bunch does not seem to be Palm Beach, it is Boulevard Mortgage Company.

A. Those are all Palm Beach Company vouchers.

Q. Those that bear "Palm Beach Company" in printing on them, are Palm Beach Company vouchers?

A. Yes, sir.

Q. Now can you look through here and find any Seminole Boat Company bills that bear your o. k.?

A. Yes, sir, here is one right here.

Q. That is a bill dated December 31, 1934?

A. Yes, sir.

Q. It covers charges on the houseboat Seminole?

A. Yes, sir.

Q. When did you put that o. k., JFR?

A. Prior to the time the check was drawn. Probably a week or ten days before.

Q. The check was drawn January 23, 1935?

A. Yes, sir.

Q. Now look at the next one underneath that; does that bear your o. k.

A. Yes, sir.

Q. That is for the week of January 31, 1935, and covers the Seminole?

A. Yes, sir.

Q. Now look at the next one, does that bear your o. k.?

A. Yes, sir.

Q. It covers the Seminole?

A. Yes, sir.

Q. Will you tell me whether or not that was the routine?

Q. Yes, sir, that is the routine.

Q. Did anybody else approve the Seminole Boat Company's bills for storage?

A. No one but me.

Mr. Underwood:

Now I will offer all this batch of Palm Beach Company checks and Boulevard Mortgage Company checks and Seminole Boat Company checks, which are previously described in the record, toward the end of the March hearing in some detail, giving the number of checks and the number of vouchers, as I recall; all being Pilkington's bills for storage, in some instances of the Seminole, in others of the Iolanthe, and perhaps the Dorothy and

possibly the Clip. Is there need to identify them any further?

Mr. Matteson:

With respect to these, I simply want to say that I reserve the right to comment on the weight and importance of the evidence, but I have no objection to them being marked as exhibits.

Mr. Underwood:

I see that the envelope has previously been marked Libelants Exhibit 75 for identification; I should have looked at that first.

The Court:

What will become of these at the conclusion of the hearing? Do you want to leave them in the record?

Mr. Underwood:

I think your Honor I will have to take the exhibits back to New York to write a brief on them.

The Court:

But I mean so far as the Court.

Mr. Underwood:

At the conclusion of the case I think on consent of all parties we will withdraw them so the Court files will not be encumbered with them.

(Discussion.)

The Court:

Without the necessity of putting in copies of each one?

Mr. Matteson:

It may be that the situation will be such that we would like to have the exhibits physically before the Court, when the Court comes to consider the case.

(Discussion.)

I am sure we can make satisfactory arrangements so the Court's files will not be unnecessarily encumbered.

(Libelants' Exhibit number 75 for identification, was admitted in evidence as an exhibit on behalf of Respondents, and marked 75 in evidence.)

Q. Now, Mr. Riley, you remember the fire on June 24, 1935?

A. Very well, yes, sir.

Q. What was the occasion of the engagement of, or the bargaining with John Thomas? Will you tell us what you had to do with that?

A. I think it was in April of that year, 1935, that Mr. John S. Phipps asked me if I could have made a rope netting, sort of a baluster, I support you would call it, or series of balusters made of rope, that went around the back end of a boat, from the rail down, and he wanted to have that made on his boat, the Iolanthe, and he asked me to see if I could find someone that could make it. So I didn't know of anyone, and I asked Abel if he knew of anyone. He said he wasn't sure but that he would see if he could find someone. And a while later, two or three weeks, he told me that he was sure that John Thomas could make such a netting, and that John Thomas was on the Keys fishing then, so I couldn't make any deal with him offhand. However he said that he thought John Thomas would make it for about,—I think it was twenty or twenty-five dollars. I wrote a letter,—Mr. Phipps was

not here at that time, so I wrote a letter to him and gave him the price and asked him if he would like to have it made; and he wrote back that he would.

Q. For what boat was that to be made?

A. Iolanthe.

Q. Did you ever deal directly with Thomas on that?

A. No, sir.

Q. Had Thomas ever been employed by any of the companies for which you from time to time performed services?

A. No, sir.

Q. There is on your payrolls I think the name of John Thomas?

A. Yes, sir.

Q. Can you tell us how that comes about?

A. He is a colored employe, has been with Mr. J. S. Phipps on his estate for the past ten or twelve years.

Q. That is not the same man?

A. No, sir.

Q. Now on the morning of June 24, 1935, you saw Abel?

A. Yes, sir.

Q. Did you have—issue any instructions to him?

A. Abel came in about nine o'clock on that morning, he had been doing some painting on the Iolanthe, the week previous and up to the day before. It was raining on this particular morning; he came in and said he couldn't do any painting. I said, "Well, it might be a good day to go down and inspect the Seminole, then, and if you will wait about half an hour I will go with you." So he left the office, went over to West Palm Beach on some errand, and telephoned from West Palm Beach that he had run into John Thomas, and that John Thomas would be leaving again for the Keys in a few days, and would I like to take him along with us so that he could see the rope netting on the back of the Seminole, and get

an idea of how to make one for the Iolanthe. I told him I thought that was a good idea, but since we didn't have anything but a coupe to ride in, I thought I wouldn't go down, the two of them could go. I told him to come back by the office, so he did, and I gave him a check made out to Pilkington for $10. This check represented the difference between $50 per month,—or $50 check that I had sent Pilkington for storage on the Seminole and the $60 a month which he had agreed to accept rather than $75 a month that he had asked. Also I gave him a note to Mr. Pilkington asking him to allow Abel to go on the Seminole, and also to remove certain fishing tackle or equipment, also just before he left he asked me about gasoline for his car and I told him to go down and fill it up; and he said how charge it, I said "Seminole Boat Company"; and he left shortly thereafter.

Q. I show you check of Palm Beach Company, number 8297 in the sum of $10 which has been marked Libelants' Exhibit number 59-A and is a part now of Exhibit 75. Can you tell me whether or not that is the check you gave Abel on that day?

A. Yes, sir, that is the check.

Q. How was that charged?

A. Charged to Seminole Boat Company.

Q. I show you paper which apparently bears no date, which has heretofore been marked Libelants' Exhibit 60; please tell us whether or not that is the paper you sent to Abel to give to Captain Pilkington?

A. Yes, sir, that is.

Q. Is that your signature?

A. Yes, sir.

Q. What was the material you speak of Abel was to bring back?

A. There was some glass bottom buckets, and grains and gaffhooks.

Q. Who owned that property?

A. Seminole Boat Company.

Q. Now before that conversation and those instructions to Abel that morning, had you had any conversation with Mr. John S. Phipps on that subject?

A. On what subject? You mean the—

Q. On the subject of Abel's going to Lauderdale, to the Seminole?

A. No, sir.

Q. Was Mr. J. S. Phipps in Palm Beach or thereabouts at that time?

A. No, sir.

Q. Do you know where he was?

A. I am not sure, I think at New York.

Q. So far as you know was there any fishing trip in prospect for Mr. J. S. Phipps at that time?

A. No, sir.

Q. Had you received instructions to do anything whatever in reference to any fishing trip for Mr. J. S. Phipps at that time?

A. No. None at all.

Q. Did you give Abel anything else besides the check and the note?

A. No, sir.

Q. Did you give him any keys?

A. No, sir.

Q. Did you have the keys to the Seminole, at Palm Beach?

A. No, sir.

Q. Mr. Riley, I show you Respondents' Exhibit S. Will you tell me when you first saw that?

A. Is this the original or the duplicate?

Q. You look at it and tell me. You might tell by looking on the back.

A. This is the original.

Q. Let me ask you then,—I will take that back; show you Respondents' Exhibit S-1. Tell me when you first saw that.

A. Between the first and tenth of July, 1935.

Q. Under what circumstances?

A. I was checking a bill, gasoline bill for this Palm Beach service station.

Q. Do you know R. C. Abel's signature?

A. Yes, sir.

Q. Can you tell me whether R. C. Abel's signature appears on that paper?

A. It does.

Q. Well, when you first saw that slip, will you tell me whether or not the words beneath "R. C. Abel", the words "Seminole Boat Co." were on it?

A. They were, yes, sir.

Q. What did you do about that when you saw that paper?

A. I went down to see the owner and manager of the Palm Beach service station and asked him if he had the original.

Q. What is his name?

A. Mr. Hawkins.

Q. Is he in Palm Beach now?

A. Yes, sir.

Q. What is his business there now?

A. He is in the service station business.

Q. What is the name of the service station, and where is it?

A. It is the Royal Park Garage, located on County Road in Palm Beach.

Q. Is it a Shell station now?

A. Yes, sir.

Q. Now when you went down and put that question to him what did he produce, if anything?

A. He produced the original.

Q. I show you Respondents' Exhibit S. Can you tell me whether or not that is the paper he produced?

A. Yes, sir.

Q. At that time?

A. It is the paper.

Q. Can you recognize the signature there?

A. Yes, sir.

Q. Is that Abel's signature?

A. Yes, sir.

Q. Can you tell me whether or not the words "Seminole Boat Co" were on that original when you first saw it?

A. They were.

Q. Did you write those words "Seminole Boat Co."?

A. No, sir.

Q. Did you see anybody write those words?

A. No.

Q. Mr. Riley, I show you Pilkington's Exhibit number 7 and ask you if you can identify those.

A. Yes, sir, I can identify those.

Q. What are they?

A. They are gasoline tickets and slips, all signed by R. C. Abel.

Q. I notice that some of them bear other words; for example, slips for January 2, 1935, bears up at the top "Chry coupe". Does that mean Chrysler coupe?

A. Yes, sir.

Q. Did that have a particular significance?

A. Yes, that indicated the charge.

Q. Can you tell me what the ordinary course of business was as to these gasoline purchases by Abel?

A. When the bill came in the charges were made in accordance with the car that was written on the slip, in other words whoever owned that car was charged with it,—with the gasoline.

Q. What had your instructions to Abel been on that subject?

A. It was to indicate the car that he was putting the gasoline in.

Q. Now I notice some of these do not bear any such indication. Was that a departure from the ordinary course of business, or was there some understanding about that?

A. Well, he had an allowance of five gallons of gas a week to put in his own car.

Q. To whom was that charged?

A. That was charged to J. S. Phipps.

Q. What was the routine?

A. Well, on those that have no name,—some of them do; I know this is for Chevrolet coupe, which was a car that belonged to him. Those were all charged to J. S. Phipps.

Q. Do I understand then that when he put no name on them, they were charged to J. S. Phipps; and when he designated his own car, they were charged to J. S. Phipps?

A. Yes, sir.

Q. When the charge was to be made otherwise, who—he was supposed to designate it on the slip?

A. Yes, sir.

Q. Getting back to the day of the fire, did you have any conversation with John Thomas before the fire?

A. No, sir.

Q. Did you give him any instructions either oral or in writing?

A. No, sir, I don't remember ever seeing John Thomas until after the fire.

Q. Now what was the first you knew of the fire?

A. The newspaper there in West Palm Beach telephoned the office and told me about it.

Q. What did you do?

A. Well, by the time I hung up the receiver, Mr. Pilkington was on the other line, and he told me about the fire.

Q. What did he say?

A. —and explosion. There was an explosion right after Abel and his friend went aboard; he wasn't positive that his friend went aboard at that time, but he said that he did, and that the whole boatyard was on fire.

Q. What did you do?

A. I left in about fifteen minutes or twenty minutes and went to Ft. Lauderdale.

Q. Did you see the Seminole when you got there?

A. Yes, sir.

Q. Was she burning still?

A. She was burning in the bowel and there was smoke still coming out of the engine room part, about amidship, I don't know just where the fire actually was coming from.

Q. Was she sunk yet?

A. No, sir.

Q. What time of day did you get there?

A. 3:50 I believe; 3:45, right around that time, nearly four o'clock.

Q. Did you see the Seminole off and on for the balance of that day?

A. Yes, sir.

Q. I show you photographs; do you identify that as a photograph of the Seminole taken that afternoon.

A. Yes, sir.

Q. Can you approximate the time when that was taken?

A. Well, it was either just before I left or just after I left.

Q. Did you see the photographer there?

A. No, sir, I didn't.

Q. Does that fairly represent all you saw?

A. Yes, sir.

Q. At about the time you got there?

A. Yes, sir.

Mr. Underwood:

I offer that in evidence.

(The said photograph was admitted in evidence and marked Respondents' Exhibit 3-W without objection.)

Q. Just one more question about it: These white streaks across the picture there on the left, what are they?

A. That is the water from the fire hose.

Q. I show you another one, Mr. Riley. Can you state the same thing about that?

A. Yes, sir.

Mr. Underwood:

I offer that in evidence.

(The said photograph was admitted in evidence without objection and marked Respondents' Exhibit 3-X.)

Q. Now these two exhibits 3-W and 3-X,—is the large boat in the right hand side of each of those pictures the Seminole?

A. What is left of her.

Q. I show you another picture; can you say the same thing of that?

A. I would say this picture was taken later than those.

Q. Taken the same day?

A. Yes, sir.

Q. The same afternoon?

A. Yes, sir.

Q. Is that the Seminole?

A. Yes, sir, this is right here.

Q. That photograph of a man without coat standing on the stern of the boat, is that the Seminole he is standing on?

A. Yes, sir.

Q. The boat beyond is apparently a car-float of some kind?

A. A barge.

Mr. Underwood:

I offer that.

(The said photograph was admitted in evidence without objection and marked Respondents' Exhibit 3-Y.)

Q. Mr. Riley, I show you another general view, was that taken that afternoon?

A. Yes, sir.

Q. Is the Seminole in there?

A. Yes, sir.

Q. The boat in the foreground, if you call that the foreground, is not the Seminole?

A. No, sir.

Q. But beyond her lies the wreckage of the Seminole?

A. Yes, sir.

Mr. Botts:

There are two men in there—there are three men in there; the hulk directly beyond the man in the middle is the hulk of the Seminole, is that correct?

A. Yes, sir.

Q. The boat in the foreground bears the name, San Cristobal?

A. Yes, sir.

Mr. Underwood:

I offer that.

Mr. Botts:

No objection.

(The said photograph was admitted in evidence and marked Respondents' Exhibit 3-Z.)

Q. Now did you see Captain Pilkington there when you got there?

A. Yes, sir.

Q. Did you have a conversation with him?

A. Yes, sir.

Q. Did you have a conversation with him about the cause of the fire?

A. Yes, sir.

Q. What is your recollection of what he said?

Mr. Matteson:

If your Honor please, for what purpose is this offered?

Mr. Underwood:

All purposes. We offer it as an admission against interests, which is admissible to prove the facts stated by the person making the admission.

Mr. Matteson:

I object, if your Honor please, to any statement by Captain Pilkington at that time, on behalf of Libelants, as not binding on them in any way, shape or form; incompetent, immaterial and irrelevant.

Mr. Botts:

So far as I am concerned I assume that this is probably the same circumstance that Mr. Hawkins testified about; and I think it would be admissible as to my client, under the same circumstances as that would.

(Legal discussion was had.)

The Court:

I shall rule the evidence is competent as against Pilkington and not competent as against the Libelants; subject to a change of ruling on arguments presented, or of the Court's own motion, to make the ruling consistent.

Mr. Underwood:

I shall at the proper time, submit authorities on it.

(The preceding questions and answers were read.)

A. Well, about five minutes after I got to the boat yard I went in to see Captain Pilkington and he was in a room,—well, the office and the room were sort of all one. And I asked him if he had any idea what caused the fire. He said he couldn't understand; that Abel and his friend had gotten the keys at his house, and that he saw Abel go aboard and didn't see the friend go aboard, and that is about four or five minutes there was this explosion that started the fire, that burned the whole boat yard; that he just couldn't understand why there was an explosion because he knew there was no gasoline aboard.

Q. Was anybody else present at that conversation?

A. No, sir.

Q. Were you present with Captain Pilkington when Mr. Hawkins and Mr. Webber were there?

A. Part of the time, yes, sir.

Q. And did you hear Captain Pilkington make any statement about the cause of the fire, when Mr. Webber and Mr. Hawkins were there?

A. Yes, sir.

Q. Was there anybody else there?

A. I don't remember anyone else.

Q. Well, will you tell us what you remember hearing Captain Pilkington say at that time?

A. I remember him saying that he couldn't understand the cause of the fire, because he knew there was no gasoline aboard the Seminole.

Q. That was in the presence of Mr. Hawkins, Mr. Webber and yourself?

A. Yes, sir.

Q. Do you remember him saying anything else at that time?

A. No.

Q. Were you there all the time?

A. No.

Q. What were you doing about that time?

A. I had already talked to Pilkington; I took Hawkins and Webber in to meet him and I wasn't interested in listening to the reasons any more; I was trying to find where this fellow Thomas was; I had understood that they had taken him to a hospital, and I was trying to get information about him.

Q. Were you in the room all the time that Pilkington was talking to Hawkins and Webber?

A. No, sir.

Q. Did you do anything about Thomas that afternoon?

A. Yes, sir.

Q. Tell us what you did?

A. I went to the hospital, found him in a room with four other patients,—three or four other patients and talked to him as best I could. Of course he wasn't very coherent, and I also talked to his wife, who was there, and at the time I went in nothing had been done about his wounds at all; he had a broken leg and a very bad cut back of his ear,—his head. And so I said something should be done. His wife wanted to give him a private room right away; so I telephoned Mr. Alley in West Palm Beach and asked him for authority to guarantee the hospital bills; that was what was holding the hospital up, they didn't know who was going to pay the bill.

Q. Did you get authority from Mr. Alley?

A. Yes, sir.

Q. What arrangement did you make?

A. I talked to the head nurse, or the owner of the hospital, I don't know which she was, and told her to give him a private room right away, to have a day and

night nurse; and I also talked to the doctor, Doctor Blount, and instructed him to get all that he needed, if he thought that he needed to consult about it, to bring in—some other doctor.

Q. Do you remember how many different times you talked to him that day or saw him?

A. That was the only time I talked to him or saw him.

Q. Did you attempt to discuss the origin of the fire with him?

A. I asked him if he knew what happened.

Q. I don't think you should be permitted to say what Thomas said. Did you attempt to discuss with him the origin of the fire?

A. I tried, yes, sir.

Q. Did you get anything coherent in the way of an answer?

Mr. Botts:

Objected to as calling for a conclusion of the witness.

(Discussion by counsel.)

Mr. Matteson:

This was at what time?

Q. Can you fix the time?

A. Between four-thirty and five o'clock.

The Court:

I think he can testify.

Mr. Botts:

I will withdraw the objection.

Mr. Matteson:

I have no objection.

(The question was read.)

A. No.

Q. Did you see him during the evening?

A. No, sir.

Q. Now it has been brought out Mr. Riley, before you testified here today, that following that time the Palm Beach Company has made various payments to doctors, nurses and others in connection with Thomas' injuries, and various payments to Thomas himself from time to time. Will you tell me whether or not you ever had any agreement with Thomas as to how much is to be paid to him, or how long he is to be paid, or anything of that sort?

A. No agreement at all; no, sir.

Q. Tell me whether Thomas has ever advanced and claim against the Seminole Boat Company or any of the Phipps family.

A. None whatever.

Q. Has he ever said that he had a claim?

A. No, sir.

Mr. Matteson:

Of course he is speaking, so far as his knowledge goes.

Mr. Underwood:

To him, or within his hearing, that is right.

Q. And so far as you know is there any agreement of any nature with Thomas as to compensation for his injuries?

A. None at all that I know of.

Q. Did you make any arrangements about the recovery of Abel's body?

A. Yes, sir.

Q. Tell us as briefly as you can what you did as to that.

A. Well, on the day of the fire, that night, after the fire department couldn't do anything else, I attempted to

get located a pump, to pump out the hull of the Seminole, so that we could get the body.

Q. Were you able to do that that night?

A. I wasn't, no.

Q. Now did you employ a diver?

A. I did the next day, yes, sir.

Q. That was Carl Holm?

A. Yes, sir.

Q. What did he do?

A. Well, he did some diving for about two or three hours,—about three hours, I think.

Q. Did you make any agreement with him?

A. Yes, sir.

Q. What was the agreement?

A. The agreement was that I would pay him $10 an hour.

Q. How much did you pay him?

A. I paid him $50.

Q. Cash or a check?

A. Cash.

Q. And he did not succeed in recovering the body?

A. No, sir.

Q. Then did you engage anybody else to do any work on the Seminole?

A. Yes, I engaged Captain West, who had a barge and a pump.

Q. Before you did any of these things, did you have any conversation or instructions from John S. Phipps?

A. No, sir.

Q. Did West bring his pump?

A. Yes, sir.

Q. And he pumped on the Seminole?

A. Yes, sir, he pumped out the Seminole. That was the second night after the fire.

Q. That was Tuesday night?

A. Yes, sir.

Q. And were you there when she floated?

A. Yes, sir.

Q. About when was that?

A. About 1:30 or 2:00 o'clock in the morning.

Q. Were you there the following morning, Wednesday morning?

A. Yes, sir.

Q. And briefly what transpired that morning?

A. Well, at about 2:00 o'clock the night before, they decided not to pump any more. Went into Ft. Lauderdale, and came back about six in the morning, five-thirty or six. And they still hadn't started pumping again, and I sat in the car and went to sleep, about, I reckon six-thirty or seven, Carl Holm woke me up, told me he had found indications of the body. And then I arranged to have the body removed.

Q. Were you there when pumping stopped early on Wednesday morning?

A. Yes, sir.

Q. And were you there during the time between the beginning of the pumping job and the time pumping stopped early Wednesday morning?

A. Yes, sir, I was there.

Q. And where were you during that time?

A. I was in the car.

Q. Were you on the boat at all?

A. No.

Q. The body was removed on Wednesday morning?

A. Yes, sir.

Q. After the removal of the body did you see Holm do anything with reference to the parts of the wreckage of the Seminole?

A. Yes, sir, I did.

Q. What did he do?

A. I saw him use a hack saw, I think it was a hacksaw, or a file, to mark some valves that he had taken off the boat.

Q. Did he remove some part of the boat?

A. Yes, sir.

Q. Did anybody ask your permission to remove those parts?

A. No, sir.

Q. Did you give anybody your permission to take anything off the Seminole?

A. No, sir.

Q. Now, what were you doing when you saw Holm using a hacksaw?

A. I was talking with Schlappi and another man, I don't know what his name was, on the porch of Captain Pilkington's house.

Q. Who had arranged with Schlappi to come down?

A. I had.

Q. Did you talk with Mr. John S. Phipps before you did that?

A. No, sir.

Q. What did you bring Schalappi down for?

A. Captain Holm suggested that I have him come down, because Schlappi knew the various outlets in the hull of the Seminole, and could help them by pointing them out so they could stop them up before they started pumping.

Q. Did you engage Holm for any purpose other than to dive for Abel's body?

A. No, sir.

Q. Did you request of him a report on any subject?

A. No, sir.

Q. Did you have any discussion with him about a report on any subject?

A. Not on that day, no, sir.

Q. Well, when was it, and what was it?

A. On Wednesday I went down to Ft. Lauderdale, and as I was leaving I saw Holm and he called me over and said "Would you like to read a report on—my report on

the accident?'" I said, "Yes, I would." And I read the report. It was addressed to Mr. Miller; and after I finished, he asked me if I would like to have a copy of it and I said I would. About four or five days after that I received a copy in the mail, from him.

Q. I show you Respondents' Exhibit number 1, ask you whether or not that is the receipt you got from Carl Holm for the $50 you paid him?

A. Yes, sir, that is the receipt.

Q. I show you Respondents' Exhibit number 2 and ask you whether or not that is the report you got from Holm.

A. Yes, sir, that is the report.

Mr. Underwood:

I will say for the record, those pencil marks on there are of my own making.

Q. Now do you know whether Mr. Alley is an officer of the Seminole Boat Company?

The Court:

Is that in evidence. (Discussion.)

Mr. Underwood:

The receipt apparently is not marked for identification, but the report is.

The Court:

Do you offer it now?

Mr. Underwood:

No, sir.

(The last question was read.)

Q. Did you know that in April 1931 when you received certain instructions from him that you have mentioned?

A. Yes, sir.

Q. Were there any other corporations or persons for whom you performed services at Palm Beach, beside the Palm Beach Company?

A. Yes, sir.

Q. And has a list been prepared of those?—I show you Respondents' Exhibit 3-S, is that the list?

A. Yes, sir, this is the list.

Q. Will you tell us for the record the nature of the duties you perform for the other companies and individuals indicated in that list,—not in detail; but in a general, brief way.

A. I didn't get the first part of that question.

(The question was read.)

A. Well, I did have charge of maintaining buildings, developing property; I have done some landscaping on various developments, and on the estates; I managed and handled the automobiles of the corporations and individuals, boats of the corporations and individuals. That pretty well covers it if you don't want to go into detail.

Q. Now, Mr. Riley, Captain Pilkington has testified that after the Seminole was laid up in April, 1935, you telephone Pilkington and asked him whether the Seminole had been put under the shed, and that he said that she not been and that he had no keys with which to get in her, and that you said you would get the keys. Will you tell us whether or not such a conversation took place?

A. Yes, sir.

Q. What was the substance of it?

A. I telephoned him and asked him if the Seminole had been put under the shed, and he said, No, that it hadn't,

that for one thing he had to arrange his boats so he could get the Seminole in for permanent berth,—in her permanent berth. And he also said that he didn't have the keys and I says "Well, I will arrange right away to get them to you; I don't have them either." And immediately upon—after talking with him, I called Miami and talked to Mr. Webber, and asked him if he would get the keys up to Mr. Pilkington right away.

Q. Do you remember when that was?

A. I am not sure, I would say two or three days after the boat was put there for storage.

Q. Now from that time on until the time of the fire, did you have any discussion with Captain Pilkington about keys?

A. None.

Q. Neither he nor Mrs. Pilkington asked you about keys?

A. No, sir.

Q. Either orally or in writing?

A. No, sir.

Q. Did you see Captain Pilkington between the time of that conversation and the time of the fire?

A. No, sir.

Q. Did you see Mr. Pilkington in that interval?

A. Yes, sir.

Q. Did she say anything about keys?

A. No, sir.

Q. What was the substance of the subject under discussion when you saw her?

A. About the rate that they were going to charge on the Seminole for storage.

Q. You were discussing the Seminole?

Q. But nothing was said about keys?

A. No, sir.

Q. Did you ever say in substance to Captain Pilkington that you would be down to inspect the Seminole at any particular interval?

A. No, sir.

Mr. Matteson:

Just a minute. You are referring to some specific statement of Captain Pilkington's as to what Mr. Riley said. I think you ought to refer to specific statements there instead of just in a general way.

(Discussion between counsel.)

Mr. Matteson:

I have no objection.

A. No, sir.

Q. Captain Pilkington testified that on one or two occasions Abel had removed gasoline from the Seminole by means of a can, and that he had told Abel not to do that, and refused to let Abel work on the boat because he had done it; and that he told Abel to tell you that Abel could not work on the boats because he had done it; and then that you phoned and told Pilkington to put the Iolanthe outside of the shed so she could be brought to Palm Beach, where Abel could finish the work. Did any such thing occur?

A. I never heard of that, sir.

Q. Did you ever have a conversation with Captain Pilkington about Abel's taking gasoline out of one boat and putting it in another, or taking gasoline out of the Seminole?

A. No, sir.

Q. Mrs. Pilkington has testified that she saw you on the Tuesday or the Thursday before the fire, to return a $50 check; is that the fact?

A. Yes, sir.

Q. Can you fix the date?

A. No, sir, I can't.

Q. Now she testified that on that occasion you told her that Mr. Phipps didn't want to pay $75; is that a fact?

A. No, sir.

Q. Now, Mr. Patten,—do you know Captain Patten?

A. Yes, sir, I have seen him up there; I saw him here in Court.

Q. He has testified that he had a conversation with you on the day after the fire, in which you told him that you were Mr. John S. Phipps' secretary; is that the fact?

A. No, sir.

Q. He also testified that you said that if you had not been so busy you would have come down with Abel and the explosion would not have happened; is that right?

A. I don't recall talking to anybody at all; if I did talk about the fire I probably said there that I was very glad I didn't come down; because I was.

Q. Did you ever tell anybody you were Mr. Phipps' secretary?

A. Never; I never have been Mr. Phipps' secretary.

Q. Mr. Riley, I show you another photograph; can you tell me whether that is a photograph taken of the Seminole after the fire?

A. Yes, sir.

Q. Do you know about when that was taken?

A. In August, I believe, 1935.

Q. Could you identify the place in the engineroom where that is?

A. It is on the forward bulkhead of the engineroom, on the starboard side.

Mr. Underwood:

I offer that.

(Said photograph was admitted in evidence without objection and marked Respondents' Exhibit 4-A.)

Q. I show you another photograph; was that taken at the same time?

A. Yes, sir.

Q. Is this bulkhead here on the left, the forward bulkhead of the engineroom?

A. Yes, sir.

Q. That photograph is looking from the port to the starboard side?

A. Yes, sir.

Mr. Underwood:

I offer that.

Mr. Botts:

No objection.

(The said photograph was admitted in evidence and marked Respondents' Exhibit 4-b.)

Mr. Underwood:

You may cross examine.

Cross Examination.

By Mr. Matteson:

Q. Mr. Riley, would you mind taking this sheet of paper and writing your name at the top?

(Witness writes on paper.)

Now would you mind writing "Seminole Boat Company" underneath that?

(Witness writes.)

Will you do it once more for me.—I ask to have this marked for identification.

(Said paper was marked Libelants' Exhibit 107.)

Q. Now I would like to go through these vouchers, Mr. Riley, taking up the file, the latest file, of checks dated in '35; the first bill of Captain Pilkington in that file was dated December 31, '34?

A. Yes, sir.

Q. I take it that that "o. k. JFR." in the lower right hand corner was written by you?

A. Yes, sir.

Q. Now I will ask you about the words "Seminole Boat Co." to the left, was that written by you or not?

A. No, that is not written by me. I think by J. M. Gorham.

Q. He was one of the men in the office?

A. Yes, sir.

Q. What position did he hold?

A. He was paymaster; he drew all the checks and did quite a bit of the bookkeeping.

Q. What was his relation with Mr. Anderson, who has been referred to?

A. Well, he was Mr. Anderson's assistant.

Q. Now, while we are at this point in the trial, this check 7402 is the lower half of a document that was all in one piece to begin with.

A. That is correct, yes, sir.

Q. And the sheet immediately under it is made at the same time as the original check by carbon, is it not?

A. Yes, sir.

Q. What do you call the upper half of the check, that is torn off? Is there a name for it?

A. No, we don't have any name for it; it is principally to tell the person who receives the check what bill we

are paying. In other words we give this description on the original, so that a person being paid will know what bill is being paid.

Q. So on the upper half of the check you write a description of the item which is being paid?

A. Yes, sir.

Q. And that is transmitted by carbon to the duplicate and triplicate copies, is that right?

A. Correct.

Q. Now I call your attention to the fact that on this duplicate copy of the words "Charge Seminole Boat Company, $50." appear to be in original typewriting?

A. That is correct, yes, sir.

Q. They do not appear on the original voucher?

A. No, sir.

Q. So that the document that went to the payee would contain a description of the item which was being paid, and attached to that, a check in payment of the item, but will contain no reference to the initial charge with respect to the item?

A. That is correct.

Q. All they would know about that, that they had gotten a check from the Palm Beach Company for that item?

A. That is correct.

Q. And the nature of the charge was reserved and put on the duplicate and triplicate copies, and that was entirely a matter of pure internal office record?

A. Yes, sir. There are two very good reasons for that, if you would like to know them.

Q. Well, that is all right. Now referring again to this duplicate voucher 7402 I see that the lower portion, what is the carbon of the upper half, there are various headings under which initials appear.

A. Yes, sir.

Q. Under "Extensions checked", what are those initials there?

A. That is J. M. Gorham. That is the man that signed this, made the charge.

Q. The same man that wrote the "Seminole Boat Co." on the bill?

A. Yes, sir.

Q. Those initials are supposed to be J. M. G., I think?

A. Yes, sir.

Q. And are these the same initials under the word "entered"?

A. Those are the same.

Q. And under the word "Certified correct" what initials are those?

A. E. J. Anderson.

Q. And under "Approved for payment" what are those initials there?

A. Those are E. J. Anderson, R. C. Alley and H. W. Robbins.

Q. In each case the initials appear?

A. Yes, sir.

Q. And not the full names. Who is H. W. Robbins?

A. H. W. Robbins in our New York office, and he signs main account checks to reimburse our paymaster account checks.

Q. So this HWR is put on after it reaches New York?

A. Yes, sir.

Q. You make duplicate and triplicate copies, do you?

A. Yes, sir.

Q. And each copy—which copy do you send to New York?

A. The duplicate; we keep the triplicate.

Q. So that this particular document that is here, apparently came from the New York files, is that right?

A. Yes, sir.

Q. Now from the initials appearing on this particular slip, it would appear that when the document was prepared, that is, when the voucher was prepared, the extensions were checked by J. M. Gorham?

A. Yes, sir.

Q. I suppose that would be the first operation?

A. Yes.

Q. Before anything else was done?

A. Yes, sir.

Q. Then which would come next, the "Certified correct" or "approved for payment"?

A. Well, the "extensions checked" and the "certified correct" would be the next, and then "approved for payment", and then "Entered" would be the last.

Q. "Entered" would be the last?

A. Yes, sir.

Q. So the initials JMG, under the word "Entered" indicates Mr. Gorham is the man who actually made the entries in the books, is that right?

A. Yes, sir, that is correct.

Q. This Pilkington bill dated January 31, '35, the initials "O. K. JFR" are yours, is that right?

A. Correct.

Q. On this bill February 28, '35, the initials "O. K. JFR" is that your writing?

A. Yes, sir.

Q. And the "Seminole Boat Co."

A. Is my writing.

Q. In each case it is your writing?

A. Yes, sir.

Q. On this bill of Mr. Pilkington dated May 1, '35, is written "O. K., JFR." Is that yours?

A. Yes, sir.

Q. Is "Seminole Boat Co." yours?

A. That is my writing, yes.

Q. And here is a bill dated December 31, 1930, this contains some writing, this bill relates to storage on the Iolanthe?

A. Yes, sir.

Q. This writing, "Too much; write and try to get better rate. JSP." Is that Mr. Phipps' writing?

A. Yes, sir.

Q. And the initials "JFR" are yours?

A. That is my writing.

Q. And the "O. J. J. S. P." is Mr. Phipps?

A. Right.

Q. Who is this, "J. S. P. Boats"?

A. That is my writing, that is the charge.

Q. Now there is one that was marked Pilkington Number 5 for identification, a bill dated April 30, '31; "Charge Seminole Boat Company" written in ink; is that yours or someone else's?

A. I think that is mine; yes, I am sure it is mine

Q. Now here is a bill dated March 31, 1931, in which there is a note at the bottom "Have talked to Pilkington" and at the bottom signed "JFR"; is that all your writing?

A. Yes, sir.

Q. That relates to the Iolanthe, I believe?

A. Yes, sir.

Q. Now on this bill of May 31, '31, written in pencil, "Charge Seminole Boat Co.", is that yours?

A. Yes, sir.

Q. I notice on this bill of May 31, there is an item relating to v21215 and after it is written the word "Clip". Are they the same boat?

A. Yes, sir.

Q. Is the word "Clip" in your own handwriting?

A. Yes, sir.

Q. And the initials "JFR"?

A. Yes, sir.

Q. And the quotation "O. K. J. S. P." is Mr. Phipps'?

A. Yes, sir.

Q. This bill of June 30, '31, is "Seminole Boat Co." written by you?

A. Yes, sir.

Q. And June 30, '31, "Charge J. S. P. Boats" is that written by you?

A. Yes, sir.

Q. August 31 ,'31, the bill, "Charge Seminole Boat Co." is that yours?

A. Yes, sir.

Q. On September 30, '31, "Charge Seminole Boat Company", in pencil, is that yours?

A. Yes, sir.

Q. And this August 31, '31, "Charge J. S. Phipps Boats" is that yours?

A. I believe so. This is a little larger writing than I usually do, but I think that is mine.

Q. On this bill dated August 31, '31, someone has written in the lower left hand corner "J. S. Phipps Boats"; do you know whose that is?

A. I am not positive; I think it is the writing of—I think the same person wrote that that signed the initials "EE", but I am not sure of it.

Q. Who is that?

A. She was the stenographer, Ethel Edwards.

Q. And this bill of October 31, '31, "Charge Seminole Boat Co." in ink is yours?

A. Yes, sir.

Q. Now in Exhibit 75, on this bill, December 31, '33, someone has written, "Mrs. F. E. G. Boats"; who is that?

A. That looks like J. M. Gorham's handwriting to me.

Q. The initials are yours?

A. Yes, sir.

Q. The bill of December 31, '33, "Seminole Boat Co." in pencil, is that yours?

A. No, sir; I think J. M. Gorham, I would rather not pass on his signature,— mean his writing. I think that is who it is.

Q. And on this bill dated January 31, '34, "O. K. JFR", and "Seminole Boat Co." is that part yours?

A. That is my writing.

Q. And down below "Seminole Boat Co." again, is that your writing?

A. No, sir, I think it is Gorham's.

Mr. Botts:

Make a memorandum, please. "Seminole Boat Co." that is nearer the top of the page is the writing that the witness identified as being his; and that towards the bottom of the page, that is not.

Q. This bill February 28, '34, "O. K. JFR"; "Seminole Boat Co." is yours?

A. Yes, sir.

Q. And bill on March 31, '34?

A. I think that is mine, yes, sir; must have slipped when I made that letter F; it doesn't look like my F.

Q. May 31, '34, the writing is yours, is it, in ink?

A. Yes, sir.

Q. The same as to June 30, '34?

A. Yes, sir.

Q. And on July 31, '34, is the writing in pencil yours?

A. Yes, sir.

Q. On this July 31, '34, the "O. K. JFR" and immediately under it, "Seminole Boat Co." is that yours?

A. I am not sure of the "Seminole Boat Co." I wouldn't like to say definitely on that.

Q. The writing at the left of the page, the initial "J"?

A. That is Gorham, J. M. Gorham.

Q. And on August 31, '34, "O. K. JFR"; Seminole Boat Co.", is that yours?

A. Yes, sir.

Q. September 30, '34, "O. K. JFR" is that yours?

A. Yes, sir.

Q. Is the "Charge Seminole Boat Co." yours?

A. Yes,—no, sir.

Q. That is Gorham, is it?

A. That is.

Q. On October 30, '34, the "O. K. JFR" is yours?

A. Yes, sir.

Q. "Charge Mr. J. S. P. Boats" is that yours?

A. I think that is Mr. Gorham's.

Q. Same on October 31, '34?

A. Yes, sir.

Q. November 30, '34, is the handwriting in pencil yours?

A. Yes, sir.

Q. And two bills of that date, one immediately following is the writing in pencil on that page yours?

A. Yes, sir.

Q. I don't want to take the time to go all through these, but there are only two more. Here is a note at the bottom of this one, this bill dated December 31, '31, which reads, "Seminole Boat Co.; we think this price should be at most $65. J. F. Riley"; is that all your writing?

A. Yes, sir.

Q. On January 31, '32, is the "Seminole Boat Co." in pencil, your writing?

A. Yes, sir.

Q. On February 29, '32, "Seminole Boat Company" is that your writing?

A. Yes, sir.

Q. March 31, '32?

A. Yes, sir.

Q. On April 30, '32?

A. Yes, sir.

Q. On September 30, '32, the initials, and the "Seminole Boat Co." in pencil, is that all yours?

A. Yes, sir.

Q. October 31, '32, is the "Seminole Boat Company" yours?

A. Yes, sir.

Q. Now on this bill August 31, '32, there is some writing at the top of the page, "Can you get reduction on storage on Iolanthe and Seminole from September on?" Is that Mr. Phipps' writing?

A. I can't identify that.

Q. Mr. Phipps has placed his initials on it, "O. K. JSP."

A. Yes, sir.

Q. You are familiar with Mr. Phipps' writing?

A. Yes, sir, I have seen his writing, but I am not a handwriting expert.

Q. Well, from your recollection of the circumstances and incidents and your familiarity with his writing.

A. It looks like it.

Q. It appears to you to be Mr. Phipps' writing?

A. Yes, sir.

Q. And this at the bottom, in pencil, "J. S. Phipps Boats".

A. That is my handwriting.

Q. Here is one on November 30, '32, "O. K. J. F. R."; Seminole Boat Co." that is yours?

A. Yes, sir.

(And thereupon the hearing was recessed until 2:00 o'clock p. m. of the same day.)

May 11, 1939, 2:00 P. M.

Afternoon Session.

The Court:

All right, gentlemen; you may proceed.

1910 Thereupon JAMES F. RILEY, JR., a witness in behalf of the Respondent Phipps, resumed the stand and was examined and testified further as follows:

By Mr. Matteson:

Q. Mr. Riley, you were telling us how you came to see this exhibit, Respondents' S-1, the carbon of the gasoline

ticket. I think you said you were checking over the accounts in the Palm Beach office when you saw that for the first time?

A. Yes, sir.

Q. Was that your usual practice?

A. Yes, sir.

Q. Of course there were a great many of these slips signed from time to time, so that you would see a good many of them coming over your desk, in the office at Palm Beach?

A. Yes, sir.

Q. And these tickets invariably, I take it, covering the charge for gas were against the account of J. S. Phipps, is that right?

A. Not all of them.

Q. There may have been some additional designation on them, but they all carried the same J. S. Phipps at the top?

A. In that particular account, yes.

Q. You mean at this Palm Beach Service Station?

A. Yes, sir.

Q. So that the account of the Palm Beach Service Station was in the name of John S. Phipps?

A. That particular account was; there were other accounts; there was one account in the name of Palm Beach Company, and there was another account in the name of H. C. Phipps. I believe that is all.

Q. You mean all at the Palm Beach Service Station?

A. Yes, sir.

Q. So there were at least three accounts there, one of which was the account of J. S. Phipps?

A. Yes, sir.

Q. And the gasoline in this case was charged to the account of J. S. Phipps at that station?

A. Yes.

Q. Now, Mr. Riley, what was the system with respect to the billing of the accounts; did they send you a bill first of every month?

A. Yes, sir; they sent the statement and attached the signed slips to that statement.

Q. And I take it that what they attached were the carbon copies, is that right?

A. Yes, sir.

Q. And that was the usual system?

A. Yes, sir.

Q. When you got the bill the first of the month you would get a statement and attached to it were the carbon copies of gasoline slips aggregating the charge made on the bill?

A. Yes, sir.

Q. Now, you are quite clear about that, I take it?

A. Yes, sir; that is the way it was handled.

Q. You did not get two slips; you just got the carbon with the bill?

A. Either the carbon or the original; sometimes they sent the original and sometimes the carbon; most of the time we got the carbon.

Q. You didn't get both copies; you didn't get the original and the carbon?

A. No, sir.

Q. Which was the usual practice; there must have been some practice for them to send you the carbon or the original?

A. The usual practice was the carbon; I saw on one or two occasions—I have seen the originals come in with the bills.

Q. But practically always it was the carbon?

A. Yes, sir.

Q. It was not the practice, you say, to get the slips in duplicate; that is, the original and the carbon with the monthly statement?

A. No, sir.

Q. I notice that there was an error made on this slip in the addition; in the first place, it was originally totaled as being $2.24, and that was scratched out and underneath

there is written "$2.19". Do you know anything about that?

A. No.

Q. Had that change been made when you first saw the slip for the first time?

A. I don't remember the change; I didn't notice it.

Q. I will show it to you (handing document to witness).

A. Yes, it had been made.

Q. Before you saw it?

A. Yes, sir.

Q. So, when you saw the carbon, as I understand it, you went over to the service station and saw the original there?

A. Yes, sir.

Q. When you saw it for the first time it was just in the form in which we have it here?

A. Yes.

Q. New Exhibit 7 here, consisting of a lot of gasoline slips, about 46 in number, which were produced by Mr. Underwood,—were they taken from your files there at the Palm Beach office?

A. Yes, sir.

Q. When you paid the bill, I take it, that the original slip would still remain with the service station, is that right?

A. Yes; in other words, they would keep one.

Q. In other words, they kept one in their records and you only got one at any time?

A. Yes, sir.

Q. I call your attention to these 46 slips which have been produced here, and I call your attention to the fact that, with the possible exception of three, they are all originals. Do you notice that?

A. Yes

Q. Everyone is an original; you recognize that, do you not?

A. Yes.

Q. And of these three exceptions it appears that two of those at least were originals; in other words, it appears to me that these two are originals and that one is a carbon?

A. I don't know; they look like carbons to me, too.

Q. At least there are only three possible carbons in the entire 46, is that right?.

A. That is right; I didn't look at every one.

Q. I tried to fan them out so that you can see all of the backs. You can identify the backs by the carbon on the back of the original?

A. Yes; they are all originals.

Q. So that would seem to be just the reverse of the ordinary course of business as you explained it to me, wouldn't it?

A. Yes. Of course they may have had a different man, may have had various bookkeepers; one might have handled it one way and another another.

Q. These slips all cover a period within a year of the time of the fire, don't they?

A. I am not sure of that absolutely.

Q. I think that is correct. Well it would appear that out of these 47 slips, with the possible exception of three, that this one, Exhibit S-1 is the only case in which the carbon came to you, is that right?

A. That is as I remember it; that I saw the carbon.

Q. Now, Mr. Riley, what was the date, as near as you can fix it, when this bill of the Palm Beach Service Station was paid?

A. We usually pay our bills between the 10th and the 25th of the month; my guess would be it was somewhere in that neighborhood.

Mr. Matteson:

Have you those bills handy, Mr. Underwood?

Mr. Underwood:

Which ones?

Mr. Matteson:

The Seminole Boat records or what purports to be the records of the Seminole Boat Company.

(By Mr. Matteson):

Q. I show you this voucher, No. 97, a part of Phipps' Exhibit "Z", showing you an entry under August 9th, Palm Beach Service Station, gas, $2.19. That apparently represents the payment of this bill; is that right?

A. Is that the amount of the bill?

Q. That was the amount of the check, $2.19.

A. Yes; that seems to be right.

Q. And the date of that payment is indicated as August 9, is that right?

A. Yes.

Q. Is that approximately the date on which you first saw this slip?

A. No, sir.

Q. Does that enable you in any way to fix the approximate date?

A. No.

Q. At least it was not later than August 9th, is that right?

A. That is right.

Q. Now, did you have some photostatic copies of these slips made when you discovered them?

A. Yes, sir.

Q. I find an item in here "Seminole Boat Company account, petty cash, photostatic copies of gas bill, $2.90; is that right?

A. That is correct.

Q. So that you had these photostats made and charged them to the Seminole Boat Company, did you?

A. Yes, sir.

Q. Why did you do that?

A. Well, I considered it a direct charge to the Seminole Boat Company.

Q. I mean, why did you have photostats made of that at all?

A. Well, I wanted more of them for the files in case I needed them at any time.

Q. You never had obtained photostats of any others, had you?

A. No.

Q. Why did you obtain photostats of this?

A. Oh, just as I stated before, I wanted to have them in my files.

Q. Did it occur to you at the time that the authenticity of this document might be later questioned?

Mr. Underwood:

May we have the time in that question fixed?

Mr. Matteson:

At the time he had the photostats made.

A. No, sir.

Q. You had not thought of that?

A. No, sir.

Q. Did you regard these slips at that time as an important piece of evidence in response of this case?

A. Well, I regarded it as an important piece of evidence, but not particularly in this case, because there wasn't any case at that time, I don't believe.

Q. After the fire on June 24th which originated on the Seminole you realized at once that there was a serious possibility of there being claims made, did you not?

A. I didn't at once, no, sir.

Q. It never entered your mind that there would be claims arising out of that disaster?

A. Not for the first two or three days.

Q. You don't say that you got these slips and made photostats of them within two or three days after the fire, do you?

A. No.

Q. You want us to understand, Mr. Riley, that your testimony is that at the time you found these documents and made photostats of them you had no thought whatever of any claims being made arising out of this fire?

A. No, I don't want you to understand that.

Q. I am asking you what your state of mind was at that time?

A. Well, I thought that if there was an occasion of someone making a claim that would be good evidence.

Q. You thought that these would be important evidence in the event any claim was made, is that right?

A. That is correct.

Q. And the importance of such evidence would of course be, if it had any, to show that on the day of the fire Mr. Abel was an employee of the Seminole Boat Company, wouldn't it?

A. Yes, sir.

Q. So that in the event any claim was based on the action of Mr. Abel it would appear that the claim was against the Seminole Boat Company and not anybody else, is that right?

A. That is correct; he was working for the Seminole Boat Company.

Mr. Matteson:

I move to strike out the answer, if your Honor please.

The Court:

I think it is a voluntary statement and not responsive to the question. I will grant the motion to strike that last sentence.

Q. Then the importance of the evidence, if any, would be against the interest of the Seminole Boat Company and in favor of the interest of anybody else that would be involved, is that right?

Mr. Underwood:

If your Honor please, I object to this witness being asked to consider the importance of evidence in this case. He is not permitted apparently to give a full and complete answer, and that is one reason I make my objection.

The Court:

I think the question is well taken. I will overrule the objection.

A. The only way I can answer that is to say that the reason I thought it was important was to show that this man was working for the Seminole Boat Company.

Q. To whom would that be of importance?

A. I can't say that it would be of any importance to anyone personally, but just in case of any sort of suit that might develop.

Q. It didn't occur to you at that time that if any liability arose out of the actions of Mr. Abel on this occasion could be shown to be arising out of employment with the Seminole Boat Company that that would be protective of the interests of the stockholders or anyone else that might be involved?

Mr. Underwood:

I object to that unless the time is fixed. The question says "at that time". I do not understand what time is meant.

Mr. Matteson:

It is understood that all of these questions refer to the time that he had the photostats made of these tickets.

A. Will you read that question?

(Thereupon the preceding question was read by the Reporter as above recorded.)

The Court:
Read it again.

(Thereupon the question was re-read by the Reporter as above recorded.)

A. Of course at that time Abel had a widow and I thought it was good evidence to show that he was working for the Seminole Boat Company that day.

Q. Now let me ask you the question this way: did you think it would be of any advantage to the Seminole Boat Company as a corporation to have this evidence and the demonstration of its authenticity?

A. No, sir.

Q. On the contrary it would be detrimental to the interests of the Seminole Boat Company as a corporation, would it not?

Mr. Underwood:
I object to that as argumentative.

The Court:
Well, it is in a sense argumentative, but it goes to the reason why he did things. I think it is within the realm of cross examination. I will overrule your objection.

Mr. Matteson:
Read the question.

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. Yes, I suppose it would; I don't know.

Q. Then may I ask you, Mr. Riley, why you charged the expense of procuring these photostats against the Seminole Boat Company?

A. It seemed like the right thing to do at the time.

Q. For whom were you acting when you did this?

A. When I charged the photostats?

Q. Yes; when you procured the photostats?

A. I don't know that I thought of who I was acting for then.

Q. In other words, you have many capacities in your position at the Palm Beach Company and it is sometimes difficult to determine in which capacity you are acting, is that right?

A. Well, I suppose I know who I am working for at times. There are a lot of activities in the company.

Q. Now in 1931 you received your first instructions in respect of the Seminole, is that right?

A. Not the first ones.

The Court:

Are you leaving that subject matter right now?

Mr. Matteson:

I do not think of anything else at this time.

By the Court:

Q. What did you have photostated?

A. Gasoline slip.

Q. Just one of them—

A. Yes.

Q. Did it cost $2.90 to get that one photostated?

A. $2.90.

Q. It cost $2.90 to have that one slip photographed or photostated?

A. I think we had more than that; I don't remember the number, your Honor.

Q. You don't recall now whether you had a large number of copies of the one slip made or whether you had a good many slips photostated?

A. I think the original was the one that was photostated, this gasoline slip, that is the only gasoline slip that

was photostated but how many pictures I had made I don't remember.

Q. As I understand it, Mr. Riley, this slip came to your office first along with a bill for the total amount of gasoline purchased at that station during the preceding month?

A. Yes.

Q. And that was for June?

A. Yes.

Q. I reckon that bill came in along the first of July, is that right?

A. Yes, sir.

Q. When did you have the photostats made?

A. I don't remember exactly; some time during July; the latter part of July, I think.

Q. Did I understand your testimony this morning that immediately (I don't mean immediately but before you took any action on the mater of paying that bill) you went down to see the manager of the station?

A. Yes, sir.

Q. Why did you go there?

A. Because I wanted the original; I wanted to see if he had it.

Q. Do I understand it now that your best recollection that you got along with the bill that was rendered the 1st of July the copies?

A. Yes, sir.

Q. You wanted to see if the original was in existence?

A. Yes, sir.

Q. And that is the reason you went down there?

A. Yes.

Q. Did you get it from the station at that time?

A. Yes, sir.

Q. When you went back to your office you had the original and the copy both?

A. I might have gotten it the next morning; the man might have had to look it up.

Q. After your visit to the station and you came back to your office you had both the original and the copy, whether it was that day or the next day?

A. Yes, sir.

Q. Did you get any other slips down there that day?

A. Any other originals?

Q. Yes.

A. No, sir.

Q. Just that one?

A. Yes.

Q. You are quite sure that these 46 odd tickets first came into your possession along with the bill rendered?

A. Yes, sir.

Q. And you didn't get them in connection with this photostat down at the service station?

A. No, sir, I didn't.

The Court:

That is all I care to ask.

(By Mr. Matteson):

Q. With respect to the time when you got this slip, how long after it was it that you had it photostated?

A. I can't remember exactly; it was the latter part of July, I think, but I cannot be positive.

Q. Who was it, if anyone, that instructed you to have the photostats made?

A. I believe Mr. Alley did.

The Court:

Where are the photostatic copies now?

The Witness:

I don't know exactly. I think there is one in one of those files there.

The Court:

What did you do with them at the time?

The Witness:

I put one in our file; I turned over one or two to Mr. Alley, and it seems to me those were all; I don't know whether there was over three or four made.

(By Mr. Matteson):

Q. Now I think, Mr. Riley, you stated that it was in 1931 that you got some instructions from Mr. Alley with respect to the Seminole?

A. Yes, sir.

Q. At that time Mr. Alley was head of the Palm Beach office, was he not?

A. Yes, sir.

Q. By the way, on June 24, 1935, was he still the head of the Palm Beach office?

A. He was still the manager of the Palm Beach Company; he had moved his office and had a law office of his own, and I was in physical charge of the Palm Beach office.

Q. But you still recognized him as the manager of the office?

A. Yes, sir.

Q. Now, Mr. Alley, as the head of the Palm Beach office, was generally the representative of the Phipps' interests in Palm Beach, was he not?

A. Yes, sir.

Q. And in addition to being the head of the office of the Palm Beach Company he performed many functions in connection with the various corporations in which the Phipps were interested and the various individual members of the Phipps' family, was he not?

A. What date are you speaking of now?

Q. I am talking about 1931, but I suppose it would apply to both dates.

A. I am not familiar entirely with what Mr. Alley's duties were at that time.

Q. Well you recognized him in 1931 as your superior officer?

A. Yes, sir.

Q. And that was because he was in charge of the Palm Beach Office?

A. Yes, sir.

Q. And it wasn't unusual for you as his subordinate in that office to take instructions and orders to do various things for members of the Phipps' family or for any of the corporations that they were interested in?

A. No, sir.

Q. In fact it was customary for you to do so?

A. Yes, sir.

Q. Your employment and your salary came entirely from the Palm Beach Company, did it not?

A. Yes, sir, so far as I know.

Q. You never have been in the employ of the Seminole Boat Company, have you?

A. You mean has the Seminole Boat Company ever paid me any money?

Q. Yes.

A. No.

Q. So that by reason of any pay or salary connection there has never been any reason why you should do anything for the Seminole Boat Company?

A. No, excepting in that Mr. Alley told me to work with them and it was a part of my duties if he told me to do it.

Q. So that when Mr. Alley told you to perform certain functions with respect to the Seminole Boat Company it wasn't because he was an officer of the Seminole Boat Company that you were required to comply, but it was because Mr. Alley is the head of the Palm Beach office and had the right to give orders, is that right?

A. I would say it was both. Of course I knew he was an officer of the Seminole Boat Company.

Q. And also in the employ of the Seminole Boat Company at that time?

Mr. Underwood:

I object to that as calling for a legal conclusion.

Mr. Matteson:

I will withdraw it.

(By Mr. Matteson):

Q. You received no salary nor any pay that would put you under any obligation to the Seminole Boat Company as such?

A. No, sir; I never received any money from the Seminole Boat Company.

Q. But you were under necessity, by reason of your employment and your payment by the Palm Beach Company, to take his order as manager of the Palm Beach Company; that is correct, it is not?

A. As my manager, yes.

Q. Now I think that you said that your introduction to Captain Pilkington was by Captain Bryant?

A. Yes, sir.

Q. And that that was in 1931?

A. I think so, yes, as near as I can remember.

Q. Well, during 1931 at any time did Mr. John S. Phipps go to the Pilkington Yard with you?

A. Not with me, not that I remember.

Q. Your introduction by Captain Bryant was purely verbal, was it not?

A. Yes.

Q. You probably are aware, in connection with this case, that there had been a designation in writing to Captain Pilkington of Mr. Huff as the man in charge of the boats, including the Seminole?

A. Yes.

Q. Was there any written communication to Captain Pilkington superseding that employment and appointing you in his place, as far as you know?

A. Not that I know of; no, sir.

Q. Now at that time, 1931, the Iolanthe and the Dorothy were stored at the Pilkington Yard for certain periods, were they not?

A. I am not sure but I think they were, though I am not certain that the Dorothy was owned by Mrs. Guest in 1931; I won't say for sure about that; I don't remember.

Q. There were three boats, either of Mr. J. S. Phipps or other members of the Phipps' family stored there during that year, were there not?

A. I don't remember.

Q. I notice that the bill here for storage on the Iolanthe during January, 1931 and for the month of February, 1931—

A. Yes.

Q. And for the month of April, 1931?

A. Yes.

Q For the month of March, 1931?

A. Yes.

Q. For the month of May, 1931?

A. Yes.

Q. And during the same month part of the time the Clip was stored there?

A. Yes, sir.

Q. Here is a bill for June storage on the Iolanthe and the Clip in 1931?

A. Yes.

Q. And again in July on the Iolanthe and the Clip?

A. Yes.

Q. In August for the Iolanthe and the Clip?

A. Yes.

Q. And here is one in October for the Iolanthe and the fishing boat; I suppose that is the Clip?

A. Yes.

Q. So all three of his boats were there during that year, is that right?

A. The Iolanthe, the Clip and the Seminole, you mean?

Q. Yes.

A. I don't remember about the Seminole. I know these were there because we paid bills for them.

Q. You were in charge of the Iolanthe and the Clip as well as the Seminole?

A. Yes, in a way.

Q. Throughout that year, or at least from the time of your introduction by Captain Bryant?

A. Who?

Q. Bryant?

A. Yes. I employed Captain Bryant.

Q. I am saying that from the time of your introduction by Captain Brayant you were in charge of all three of these boats, is that right?

A. Yes.

Q. What time of the year was it that you were introduced by Captain Bryant, do you recall?

A. As I recall, sir, it was in the spring; I don't know just what month.

Q. Around April?

A. It would be entirely a guess; I don't know.

Q. I show you this bill for storage on the Seminole in April, for storage on the Seminole from April 20th to April 30th. It seems to be the first bill with respect to the Seminole in that year. I suppose that indicates that the Seminole went in storage at Pilkington's that year about April 20th, is that the fact?

A. That is what it would indicate, yes.

Q. Was that when Captain Bryant introduced you to Captain Pilkington?

A. It must have been after that date, because the Seminole was already there.

Q. And had been there for some time?

A. I don't remember how long.

Q. Was that the first time that you had been to the Pilkington Yard?

A. That is the first time that I remember, yes.

Q. Was Captain Bryant's introduction sufficient to put you in charge of all of these boats insofar as Pilkington was concerned?

Mr. Underwood:

I object to that as calling for a legal conclusion, your Honor.

The Court:

I think that is subject to that objection.

(By Mr. Matteson):

Q. In Captain Bryant's introduction of you to Captain Pilkington was anything said about the Iolanthe or the fishing boat Clip?

A. I don't remember definitely whether there was or not.

Q. How was your authority to deal with the Dorothy and the Clip communicated to Captain Pilkington, do you know?

A. No.

Q. You have no recollection of that at all?

A. No.

Q. Captain Bryant was the Master of the Seminole at that time, was he not?

A. I believe he was, yes.

Q. As I understand it, Mr. Riley, your introduction by Captain Bryant was the only communication to Captain Pilkington dealing with your authority in respect of the Seminole of which you have any recollection?

A. Yes, sir.

Q. Or either of the other boats, for that matter?

A. Yes.

Q. Where is the office of the Palm Beach Company located?

A. Located in the Plaza at Palm Beach.

Q. It is now known as Bessemer Properties, Inc.?

A. Yes.

Q. That is since 1937?

A. 1937, yes.

Q. It is the same office?

A. Yes.

Q. And the same organization substantially?

Mr. Underwood:

I object to that if it means to go into the reorganization of the corporation. If he means the physical plant, I have no objection.

Mr. Matteson:

That is what I intend.

A. That is correct; the same employees.

Q. What does the office there consist of?

A. Building?

Q. How many rooms and where located?

A. We have one main office and a couple storage rooms and three private offices.

Q. Who occupies the private offices?

A. I occupy one; Mr. H. C. Phipps has one when he is down, and Mr. J. S. Phipps has one when he is down. During the summer, when they are not here, we very seldom use the two offices except for files.

Q. Now in the winter of 1934-35 do you recall what period Mr. J. S. Phipps was in Palm Beach, approximately?

A. It will have to be approximate; I don't know exactly.

Q. All right.

A. Probably from around Christmas-time until the 15th of April or maybe the 1st of May.

Q. But when Mr. Phipps is in Palm Beach does he transact his business at the office of the Palm Beach Company?

A. Mr. Phipps does not transact his business himself. He is retired. If you mean personal bills here, I will say that he okeyed some at his home and he okeyed some at the office; some of his checks were drawn at his home and some were drawn at the office.

Q. When did he retire?

A. I do not know, sir.

Q. Well, during this period of 1934-35 was he in the office daily?

A. This is a guess. He might be in every day for one week and the next week he wouldn't come in at all; you never knew how to figure that.

Q. But he is there frequently, is he not, when he is in Palm Beach?

A. Yes.

Q. You are called upon to do a great many things in company with Mr. J. C. Phipps, are you not?

A. Yes, I have been in his company and have been in Mrs. Guest's company and have been in Mr. H. C. Phipps' Company. I don't know that one dominates the other; I work for all of them.

Q. It is fair to say, is it not, that Mr. John S. Phipps comes to the office a good deal more frequently than Mr. H. C. Phipps?

A. No, sir.

Q. I want to ask you about Mr. J. S. Phipps' estate; where is that located?

A. His home?

Q. Yes.

A. On North County Road, Palm Beach.

Q. How large a place is that?

Mr. Underwood:

I object to this; it is wholly immaterial in this case.

Mr. Matteson:

I think it is quite important in connection with the relations between Mr. Riley and Mr. Phipps, and I think we are entitled to know. Mr. Riley has testified that he has had many duties in connection with Mr. Phipps' estate. I want to find out what those duties are and how extensive they are, and how close his relations are with John S. Phipps.

The Court:

I do not see what the size of the home has to do with that.

Mr. Matteson:

It might have to do with the amount of detail in connection with it.

The Court:

I want to allow a fair amount of latitude in cross examination, but I really do not see the materiality of that, however, I will let you proceed.

Mr. Matteson:

Read the question.

(Thereupon the preceding question was read by the Reporter as above recorded.)

Q. I don't care about the number of acres, but just give us an idea.

A. It is 26 acres. Do you want to know the size of the house?

Q. No.

A. All right.

Q. What duties have you had in connection with the estate?

Mr. Underwood:
May we have the time fixed?

Mr. Matteson:
I am talking about the period in 1934-35 season.

A. Well, I suppose I have, you would call it, business management, and I think that covers it.

Q. You have the business management of Mr. John S. Phipps' estate in your charge?

A. Yes, sir.

Q. And that is true when he is away as well as when he is there?

A. Yes, sir.

Q. You are from time to time called upon to represent Mr. Phipps in various matters in connection with the estate and in connection with other of his personal affairs, is that right?

A. Yes.

Q. You act for him?

A. I act for him with his permission, yes.

Q. Of course.

A. Yes.

Q. And in his absence you have authority to deal with his matters coming up, routine matters coming up, in connection with his personal affairs?

A. You mean his estate; the home there?

Q. Yes.

A. Yes.

Q. Now I suppose in that connection you have on occasion been required to deal with strangers on behalf of Mr. John S. Phipps?

A. With strangers?

Q. I mean with people that you have not met before and who may not know who you are.

A. If you mean salesmen who come in that would like to sell the estate something, or something of that sort, yes.

Q. I do not necessarily mean anyone coming to the office; in fact, I assume there must be occasions in connection with Mr. Phipps' affairs when you have to approach others, is that right?

A. I don't think it is true except in that I do talk to people who want to sell things to the estate, and that's about all; when it comes to his own personal business I do not have anything to do with that.

Q. There are occasions when you purchase things for the estate and have to go out and purchase things for the estate?

A. Yes, sir.

Q. When you do deal with someone on the outside with spect to some matter that concerns Mr. Phipps personal how do you describe yourself; how do you identify yours as representing Mr. Phipps?

A. I usually identify myself as representing the estate because the Palm Beach Company through me or through the Palm Beach Company sort of handle affairs of that sort for the Phipps Estate as well as others.

Q. When you say you represent yourself as representing the estate, what do you mean?

A. I mean that the name of his place is Casa Vendita, and I am in a sense business manager of Casa Vendita, but not the business manager of John S. Phipps.

Q. You never have indicated to anyone under any circumstances that you were the representative of John S. Phipps?

A. No, sir.

Q. Whether you described it as secretary or manager or any other capacity?

A. No.

Q. Now with respect to June 24, 1935—

A. Just a minute. May I change one thing there in the last answer I gave?

The Court:

Yes.

A. There are other properties that are owned by Mr. John S. Phipps, and of course I manage those other properties also. He has not confined me just to his one home or estate.

Q. I appreciate that. I meant my question to be general and to apply to any representation of Mr. Phipps with respect to any of his interests. Do I understand that you have never on any occasion indicated to anyone that you were acting as the representative of John S. Phipps?

A. No.

Q. As a matter of fact in many dealings you have representing him?

A. I have represented the properties that he owned, yes; maybe that is considered as representing him. If you mean though, that if someone comes in and wants to borrow some money from Mr. Phipps that I can receive him and say, "Yes, I can loan you the money,"—that is not it at all.

Q. I am not suggesting that at all.

A. All right.

Q. Getting back to June 24, 1935, I understand from your testimony this morning that the decision with respect to going to Ft. Lauderdale was made on the morning of that date?

A. That is correct.

Q. And it was made because it was raining on that day?

A. Yes.

Q. So that there was no possible way that Abel could have known the day before or the evening before that he was going to Ft. Lauderdale on June 24th, is that right?

A. Except that we had talked about it several times within the last three or four weeks previous to the time he actually went down there, and I said, "As soon as we had the opportunity"; I told him as soon as I had an opportunity I would go and would have him go with me and he knew that I had it in mind.

Q. But there was no reason other than the general possibility of such a thing happening at some time in the future that would be any basis for his understanding the night before that he was going to make a trip to Ft. Lauderdale the following day as far as you know?

A. As far as I know he didn't know that he was going to make the trip to Ft. Lauderdale on the 24th.

Q. You had said nothing to him about it?

A. Not for that date.

Q. Now with respect to this fishing tackle; for what purport was that required?

A. It was just to go in storage; we always stored the glass bottom buckets and gaffhooks during the summer, because they were left out on the upper deck of the Seminole, and of course out in the weather, and we just stored them. Usually they were stored in Miami, but this particular trip they apparently forgot to leave them there.

Q. Well, how do you know that?

A. Mr. Hawkins told me that.

Q. Is it a fact that preparations were then being made for a fishing trip on the Iolanthe?

A. No.

Q. Where was the Iolanthe at that time?

A. The Iolanthe was at Mr. J. S. Phipps' dock.

Q. Palm Beach?

A. Yes.

Q. Was this equipment sometimes used in the Iolanthe?

A. No, sir, the Iolanthe had its own equipment.

Q. Isn't it a fact that the Martins were going to make a fishing trip at that time, about that time?

A. Not that I remember; no, sir.

Q. Were the Martins in Palm Beach at that time, or were they expected?

A. I don't believe they were.

Q. You don't know?

A. No, I don't know. Yes, I do, too; I know they were not in Palm Beach.

Q. Were they expected?

A. No, I don't know that.

Q. Now from the spring of 1931 I understand that you were in complete charge of the Seminole.

A. When it was in Palm Beach or at Ft. Lauderdale, yes.

Q. And you had received instructions to make regular inspection of the Seminole, had you not?

A. Not regular inspections. I received instructions to make inspections from time to time.

Q. And is it a fact that when the Seminole was in storage at Ft. Lauderdale, you visited her there approximately once a month?

A. Well, it depended on whether I could get there or not; I tried to get down there once a month, but I don't think I did; probably the trips were six weeks apart.

Q. On this occasion of June 24, 1935, she had been in storage there for approximately something over two months, had she not?

A. I don't remember when she was put in; I think that is about right; it was about the 15th of April or a little after that she was put in storage.

Q. You had not visited her during that time, had you?

A. No.

Q. And other times when she had been there you had been down there and made inspections from time to time?

A. Yes.

Q. And when you made these inspections did you go through the boat?

A. Yes, sir.

Q. Of all her parts?

A. Well, on most occasions I did. Some occasions I didn't go into the bilges at all; it depended on whether I had a Captain with me or not.

Q. What do you mean by "bilges"?

A. The bilges down in the hull.

Q. You mean on some occasions you didn't look under the floors?

A. That is right.

Q. But except for that, whenever you went, you went all through the vessel, is that right?

A. Except in the engineroom.

Q. You didn't go in the engineroom from time to time?

A. I have been in the engineroom when she was in commission; I don't believe I ever have when she was in storage.

Q. You say you were charged with the duty of making the inspections of the Seminole while she was at Ft. Lauderdale and your never did inspect her engineroom?

A. Well, the window along the companionway was always open, and I stuck my head down in there and looked around. That is about as good an inspection as I could make of the engineroom.

Q. You never climbed through the window or went in that engineroom?

A. Yes, on a number of occasions.

Q. On the occasion of some of these inspections?

A. I am not positive that I was ever in the engineroom on an inspection, but if the Captain was along with me it is very possible that I did go along with him.

Q. You didn't always have a Captain with you, of course?

A. Not always, no.

Q. Most of your inspections were made with the Captain, weren't they?

A. I would say 75 per cent of them, yes.

Q. On these occasions you say that you never went into the engineroom?

A. I don't believe I have ever been in the engineroom unless a Captain was with me.

Q. But you did inspect the engineroom, by looking through the window?

A. Yes, sir.

Q. What was your experience before you went with the Palm Beach Company; what previous experience had you had?

A. I had been a timekeeper for a building contractor there in West Palm Beach. Previous to that I worked for a brick and tile manufacturing company.

Q. Your experience then, I take it, had been almost entirely in construction and real estate management?

A. Yes. Of course I had not had much of that at that time; at the time I went with the company.

Q. Do you mind telling us your present age, Mr. Riley?

A. Not a bit. Thirty-seven.

Q. As far as expenditures with respect to the Seminole were concerned, you told us that you had a mental limit of two or three hundred dollars.

A. Yes.

Q. And the only time that you exceeded that amount was with the personal approval of the stockholders?

A. Yes, sir. That is on one job; of course if you are doing painting and doing plumbing work, reupholstering furniture and remaking mattresses, all of those things together might go to make more than two or three hundred dollars, but for one certain job, like working on motors, running to more money than that I would always get permission.

Q. And you did have the management of the other family boats as well as the Seminole?

A. Yes, sir.

Q. That includes the Iolanthe and the Clip and the Dorothy, is that right?

A. Yes. I had the management with the approval of those who owned them.

Q. Of Course. And they approved everything that was done on them.

A. Yes.

Q. And that was all because of your employment by the Palm Beach Company and your obligation to respond to personal calls of members of the Phipps family?

A. Yes, but I want to get myself straight on that, though: There is quite a difference between management that I had of the personal boats and the management I had of the Seminole, because every little thing on Mrs. Guest's boat and every little thing on Mr. Phipps' boat had to be approved by them before the work was done.

Q. In other words, your authority with respect to the Seminole was somewhat broader than with reference to the others?

A. Yes; much broader.

Q. You were telling us about a conversation that took place with Captain Pilkington when Mr. John S. Phipps was present, where there was a discussion of rates and a statement by Mr. John S. Phipps with respect to the advisability of moving the boats to Gulfstreat. You gave us something of an interpretation of what was said. I wish you would tell me as exactly as you can the exact language that Mr. J. S. Phipps used on that occasion.

A. I think I gave that this morning, as well as I can remember.

Q. Will you give it to us again?

A. He started—he walked along and heard the gist of the conversation, and he said that he just couldn't pay too much for storage of boats, and that I had decided, meaning me, that unless he continued to make the rate

$50 a month on the Seminole, that I was planning to take the boats to Gulfstream.

Mr. Underwood:
Read that answer.

(Thereupon the following portion of the previous answer was read by the reporter, at which point the reading of the answer was interrupted by the witness: "He walked along and heard the gist of the conversation and he said that he just couldn't pay too much for storage of boats—")

The Witness:
That is wrong. I didn't say-he said that he just couldn't pay—

The Reporter:
I read it as I recorded it.

Mr. Underwood:
I am asking the witness to correct the answer as incorrectly read by the reporter.

Mr. Matteson:
I want to say that it was read just exactly as I heard it.

Mr. Botts:
And exactly the way I heard it.

Mr. Underwood:
Not the way I heard it.

The Court:
The witness will be the judge. Commence all over and state it again.

The Witness:

Well, he heard the gist of the conversation and said that we couldn't afford to pay too high rates on the storage of boats, and that unless Captain Pilkington kept his rates as they were that I (meaning me) had thought it best to take the boats to Gulfstream and store them there.

Mr. Underwood:

Again I am not clear, your Honor, as to just what went in. May I have that answer read?

(Thereupon the preceding answer was read by the reporter as above recorded.)

The Court:

Does everybody understand the answer now?

Mr. Botts:

I understood both.

The Court:

You may proceed.

Q. Mr. Riley, that makes three times now you have said that Mr. Phipps said "that I (meaning me, quoting you) had a certain idea. I do not suppose that Mr. Phipps would be so ungrammatical as to use the word "I" in referring to you. What I want to know is exactly what he said.

A. That is what I am trying to give you, but after all of these years—after all, this was five years ago, and of course you know—

Q. He did not refer to you as "I"; that is your—

A. That Jim had decided to take the boats to Gulfstream.

Q. You think that is what he said?

A. Either Jim or Mr. Riley; I don't know which.

Q. And when he said that he was referring to all of the boats there were in storage or accustomed to be stored there.

A. Yes. There were only two at that time, as I remember it; the Seminole and the Iolanthe.

Q. Now referring to these payrolls. I hold in my hand the summary with respect to the amount paid to Mr. R. C. Abel. He was employed as a boat Captain, was he?

A. They called him that on the payroll.

Q. He was so described throughout the payroll as a boat Captain?

A. Just "Captain" I would say.

Q. And he was the registered Master of the yacht Iolanthe, was he not?

Mr. Underwood:

I object to that as not the best evidence. The registration papers, if your Honor please, are filed in the Customs House, and they are temporarily suspended from time to time, and I don't know whether this witness knows whether the registration papers were in effect, and I think the basis of his knowledge ought to be—

The Court:

If he knows, I think it is all right to ask him.

The Witness:

I don't know.

Q. Well, it is a fact, is it not, that his employment was principally in connection with the Iolanthe?

A. No, I wouldn't say that.

Q. If we say principally in connection with the Iolanthe and the Clip, would that cover it?

A. Well, he worked on those boats more than any other boats, yes.

Q. And he was employed regularly, week in and week out at a monthly wage, was he not?

A. No, sir, he was employed on a weekly rate.

Q. Well, he was employed week in and week out on a weekly rate?

A. Yes.

Q. And his wages were uniformly charged to J. S. Phipps except at such times as he worked on boats for business of others?

A. His wages were charged to J. S. Phipps when he was working for J. S. Phipps, yes.

Q. And that was something over ninety-five percent of the time, wasn't it?

A. I haven't figured it out.

Mr. Underwood:

I think that is a matter of calculation and that we can agree upon it. If you want an accurate percentage we can figure it out in dollars and cents.

Mr. Matteson:

I want to bring out the fact that it was only on rare occasions that his wages were charged to anyone else.

Mr. Underwood:

That depends on the definition of the word "rare". I do not see that that gets us anywhere, your Honor.

The Court:

Well, the facts speak for themselves. We can make that calculation, if necessary.

A. Most of the charges on here are to J. S. Phipps.

Q. Now there were one or two occasions, three I guess, where his wages were charged to the Seminole Boat Com-

pany. Can you tell us and refresh your recollection by referring to payrolls, if you wish; for instance, during the week of September 20, 1934, his wages of $20 was charged to the Seminole; can you tell us what he was doing that week?

A. To the best of my recollection he was painting around the hull of the boat.

Q. I see that a part of the following week, September 27, 1934, was also charged to the Seminole; was that a part of the same job?

A. I am not positive; it was either painting in the bilges or doing other maintenance work on the boat.

Q. And again in the week of October 11, 1934, $10.00 was charged. Can you tell us what he was going then?

A. He was doing some work in connection with the maintenance of the boat.

Q. And those were the only occasions from January, 1934 down to June 24, 1935, that any of his wages were charged to the Seminole Boat Company?

A. Yes, sir, that is, from these payrolls, unless there were some checks drawn to him and charged to the Seminole Boat Company.

Q. Now there is a voucher here representing the payment of the final installment of his wages, which vouchers is a part of Phipps' Exhibit 3-V, which final voucher shows the payment of $60 to Mrs. R. C. Abel. That was the final installment of Captain Abel's wages, was it not?

A. Yes, sir.

Q. And that was paid on June 29, 1935?

A. Yes, sir.

Q. Do I understand that this memorandum that is attached to it, which is in your handwriting, and on which the charge was made at the time the check was made out?

A. Yes, probably the same day the check was made out.

Q. So that your decision to charge the Seminole Boat Company with $5.00 for one day's wages was made five days after this fire, is that right?

A. Yes.

Q. And when you made up this memorandum—

A. I won't say my decision was that day; that is the day I wrote it up.

Q. That is the date this written memorandum was made?

A. Yes, sir.

Q. And at that time did you have in mind the same thing that you had in mind when you had photostats made of Exhibits S and S-1, that the fact of his employment by the Seminole Company on that date might be a very important matter for somebody?

A. No, sir; this was done just in the regular routine of business. I made out these slips from time to time, and I charged the man for whatever job he was working on.

Q. You stated that the vouchers showing payments to Abel, which constitute the exhibit I was just showing you, Exhibit 3-V, were all that you could find in your office. Does that mean that the vouchers are missing for some of the weeks that are described in the summary of the payrolls; there is no voucher covering the entire employment as indicated by the payroll.

A. No, I don't mean that; I think that they are all here; I am not positive; I will have to check them by weeks to see.

Q. They should all be here?

A. Yes.

Q. In other words, you should have in your office a voucher for every payment which has been made by the Palm Beach Company, is that right?

A. Yes.

Q. Now, Mr. Riley, Schlappi was also engineer of the Iolanthe, wasn't he?

A. Yes, sir. He acted as engineer of the Iolanthe on occasions.

Q. During 1934 and 1935 was the Iolanthe continuously at Palm Beach?

A. I don't believe so. I think the Iolanthe was in storage in Ft. Lauderdale uttil the spring of 1935, but I would have to look through the records and make sure of that.

Q. Well, in the 1934 vouchers there are vouchers, month by month for the Iolanthe up to November, and the November bills says "Out November 25". Does that refresh your recollection as to when the Iolanthe left the Pilkington yard?

A. That says that she left on November 25th.

A. It says it left here on November the 25th; I am not sure where it was until around the first of May; I know it was at Palm Beach around the first of May, 1935.

Q. Well, there was a period during March and April when it appears from the testimony already given that Schlappi was working on the Seminole. But can you tell us from the payrolls except for that period, where he was working?

A. Schlappi was employed to work on the Seminole, I think, sometime in March and he stayed on the Seminole until after the trip that was made to the keys, was finished up. Before that employment on the Seminole he wasn't employed by us, that I can remember.

Q. So his name should appear, if he was employed, on these payrolls?

A. No, sir; he was never paid on payrolls; he was always paid by check.

Q. Always paid by check?

A. Yes, sir.

Q. Did you produce a series of checks here?—Now the first voucher that appears here in 1935 for the payment of wages, is this one dated May 6, 1935; is that right?

A. Yes, sir.

Q. Now that covers wages here over quite a period.

A. Yes, sir.

Q. There is, Seminole Boat Company, twenty-two days; Mr. J. S. Phipps Boats, thirty-one days; would that be on the Iolanthe?

A. That is either on the Iolanthe or it is during the time that Mr. Phipps had the boat on a trip,—when he himself took it on a trip.

Q. That was the last trip that the boat made, in April 1935?

A. Yes, sir.

Q. Is there any way that we can get behind this voucher to find the exact periods that are covered by those different charges?

A. No, sir, there is not, because Schlappi gave me this time, when I made this out; he had kept the record of the days that he spent on various jobs and he gave this to me and I wrote it out and then had the check drawn for it. In other words there is no payroll or item, slip or anything that would show the dates covered by these numbers of days?

Q. The only memorandum is the yellow sheet attached in your writing?

A. Yes, sir.

Q. And that does not give any dates?

A. No, sir, I don't believe it does. No.

Q. He didn't give you any memorandum that would be more specific than that?

A. No, he gave me that verbally and I wrote it down.

Q. When Schlappi was employed by Mr. Phipps, it was usually as engineer of the Iolanthe, is that it?

A. Well, I would say he worked about half and half, on the Seminole and on the Iolanthe. He worked some for Mrs. Guest.

Q. I think, from my notes when you were referring to this voucher, you said something about a trip on the Iolanthe later.

A. Yes, sir.

Q. What was that trip?

A. That was a trip to Dimini I believe; yes, to Bimini.

Q. When was that, do you know?

A. That was made after the Seminole came back to storage at Ft. Lauderdale; it was around the 25th of April, would be my guess.

Q. And Schlappi acted as engineer on that trip?

A. Yes, sir.

Q. Now as I understood your testimony you said you had one man to make up the payrolls; who was that man?

A. At that time it was J. M. Gorham.

Q. Covering what period?

A. Well, of course he had help, someone else would do it when he was on vacation, but he did it practically entirely from about 1929 through 1935.

Q. During 1934 and '35, how many people outside of the Phipps were in the office at Palm Beach?

A. Four.

Q. And who were they?

A. There was a stenographer, Mr. Anderson, Mr. Gorham and myself. We might have had two stenographers, I don't remember for sure.

Q. You refer to one whose initials were BB, this morning; is that one?

A. EE; no, she wasn't there in 1934 and '35.

Q. Who was there in the office in '34 and '35?

A. Bess Higgins; I believe her name was Bess McDougall at that time. She has been married.

Q. I think you said that when you went to the hospital in Ft. Lauderdale, you were required to guarantee the payment of Thomas' hospital expenses there?

A. Yes, sir.

Q. And did you sign the usual form of agreement for the hospital at that time?

A. I don't remember whether I signed an agreement, or just—I think I just telephoned the lady in charge and told

her I would see her later, and I don't remember whether I signed anything or not.

Q. Well, in whose name did you give that guarantee?

A. I don't know whether I told her personally, or whether I used the company name. If I used the company name, I used Palm Beach Company. I think I just told her personally; she took my word for it for some reason.

Q. Did you tell her who you were?

A. Yes, sir, I told her who I was.

Q. And who did you tell you were?

A. I told her I was with the Palm Beach Company.

Q. You spoke of seeing Carl Holm marking certain valves with a hacksaw, and making disposition of them: And you were asked if you gave permission for those actions on his part. You said that you did not. You did not make any objection either, did you?

A. No, sir; I was not interested in valves at that time at all.

Q. You spoke of some conversation with Captain Pilkington, in which I think you said that he told you that there was no gasoline on the Seminole. You knew that that information was erroneous, that there must have been gasoline on the Seminole at that time, didn't you?

A. I knew there must have been something, because of the explosion.

Q. And you knew, as a matter of fact, all of the gasoline could not be removed from the tanks of the Seminole, didn't you?

A. No, sir, I didn't know it.

Q. You wrote a number of letters to Captain Pilkington, or the Pilkington Boatyard, that appear in the file here; and I note that you invariably signed your own name alone, writing on the stationery of the Palm Beach Company, or else on one occasion,—on two occasions you signed Palm Beach Company, under your name. That

was the way you wrote to Pilkington, was it, using your name of the name of the Palm Beach Company.

A. Yes, sir; I see I have used the name of the Palm Beach Company here.

Q. Most of the time you simply signed your own name?

A. Yes.

Q. This occasion of this conversation with Pilkington about rates, when something was said about taking the boats away, was not the only time that Mr. John S. Phipps expressed an interest in the rates charged on the Seminole, was it?

A. No, sir, I think there was another occasion.

Q. And that other occasion you referred to this memorandum that he wrote on Pilkington's bill of August 31, '32?

A. Yes, sir.

Q. On that occasion he asked to see if you could get a reduction on the Iolanthe and the Seminole, from September on, did he not?

A. Yes, sir.

Q. You say those two occasions are the only occasions when the matter of rates for storage on the Seminole were discussed between you and John S. Phipps?

A. The only other time I remember is one time when Mr. Pilkington reduced the rates on his own; in other words, we hadn't asked for a reduction, and I received a letter from him saying that he was reducing them? I told Mr. H. C. Phipps and Mr. J. S. Phipps about it. That is the only other time I remember talking about rates. The time of the conversation, there hadn't been any conversation between—I mean the conversation between Pilkington and Phipps and myself before that there hadn't been any conversation between Mr. Phipps about it.

Q. You have told us about the only occasions on which the matter of storage was discussed with Mr. J. S. Phipps at all?

A. The ones I remember, yes, sir.

Mr. Matteson:

I think that is all.

Q. Mr. Riley, do I understand you that no one, so far as you know, either verbally or in writing vouched for your authority to Captain Pilkington other than Mr. Bryant, Captain Bryant, who was Captain of the Seminole? Is that true?

A. That is the only one I know, yes, sir.

Q. And as I understand, you hired Captain Bryant?

A. Yes, sir.

Q. And then he vouched for you?

A. Yes, sir.

Q. And on the basis of that, over a period of years, you undertook to give written directions to Captain Pilkington with respect to this boat, the Seminole, and other boats?

A. Yes, sir. Captain Pilkington—I mean Captain Bryant, knew Captain Pilkington, had known him for quite a while I think, at the time he introduced him to me.

Q. And how long after that occasion was it before you visited this yard with Mr. J. S. Phipps?

A. Well, the only other time except 1934, that I can remember, is in 1932; I am not positive whether it was '32 or '33, but it was in the spring, and it was—well, probably in April, or the first of May. That was in 1932 I think.

Q. You visited the yard with Mr. Phipps?

A. Yes, sir.

Q. And when was it that Captain Bryant introduced you to Captain Pilkington?

A. I think it was 1931, the best of my recollection.

Q. Approximately a year earlier?

A. Yes, sir.

Q. Mr. Riley, could it be possible in your judgment, that the sequence of events is, after these many years, con-

fused in your mind, and that you were there with Mr. Phipps on the first occasion of your introduction?

A. No, sir, there is no confusion in my mind at all; because the reason is—the reason I know it was Captain Bryant, because I was either riding in his car or he was riding in mine, I don't remember which,—I think, in mine, and I got lost on the way he told me to turn up a certain street, and I misunderstood him and went the other street, and finally got on the right road. That is the reason I recollect it so perfectly. I had never been to Pilkington's yard before that, at that time.

Q. And is it possible Mr. Riley, in your best judgment, after these long years, that the occasion when you were there with Mr. Phipps was not a year later, but the same year that you went there with Mr.—with Captain Bryant?

A. Well, that is possible, from this standpoint; that it might have been '31, '32 or '33; that I was there. I think I could find from the records of the summary that the trip was taken, and from those I could tell you exactly what year it was that I was there with Mr. Phipps.

Q. It is possible then, as I understand it, that a relatively short time, perhaps a few weeks, might have intervened between the time you were there with Captain Bryant, and the time you were there with Mr. Phipps? I say, that is possible?

A. That is possible, yes.

Q. All right; now then, when you were there with Mr. Phipps, do you have at this time any definite recollection as to just what you did, and where you were, and what was said, on that occasion? I mean, after all these years, can you recollect that picture definitely at this time?

A. Well, of course I know the purpose of the trip.

Q. Wait a minute, would you mind answering the question yes or no, and then make any explanation you want to? I say, can you now recollect it with clearness and definiteness, or are there some indefinite features of that transaction?

A. I would rather not answer it yes or no, because I couldn't tell you just how long I stayed there, no. I don't know whether it was fifteen minutes, a half an hour or an hour.

Q. All right then; there is, as is natural, a certain amount of indefiniteness with reference to the circumstances attending on that visit; is that true?

A. You mean indefiniteness as to what we did?

Q. As to generally what took place there at the time. You don't remember all the details, do you?

A. I think I do,—everything that was of importance. We went there and found the boat, checked the boat over; and I couldn't say what was said when we walked to the boat, no; I can't be positive about that.

Q. All right; now then, do you know whether or not you remained with Mr. Phipps during the entire visit?

A. No, sir, I couldn't swear to that.

Q. In other words it is entirely possible that you might have remained on the boat, looking at some things, or looking at some other boat, and Mr. Phipps walked off and engaged in conversation with others? That is entirely possible, isn't it?

A. That is a possibility, yes.

Q. Then I understood you to say that you never heard Mr. Phipps say to Captain Pilkington, in substance, "This is my secretary", or "Mr. Riley is my secretary", or "Mr. Riley is my representative", or anything of that kind?

A. Mr. Phipps has never called me his secretary; I never have been his secretary.

Mr. Botts:

Would you read the question?—I don't believe the answer is responsive.

(The last question preceding was read.)

Q. I asked you the question, did you hear him make such a statement?

A. No.

Q. With reference to Mr. Phipps' properties, and the management and upkeep of his properties in Palm Beach, you were in a sense his representative?

A. In the same way I told Mr. Matteson, exactly.

Q. In the management of his boats? Don't think I am trying to trick you; I will say, the boats Iolanthe and Clip; you were in a sense his representative in connection with keeping up those boats and caring for them, weren't you?

A. Yes; I took recommendations and gave them to him, and he approved them or disapproved them as he saw fit.

Q. If Mr. Phipps had said to Captain Abel "Mr. Riley is my representative in connection with my boats," that would have been true, wouldn't it?

A. You mean on his boats Iolanthe and Clip?

Q. I say, "With reference to my boats," now. Do you consider the Seminole his boat?

A. No, sir.

Q. Well, then, answer the question.

A. Yes, that would have been.

Q. That would have been true?

And you did, as a matter of fact have the detail or the control with reference to the storage and care of Mr. Phipps' boats, the Iolanthe and the Clip, didn't you?

A. Yes, sir; I knew what the storage bills were, had them approved.

Q. You approved them and they were paid under your approval?

A. No, they were approved by Mr. Phipps also in most cases.

Q. In most cases?

A. Yes, sir.

Q. All right. Now then, except possibly for the personal approval which you sometimes secured, with reference to the payment of bills on the Iolanthe and the Clip,

your handling of the details with reference to the Iolanthe and the Clip and the Seminole were about the same, weren't they?

A. No, sir, they weren't; because I couldn't expend the money on the Iolanthe or the Clip without Mr. Phipps' approval.

Q. But with reference to the storage charges, the storage charges on the Iolanthe and the Clip were paid by checks of the Palm Beach Company, weren't they?

A. Yes, sir.

Q. And the storage charges on the Seminole were always paid, weren't they?

A. Yes, sir.

Q. And with reference to the Iolanthe and the Clip, you would send word to Mr.—to Captain Pilkington, what you wanted done with reference to them, would you?

A. I think for some work, yes.

Q. And you would do the same thing with reference to the Seminole, wouldn't you?

A. Yes, sir.

Q. And in your mind, the difference was with reference to the Clip and the Iolanthe, you were acting for J. S. Phipps, but with reference to the Seminole, in your mind, you were acting for the Seminole Boat Company, is that true?

A. Yes, sir.

Q. But the checks all came from the same source?

A. They were all made by the Palm Beach Company, except a few, that Mr. Phipps—

Q. And the main—

Mr. Underwood:

Let him finish his answer.

A. Except a few that Mr. Phipps made on his own checks, paying for the storage of the Iolanthe or the Clip.

Q. And your contact, however, with Captain Pilkington, was so near identical with reference to the three boats, that it would be difficult for even you to point out any distinction, as far as you were concerned, wouldn't it?

Mr. Underwood:
I object to that, if your Honor please as argumentative.

(The question was read.)

The Court:
Overrule the objection.

Q. Answer the question.
A. Of course Captain Pilkington didn't know what arrangements I had. All he knew, I was looking after the Seminole, and also on occasions I looked at the Iolanthe and the Clip,—if that is what you mean.
Q. Yes. Then in truth there was little difference so far as between you and Captain Pilkington, if any; isn't that true?
A. Yes, I don't know that I ever went into explanation with him as to my duties.
Q. Now then, on this occasion when you and Mr. Phipps were there, it is entirely possible that in your absence Mr. Phipps did make to Captain Plikington a statement to the effect that you were his agent, representative, secretary, or something of that kind.

Mr. Underwood:
If your Honor please, I object to that as speculative. Anything is possible in Mr. Riley's absence.

The Court:
I think it is proper cross examination.

A. I suppose it is possible, yes.

Q. And you can't say that it didn't in fact take place, can you?

A. It didn't take place in my presence.

Q. All right. I have asked you that already; that is all right, I understand that. Now then with reference to the handling of Mr. Phipps' properties, which we will limit to his estate and lands and his boats, the Iolanthe and the Clip,—you state in substance that you performed the ordinary functions of management, and that Mr. Phipps gave instructions to quote your exact words, not in the ordinary course of business. Now will you explain to us just what those things were which you characterized as not in the ordinary course of business, and in respect to which Mr. Phipps gave especial instructions. Can you illustrate?

A. Well, I certainly wouldn't built an addition to Mr. Phipps' house without his telling me to do so. On the other hand, I would pay the employes on the estate, that he knew were there, without his special permission; he knew they were there and knew how much they were to get.

Q. And with reference to his boat, you would pay the employes of his boats without special instructions there through the company?

A. Yes, sir.

Q. Of course I understand that, in the ordinary method that had been established for paying his personal obligations. And the method of paying Mr. Phipps' personal obligations with reference to his estate, and with reference to his boats, was exactly the same as the method for paying the expenses and disbursements with reference to the boat Seminole, isn't that true?

A. No, sir, because he approved the bills on his estates, with the exception of payrolls. Payrolls of course go on in the summer and there is no way of approving them. The bills were sent to him in New York, for work on his

estate, and given to him here in Palm Beach when he was here in the winter, he approved them.

Q. I limited my question to the ordinary expenses for upkeep of his estate, and the payment of ordinary expenses for labor and so forth on his boats. Now, isn't it true that the method of payment of these ordinary expenses on his estate and on his boat, and on the boat Seminole, were identical? Isn't that true?

A. No, sir; I just gave the reason why it wasn't true.

Q. I wonder if you can find voucher 8320.

A. Which bunch was it in? June 29.

Q. June 29. Will you take that please, Mr. Rliey now that as I understand it had three items. One charged to the Seminole Boat Company. How much was that?

A. $5.00.

Q. And one charged to Mrs. F. E. Guest; how much was that?

A. $10.00.

Q. And some charged to J. S. Phipps Boats; how much was that?

A. $45.00.

Q. Now then, those were ordinary expenses with reference to those three boats, weren't they?

A. You mean did I have to get them approved?

Q. I say, those were ordinary expenses with reference to those three boats, weren't they?

Mr. Underwood:

If your Honor please, I submit that the witness feels that he doesn't understand the question.

Mr. Botts:

He doesn't need counsel's help in answering it.

Mr. Underwood:

May I be permitted to make my comments without interruption?

Mr. Botts:

No, sir, you cannot when you are trying to instruct the witness how to answer.

Mr. Underwood:

I resent that accusation. This witness does not need any instruction from you or from me. The witness started his answer with the word "If", so I assume that he didn't feel that he understood the question.

Mr. Botts:

He can say so, if he wants. I am not trying to deceive this witness.

Mr. Underwood:

I think you were trying to mislead him.

The Court:

Do you understand what ordinary expenses are?

A. Well, I wanted to ask him one question.

Q. All right, go ahead.

A. I want to ask if you mean by that that I have to get approval to pay that $10.00 and that $45.00.

Q. I haven't asked you that question. No, sir, that wasn't what I asked—Mr. Reporter, will you read the question.

(The last question was read; "I say, those were ordinary expenses with reference to those three boats, weren't they"?)

A. Yes, those are ordinary expenses.

Q. All right; and who approved the payment of the charge to the Seminole Boat Company?

A. I did.

Q. Who approved the payment for Mrs. Guest's boats?
A. I did.
Q. Who approved the payment of J. S. Phipps' Boats?
A. I did.
Q. Did Mr. Phipps approve them?
A. Well, he didn't on this particular occasion. He approved—
Q. All right, I know that:

Mr. Underwood:
May he finish, please?

A. He approved the work that Abel was doing on that boat.
Q. His approval isn't on the bills, is it?
A. No, sir.
Q. Then is there the slightest difference in the method of handling and paying those three items chargeable to those three people?
A. No, sir.
Q. All right. And isn't that the exact situation that obtained with reference to all other ordinary, usual expenses, with reference to Mr. Phipps' estate,—Mr. Phipps' boat—the boat Semniole? Do you understand that question?
A. I don't exactly understand what you mean by ordinary, no. If you mean payrolls, labor, that is true.
Q. Well, I will quote your words; "Expenses in the ordinary course of business"; you understand that, you used the phrase.
A. Well, by that I meant, payrolls; that is what I had particularly in mind.
Q. Then you didn't mean, repairs?
A. You mean, purchase of material and so forth?
Q. Made in the ordinary course of business; you didn't mean repairs?
A. Not special repairs, no.

Q. Did you mean any kind of repairs?

A. Well, if this man put in a new piece of pipe in the boat, why I suppose that is ordinary business, yes; because he was working, and bought a piece of pipe and put it in.

Q. I want you to understand, Mr. Witness, that I am not trying to trick you about any question; there are some things that I want to give you a chance to make clear, because I am going to comment on them later, and I don't want to be charged with being unfair about that. So if you don't understand the question, I ask you not to answer it until you do. Now you employed Mr. Schlappi, the engineer, didn't you?

A. Yes, sir.

Q. And you assigned him a part of the time to the boat Seminole, didn't you?

A. Yes, sir.

Q. And you assigned him a part of the time to the Iolanthe, didn't you?

A. Yes, sir, when we needed him,—when he was needed.

Q. And you o.k'd the payment of his salary or wages?

A. Yes, sir.

Q. And you o.k'd it to the identical manner, whether he was working on the Iolanthe, or the Seminole, didn't you?

A. I did so far as the vouchers are concerned, yes, sir.

Q. Did you consult anyone in connection with the selection of Mr. Schlappi to act as engineer?

A. The Captain of the boat, yes.

Q. You consulted with the Captain?

A. Yes.

Q. And that is all?

A. Yes.

Q. Now then as I understand it, you had the dealings with Mr. Thomas which resulted in his receiving these monthly gratuities?

A. Yes.

Q. Now did Mr. Thomas approach you and ask you to do something of the kind?

A. No. We discussed it together; I wouldn't say he approached me, and I didn't approach him on it.

Q. All right, where were you when the discussion of this—I don't want to use the word, settlement,—this method of adjusting affairs with Mr. Thomas, occured?

Mr. Underwood:

If your Honor please, I object to the question. There is no suggestion in the evidence thus far, that this was any method of adjusting affairs with Mr. Thomas.

(Discussion by counsel.)

The Court:

As I understand the question, it is, doing business with Mr. Thomas.

Mr. Underwood:

We don't object to that at all.

A. I was—he asked where?

Q. Yes.

A. In the hospital in West Palm Beach.

Q. That was during the period that the Palm Beach Company was disbursing funds in payment of Mr. Thomas' hospital and doctor's expenses?

A. That is right, yes, sir.

Q. And tell us just what you said to Thomas, just what he said to you, if you can.

A. Well, it was—got to the point where he was going to be released from the hospital, and I think I asked him

what his house arrangements were, where he lived; and he told me that he had been worried about that, because of course there was this lameness in his leg; that he wasn't going to be able to go up and down stairs and nobody could carry him up and down stairs. That he had been living in a garage apartment on the second floor, and that he felt he ought to have a house, one-story house. So they told me at the hospital that he should have an attendant for a while, to help him get around. At the time, his wife was pregnant, needed help also. So I don't know just how,—what basis the $125 a month was on, I don't remember the details; but it was the difference between the house rent; he also advised me that his pay had been cut, because he wasn't able to work, and there was that. And then this attendant and the help for the wife; also, telephone to be put in the house so that he could get in touch with the doctor.

Q. Now Mr. Thomas had never been an employe of the Palm Beach Company, as I understand it?

A. No.

Q. Nor, of the Seminole Boat Company?

A. No.

Q. Nor of any of the other Phipps organization?

A. No, sir.

Q. Nor of Mr. Phipps or any of his relatives personally, so far as you know?

A. No, sir.

Q. And then you weren't purporting to pay him wages as an employe?

A. No.

Q. Did you tell him who suggested that they make these continued and substantial payments?

A. No one did suggest it, except me.

Q. No one told you that you were authorized to pay out all this money to Thomas?

A. I talked the matter over with him, and then consulted with Mr. Alley. Mr. Alley gave me approval to go ahead and do it.

Q. Now then, was the payment,—the making of payments aggregating as they have something over $7,200, was that in or out of the ordinary course of business?

A. I should say that was out of the ordinary course of business.

Q. And as I understood it, you said that when payments on the boat, Seminole or for Mr. Phipps', out of the ordinary course of business, came up, you consulted either with the stockholders or with Mr. Phipps; is that right?

A. No, I said I usually consulted with Mr. Alley or with the stockholders.

(And thereupon the hearing was recessed until 9:30 o'clock a. m., the following day.)

Forenoon Session.

May 12, 1939, 9:33 o'clock A. M.

Hearing resumed pursuant to adjournment of the previous day, the witness JAMES F. RILEY, JR. being upon the stand, on continued cross examination.

Q. All right, sir. Now getting down to this fishing tackle that you wanted to get off the Seminole; as I understand it, that was some, what you call grains, or three-pronged fishing spears?

A. Yes, sir.

Q. Some glass bottom buckets?

A. That is right.

Q. Some, I believe you stated, gaff hooks?

A. Right.

Q. Did you say boat hooks. I have forgotten.

A. No, gaff hooks; and I think there was some bait nets, I think they call them, made out of wire.

Q. That would be wire with cotton string mesh, is that what you mean? Isn't it fish net or something of that kind?

A. No, I mean the bait nets that they put live net in and drop down in the water. I can't describe them.

Q. I call them bait cars. I think that is the technical name for it.

A. That may be.

Q. Now as I understand it you say that previous to this year, those things had been stored in Miami?

A. That was my understanding. We never had stored them at Palm Beach.

Q. You never had stored them at Palm Beach. You don't know as a matter of fact if they had ever been stored anywhere—I mean, of your own knowledge?

A. Nothing except what Mr. Hawkins told me.

Q. You don't know of your own knowledge then?

A. No.

Q. And so far as you know they might have been left on the vessel during the summer?

A. Possibly so, but I don't believe so. I think I would have seen them on the vessel on my inspection trips.

Q. Not at the time when you discussed with Thomas, these payments that were made to him, and began the practice of making these monthly payments to him, you were aware that Mr. Thomas had never previous to that time been an employe of the Seminole Boat Company or of the Palm Beach Company, or any of the Phipps personally?

A. Yes, sir.

Q. And you were also aware that, save and except for a possible junk value of the vessel Seminole, that the Seminole Boat Company was entirely without any assets which could have been made the subject of any claim?

A. I was not aware of that. I don't know anything about the books of the Seminole Boat Company, what the set-up is.

Q. Oh, you didn't know anything about the financial standing of the Seminole Boat Company?

A. I don't know anything about the books of the Seminole Boat Company, if that is what you mean.

Q. Wait a minute; did you know anything about the financial condition of the Seminole Boat Company?

A. Well, I knew that the Seminole Boat Company owned the Seminole and another small boat.

Q. And another small boat?

A. Yes, sir.

Q. You knew it had no bank account?

A. Yes.

Q. And you knew it had no income?

A. Well, they tried to make an income.

Q. Well, it didn't in fact, have a nickel of income except contributions from the stockholders, since about 1931, isn't that a fact?

A. No, I never did handle the charters.

Q. Since it has been in your charge, the boat Seminole had never earned a dime?

A. It never was chartered out of Palm Beach and it was at Palm Beach that it was in my charge.

Q. From the time you had charge of the boat Seminole, beginning at about 1932, up until the time of the fire, it had never earned a dime, had it?

A. Not that I know of.

Q. And you knew that all of its obligations had been paid in the first instance by the Palm Beach Company, on vouchers approved by you, and the Palm Beach Company reimbursed from the stockholders of the Seminole Boat Company? You knew that, didn't you?

A. Yes, sir, I knew that the Palm Beach Company advanced moneys to the Seminole Boat Company.

Q. And you knew that they got those moneys back from the stockholders of the Seminole Boat Company, didn't you?

A. Eventually, yes.

Q. Yes, all right. Now then Mr. Riley, didn't you as a matter of fact know—now let's get right down to brass tacks. Didn't you know that the Seminole Boat Company after that fire had no assets whatever except possibly value of the boat Seminole; and I will ask, the value of this small Prigg fishing boat? Don't you know that was its sole assets?

A. Those were all the assets that I knew of, yes, sir.

Q. And you had been the active manager of it for about four years, had you?

A. Yes, sir.

Q. And you didn't know anything else?

A. Well, I was active manager of the Seminole, yes, and those are all the assets I ever heard of in the Seminole Boat Company.

Q. Well, you had a pretty well convinced idea that it had no assets, except those that I have mentioned, didn't you?

A. Yes, sir, I don't think it had any others.

Q. Now then, knowing that the Seminole Boat Company had no assets except those that I have mentioned, and that the fire originated on the Seminole, and so on, you knew that John Thomas couldn't successfully collect any substantial amount from the Seminole Boat Company, didn't you, even if he could successfully get a judgment against them? You knew that, didn't you?

A. I suppose I did, I never thought of it.

Q. Well, I am trying to get just exactly what you were thinking about then, when you initiated these payments ultimately running up to seven thousand, two hundred odd dollars to John Thomas. Just what liability were you thinking about?

A. Well, I felt sorry for John Thomas. There was a man that had either—his pay had been cut, and he had no way of living, that I could see, the way he was going to have to live.

Q. Of course everyone would feel sorry for them; there were lots of other unfortunates in Palm Beach, weren't there?

A. Yes, sir, that is true.

Q. Did you happen to make any such gratuitous payments to any other unfortunates in Palm Beach along about that time?

A. No, sir, not that I remember.

Q. Well, then, can you give any explanation now, other than the natural human sympathy which we all have for an unfortunate,—why you voluntarily made these various substantial payments, which are still continuing to this young man?

A. Well, nothing more than what I have said; I felt sorry for him; I went to Mr. Alley and asked him if we couldn't do something for him. He asked me how much, and I told him.

Q. You are the one that suggested it, then?

A. Yes, sir.

Q. Oh, yes. Now then you were at that time interested in collecting and preserving evidence with reference to this transaction, weren't you?

A. Yes, sir.

Q. Especially evidence that would fix liability on the Seminole Boat Company?

A. No, not especially; just trying to get the facts.

Q. Just trying to get the facts; all right. Now then in view of your interest in this evidentiary situation, I will ask you this: If at the time when you suggested these payments to John Thomas, it remotely occurred to you that John Thomas was the only living witness to that transaction?

A. I knew that he was the only living witness, yes, sir, except Pilkington and the rest of them that were there at the yard.

Q. Did you think of that circumstance in connection with the advisability of making these payments?

A. I didn't at the time, no, sir.

Q. You didn't. Now my recollection is that at the time when you made this guarantee to the Broward General Hospital, you did so in the name of the Palm Beach Company, or by identifying yourself as being connected,—or personally identifying yourself as being connected with the Palm Beach Company, is that right?

A. Yes, sir.

Q. All of these expenses of John Thomas appear now to be recorded in the ledger of the Seminole Boat Company; you are aware of that, aren't you?

A. I believe they are, yes.

Q. Did you direct that these items be charged against the Seminole Boat Company?

A. I believe so, yes, sir.

Q. All right now, just when was it, will you mind telling us, when you decided that you would charge these expenses against a company different from the one in whose name you made the guarantee?

A. Well, that was the usual course of business, with anything that pertained to the Seminole Boat Company, we charged to the Seminole Boat Company on the Palm Beach Company books.

Q. But you didn't make the guarantee in the name of the Seminole Boat Company, did you?

A. No, sir.

Q. I am just trying to find out whether or not the thought of carrying this Palm Beach Company guarantee in effect by recording the charges in the books of the Seminole Boat Company, with the thought that occurred to you along the time maybe when you were getting photostats of these gasoline slips?

A. No, sir, I don't believe so, because I paid, as I remember it I paid the hospital $200 on the next day after the fire; either the next day or the third day.

Q. Now I believe you said that you were present when you saw Mr. Carl Holm pick up some valves from the rubbish and debris in the engineroom of the Seminole and mark them with a hacksaw or a file?

A. Yes, sir, I was present.

Q. I am not sure that I can quote you exactly, but my recollection is that you said at that time that you were not particularly interested in those valves?

A. I was not.

Q. Up to that time you had never been interested in the valves from the engineroom of the Seminole, is that true?

A. That is true, yes, sir; never thought of them.

Q. During all these years when you were inspecting the Seminole from time to time, during all those years, you hadn't been interested in those valves, had you?

A. Well, I left that entirely up to the engineer and Captain. I don't know anything about valves.

Q. During all those years you had never inspected those valves, had you?

A. No, sir.

Q. And during all those years you had never inquired to find out whether anybody else had done so, had you?

A. No, sir.

Q. All right. Had you ever looked at the tanks of the Seminole?

A. No, sir.

Q. You didn't know a thing in the world about how they were constructed, or anything else, did you?

A. No, sir.

Mr. Botts:

I think that is all.

By Mr. Matteson:

Q. May I ask just a few questions more?

The Court:

Yes, sir.

Q. Mr. Riley, Captain Abel did act, at least part of the time, as Master of the Clip, did he not?

A. Yes, sir.

Q. And he also acted as Master of the Iolanthe?

A. Yes, sir.

Q. When it was in operation. He had never acted as Master of the Seminole?

A. No, sir.

Q. I was looking over these gasoline charges here on these different slips; there seem to be a number of them for a Ford coupe. Whose car was that?

A. A Ford coupe?

Q. A Ford coupe.

A. It would be impossible for me to say offhand, I don't know.

Q. Well, here—look at these, who did you charge those to when they came in?

A. It looks to me as though these slips are for the car that was owned by Abel. I thought he had a Chevrolet coupe. The reason I say that is because in most cases the amount of gasoline is five gallons; and he was allowed five gallons of gasoline per week. There is the 19th, 24th—

Q. Well, here are quite a number that have no heading at the top, except J. S. Phipps, and they are all five gallons too.

A. I believe these—those are all under—for gasoline on the car that Abel had.

Q. You are referring now to these slips that I have shown you, that have no heading except, John S. Phipps?

A. Yes, sir.

Q. Now I have shown you a number with the heading, Ford Coupe; and here are a number of more; some seem to be headed, Chrysler Coupe and Chrysler sedan.

A. The Chrysler sedan belongs to Mr. J. S. Phipps.

Mr. Underwood:

May I see the ones you say are headed Chrysler coupe? —That isn't Chrysler. I don't want to say this in the presence of the witness; come over here and I will tell you what it is:

Mr. Matteson:

I have no objection to your suggesting it to the witness.

Mr. Matteson:

I don't want to be in the position of suggesting anything.

Q. This one I have referred to as Chrysler coupe, may be a Chevrolet coupe.

A. Chiv, that looks like.

Q. So that is a Chevrolet coupe. Then we have a Ford sedan, Chevrolet coupe, and a Chrysler sedan.

A. Have a Ford coupe instead of a Ford sedan.

Q. Did I say sedan? Ford coupe, *Chrysler* coupe, Chrysler sedan, is that it?

A. Yes, sir, that is correct.

Q. Now can you tell me whose cars these were, and to whom the charges were made on those different cars?

A. On these tickets that have no car marked on them at all, I am sure that is Abel. The Ford coupe I am not sure of, I don't know who that belonged to. It might have belonged to Abel and later he traded it in for this Chevrolet coupe; I know at the time of the fire he had a Chevrolet coupe. The Chrysler sedan belonged to Mr. J. S. Phipps personally.

Q. And did Abel at times drive the Chrysler sedan for Mr. Phipps?

A. Yes, sir, he has.

Q. And did he use his own car on company business?

A. You mean other than for Mr. J. S. Phipps?

Q. Well, I mean the general business that you would assign to him.

A. No, not unless he bought gasoline for it.

Q. What was the reason for the allowance to him of five gallons a week?

A. Well, he did a lot of running around with his car; he came to and from work in his car; and Mr. Phipps said "Just to let him have five gallons of gasoline a week."

Q. He did do more or less running around on the company business?

A. No, sir.

Q. I thought that is what you said was the reason for the allowance.

A. No, not company business; on Mr. J. S. Phipps' business.

Q. On Mr. J. S. Phipps' business. So when he wasn't occupied actively as Captain of one of the boats, he would sometimes act as a chaueffeur, is that right?

A. No, sir, not as a chaueffeur. The times that he would use that Chrysler sedan would probably be, if he went on a hunting trip or a fishing trip, they would go out and do some fresh water fishing, of that sort, and he did go on quite a few duck hunting trips, and he usually used the Chrysler to carry along paraphernalia with, that was used.

Q. Well, did he or did he not use these cars for general errands, or occasional errands, for you or for Mr. Phipps?

A. You mean the Chrysler sedan or any of them?

Q. Any.

A. He used his own car for errands for Mr. Phipps.

Q. You were saying yesterday that this entry number 4206, representing Abel's salary for a week, charged to

Townsend Martin, was because he was doing something for Townsend Martin that week. Can you tell me what he was doing for Townsend Martin that week?

A. No, sir, that would be impossible.

Q. But is it possible, or is it a fact, that Mr. Townsend Martin was using the Clip that week?

A. I don't know; it is possible.

Q. You haven't any recollection at all of what he was doing for Townsend Martin?

A. No, sir, I don't.

Q. Did Townsend Martin at that time have the use of the Clip?

A. Yes, Mr. Phipps loaned it to him.

Q. And on such occasions, would the wages of Abel be charged to Mr. Townsend Martin?

A. No, not when he was on the Clip. If it was, Mr. Phipps loaned it to him he never charged him for the operation of it.

Q. And you didn't charge the wages involved, to Mr. Townsend Martin?

A. I don't believe so. I don't think Mr. Phipps ever made him pay the wages when he was using the Clip; but I am not positive of that.

Q. Then I take it that this second voucher, 4247, $32.60, for salary and reimbursement of expenses to Abel, charged to Mr. Townsend Martin—do you have any recollection of what that was for,—what he was doing for Mr. Townsend Martin at that time?

A. No, sir, I don't.

Q. And then here the next voucher, 4364, four weeks' salary, charged to Mr. Townsend Martin, do you recall what that was?

A. No, sir, I don't.

Q. No recollection?

A. I can't say exactly what he was doing. I think I might find out from the files.

Q. That was in 1933, wasn't it?
A. Yes, sir.

Stipulation:

It is stipulated that in the first line on page 1562, the word "with" should read "without".

The Court:
That is stipulated with all counsel, is it?

Mr. Botts:
Yes, I remember it clearly.

Mr. Underwood:
Yes, that is right.

Re-Direct Examination.

By Mr. Underwood:

Q. Mr. Riley, do you remember whether you had any conversation with anybody before you went down—between the time you got the carbon copy of the gasoline slips, and the time you went down for the original?

A. I might have had conversation with Mr. Alley, I am not positive of that.

Q. Do you remember about that definitely, either way?

A. No, sir.

Q. Mr. Riley I note that of these forty-six gasoline slips the ones dated May 15, 1934,—there are two of that date—one dated May 16, 1934 and one dated May 11, 1934, are all charged to Chrysler sedan; and three I think, bear in addition to the designation of car, the initials, T. B. M. That is May 16 to 17, inclusive, 1934. Is it not a fact that Abel's pay for the week of May 17, 1934 was charged in part, and for the week of May 24, 1934 was charged ap-

parently in toto, to either Mr. Townsend or Mr. Bradley Martin?

A. Yes, sir, that is correct.

Q. When this analysis of the payroll of Abel's was made up, is it a fact that Townsend Martin's and Bradley Martin's charges were included in the same column?

A. Yes, sir.

Q. So without looking at the original payrolls, you can tell whether it is Townsend or Bradley?

A. No, sir.

Q. The original payrolls would show that?

A. Yes, sir.

Q. The original payrolls would show that?

A. Yes, sir.

Q. Can you tell me why it was that the gasoline purchased for the Chrysler was charged to one of the Martins, if the Chrysler was owned by John S. Phipps?

A. It is possible that the car might have been loaned to Townsend Martin on that particular occasion, and that naturally he wouldn't expect to have loaned him the car with gasoline, he might have insisted on paying for it.

Q. You were asked some questions about your dealings with John Thomas, while under fire. Did you ever make any agreement with him, directly or indirectly, expressed or implied, as to the character of his testimony?

A. No, sir.

Q. Or as to what he would say as to what transpired on the Seminole on the day of the fire?

A. No, sir.

Q. When Mr. Botts was speculating with you about the possibilities of signing the gasoline tickets, I observed that he held the pad in his left hand, with his thumb, his left thumb firmly fixed across the pad at the top, covering the line reserved for the name and address of the charge, and he asked you whether or not the thing might slip. I am going to ask you to tell me and show the Court

under what other circumstances a man might possibly hold that pad to sign it; not all possibilities but just a few that occur to you.

A. Well, in some cases, in the first place this top is made out in the office before they ever bring the ticket out to you; I have seen them mark it a lot of times; they see who comes up, and makes the ticket out and bring it out for you to sign. When they hand it to me in the car, I usually put it on my steering wheel like that.

Q. You have indicated your thumb covering up more than half an inch of the left margin of the pad.

A. Yes, sir.

Q. And no other finger on top of the paper?

A. No, sir.

Q. All right, go on.

A. Or, I put it on the sill of the door, on the side, and sign it.

Q. Indicating the same position of the thumb?

A. Yes, sir.

Q. Have you ever seen anybody sign a gasoline ticket where the pad was held by the station attendant, and the signature written by the purchaser, without holding the pad himself at all?

A. No, sir, I don't believe I have.

Q. Have you sat in a car and reached outside the car to sign the ticket, when the station attendant was holding the pad?

A. No, sir, I don't believe I have.

Q. Is it quote possible that a man might also sign the pad by holding it in his hand as I have it now, with the three fingers against one side, and the thumb against the other side, but neither fingers nor thumb over the top of the paper?

A. Yes, sir, I think he could sign that way.

Q. Is it quite possible that the upper ticket might slip over the lower ticket while the pad was being signed in some such way?

A. Yes, sir.

Q. You have recalled, I think, sending a man down to the Seminole shortly after returning from the cruise in the spring of 1935, to bring back some beds or springs or something of that sort?

A. Yes, sir.

Q. Do you know whose property those things were?

A. They belonged on the Iolanthe, which was owned by J. S. Phipps.

Q. You mean that they had been borrowed for this cruise from the Iolanthe?

A. Yes, sir.

Q. Now at that time what was Randall's position in the office?

A. I suppose you would call him office boy. He did errands.

Q. How old a person is he?

A. Sixty-three I believe.

The Court:

He was in the office of the Palm Beach Company?

A. Yes.

Q. He was in substance the Palm Beach Company's office boy, was he?

A. I think I am right about that. He used to work for Mr. J. S. Phipps, and he was at our office, and I am not sure the year, it was either '34 or '35, but I believe at this time he was working there in the office, as office boy.

Q. Did you make any report to anybody of your inspections of the Seminole?

A. Well, I discussed the inspections with Mr. Alley.

Q. Did you make any reports concerning the engine plant and the gasoline lines or tanks of the Seminole?

A. No, sir.

Q. How did you get your information as to the condition of the engines and the gasoline lines and tanks and

the electrical equipment and so on, in the engineroom of the Seminole?

A. I depended entirely on the Captain and engineer to tell me whether there was anything necessary,—repairs or replacements.

Q. Did you have any report from them from time to time, as to that?

A. Yes, sir.

Q. Have you had any mechanical experience yourself?

A. No, sir.

Q. You told us yesterday that you worked for a contractor, as I recall it, before you went to work for the Palm Beach Company. What did you do before that?

A. I worked in a brick and tile manufacturing plant.

Q. And before that?

A. I was at school before that.

Q. Where did you go to school, and how long were you in school, and what did you study?

A. I went to prep school for two years.

Q. Where?

A. At Marion, Alabama; and then I went to Washington and Lee University in Virginia one year, and went to Alabama Polytechnic Institute in Auburn, Alabama for one year.

Q. You were asked yesterday, with voucher number 97 of Exhibit 78 before you, about the entry dated August 9, Palm Beach Service Station, gas $2.19, indicated the date of payment. Do you remember that?

A. Yes, sir.

Q. What payment do you mean that that indicated? Payment from whom, to whom?

A. Well, this August 9 does not indicate the day that we paid the Palm Beach Service Station.

Q. What does it indicate?

A. It indicates—

Mr. Matteson:

Does the witness know? * * *

A. I really don't know, no.

Q. Do you remember what you were about to do, if anything, with the originals of these two gasoline tickets signed by Abel on the day of the fire, when you had the photostats made?

A. I gave the original, and I think a copy too, to Mr. Alley, and kept the photostats in our files.

Q. You said something yesterday about being in charge of the Iolanthe and the Clip. Who was it that gave your instructions to you as to that?

A. Mr. Phipps.

Q. Did you get any instructions as to that from Mr. Alley?

A. No, sir.

Q. Have you that file of Pilkington letters, to and from? —I show you Libelants' Exhibit 49, did you write that letter?

A. Yes, sir.

Q. That is in August, 1931?

A. Yes, sir.

Q. I show you another letter dated April 16, 1935; did you write that letter?

A. Yes, sir.

Q. That Libelant's Exhibit 53. Is that the one that you gave to Randall, of whom we spoke a moment ago?

A. Yes, sir.

Q. When did he go down there with reference to the date of that letter?

A. He went down the same day.

Q. Mr. Matteson has asked me too, to have you identify all your letters in here; we will go through and do it. There is Exhibit 49, dated August 26, 1931; you wrote that?

A. Yes, sir.

Q. Exhibit 55 dated January 2, 1932?

A. Yes, sir.

Q. Exhibit 41 dated May 18, 1933?

A. I dictated that but didn't sign it.

Q. Who signed it?

A. I don't know; the stenographer's initials are there.

Q. There are some initials below the pen and ink, J. F. Riley?

A. Yes, sir; the initials are E. H., which indicate Edna Holmes.

Q. Exhibit 50 dated September 13, 1932, did you write that?

A. Yes, sir.

Q. —and sign it?

A. Yes, sir.

Q. Exhibit 56 dated March 21, 1933, did you write and sign that?

Q. Exhibit 57 dated May 3, 1933, did you write and sign that?

A. Yes, sir.

Q. Exhibit 47, dated May, either 2 or 3, 1934, did you write and sign that?

A. Yes, sir.

Q. That is all in your handwriting?

A. Yes, sir.

Q. Exhibit 48 dated September 5, 1934; is that all in your handwriting?

A. Yes, sir.

Q. Exhibit 53 dated April 16, 1935, did you write and sign that?

A. Yes, sir.

Q. Exhibit 60, without a date, did you write and sign that?

A. Yes, sir.

Q. That is the one you gave to Captain Abel on the day of the fire?

A. Yes, sir, all in my handwriting.

Q. And Exhibit 62 dated September 30, 1935, did you write and sign that?

A. Yes, sir.

Mr. Botts:

I take it the one he didn't sign, he accepts responsibility for as if signing. I don't know what is in it.

A. Yes, I accept.

Q. Mr. Riley, you were asked yesterday about the nature of your management of the J. S. Phipps estate. I would like to ask you how that compared with your duties as to the personal estate of H. C. Phipps and Mrs. Guest, and Howard Phipps.

A. Practically the same.

Q. And generally, what are those duties as to the estates? And by estates, I mean their residences and the land around them.

A. Well, they have certain employees on the estate; they are paid each week, and I in a general way supervise their work; I supervise any repair work that is necessary on the improvements; and when any new construction is done I usually handle obtaining bids, having plans made for that sort of work, and any repairs in the house, I have a staff of men that make repairs on plumbing, carpenter work, painting.

Q. When you made purchases for those estates and for companies that you occasionally do things for, what is the form of making those purchases?

A. We use a requisition system in our office. A requisition is made out to the company or contractor, whoever it might be, that we are ordering the work done, or buying any goods there.

Q. Whose requisition is that?

A. Palm Beach Company's requisition.

Q. You were asked yesterday, and we had some discussion about the ordinary expenses in connection with

the Seminole. Will you tell me what was ordinary for the Seminole, compared with what was ordinary for the Iolanthe? And the Clip, and Mrs. Guest's boat, Dorothy?

A. Well, what was ordinary for the Seminole was, various small repairs that I would authorize, o.k. the bills for and have paid. In the case of the Iolanthe and the Clip and Mrs. Guest's boat the work was approved before it was done, and then in some cases the bill was approved after the work was finished, before the bill was paid.

Q. When you say it was approved before it was done, on the Iolanthe and the Clip and the Dorothy, by whom was it approved?

A. By the owners of those boats; in most cases verbally.

Q. Was that true of the ordinary expenses on the Seminole?

A. No, sir.

Q. You were asked yesterday whether Mr. Martin,—I have forgotten whether Townsend or Bradley Martin, was in Palm Beach at the time of the fire, and you said that you recalled whether he was or not, but you weren't asked what you recall. What is your recollection as to that?

A. I know he wasn't in Palm Beach the day of the fire, because I had a telegram from him the next day, asking that I buy flowers and send them to Abel's funeral.

Q. Where did that telegram come from?

A. It came from New York.

Q. There was some discussion yesterday about when it was you decided to make the charge against the Seminole Boat Company for Abel's pay for June 24, 1935, as it appears on voucher 8320 of Exhibit 3-V. When did you determine that Abel's pay was to be charged for that day, to the Seminole Boat Company?

A. I determined that on the day of the fire.

Q. When did you make the charge?

A. On June 29, 1935.

Q. What part of the day of the fire did you reach that determination as to the charge?

A. In the morning, before Abel left Palm Beach.

Q. You were asked yesterday whether this file of vouchers is all that there were for Abel. Tell me just what you did in that respect.

A. Well, we had a system of filing these vouchers as to name, in alphabetical form; and we went through and got all vouchers that had the name, R. C. Abel, on them.

Q. Who went through and picked them out?

A. Mr. Anderson.

Q. Who did he give them to?

A. He gave them to me.

Q. You gave them to me?

A. I gave them to you or to Mr. Alley.

Q. Did you give me or Mr. Alley all that Mr. Anderson gave you?

Mr. Underwood:

I will ask my friends to accept my statement that is all I received.

Mr. Botts:

All right, we will even stipulate that.

Q. There was some mention yesterday of a trip to Bimini, following the fire Who made that trip?

A. In the Iolanthe?

Q. Yes.

A. When, did you say?

Q. Who. Who made the trip?

A. I understand you to say, following the fire?

Q. Was it following—I should say, following the lay-up of the Seminole. I am sorry.

A. Mrs. Guest.

Q. Did you find anything that will make your memory certain as to when it was that you and Mr. Phipps first went to Pilkington's yard together?

A. Yes, sir.

Q. What did you find?

A. I found a list of groceries that I had made up at the time the trip was taken, in the summer—August, 1932.

Q. Is that the list?

A. Yes, sir.

Q. Is that what refreshes your recollection?

A. Yes, sir.

Q. What year was it that you and Mr. Phipps first went to Pilkington's together?

A. In August—I mean in about April or May, 1932.

Mr. Matteson:

I shan't offer this, because I don't think it is necessary to encumber the record; but you may examine it if you like.

Q. While Mr. Botts was cross examining you yesterday about what was said by Mr. Phipps on that first trip in 1932, you said, according to my notes, "I couldn't say what was said when we walked through the boat." To whom did you refer when you said, "We walked through the boat?"

A. Mr. Phipps and myself.

Q. Where was Mr. Pilkington when you and Mr. Phipps were on the boat?

A. I don't know, he wasn't in the boat.

Q. Now, you were asked whether on that occasion it is possible that Mr. Phipps may have gone off by himself and talked with others. What is your recollection as to whether he did that or not?

A. I don't remember him going off and talking to anybody.

Q. Do you remember being separated from Mr. Phipps on that occasion at all?

A. I don't remember it, no, sir.

Q. You were asked some more questions about this voucher and these payments to Abel, voucher number 8320 of Exhibit V, and you were asked whether you got authority from Mrs. Guest for that $10.00 charge, and from Mr. Phipps for the $45.00 charge, at the time you made the charges. You answered in the negative, as I recall it. Will you tell me anything more you have to say about your authority to charge that $10.00 and that $45.00 to Mrs. Guest and Mr. Phipps respectively?

A. Well, I had permission to do the work that that indicates, both on Mr. J. S. Phipps' boat and on Mrs. Guest's boat.

Q. From whom did you get that permission?

A. From Mr. J. S. Phipps and from Mrs. Guest.

Q. In other words they approved those expenses before they were incurred?

A. That is right.

Q. So that you needed no further approval at the time the bill came on for payment?

A. No, sir.

Q. I think you have said Mr. Riley, that your interest was not in the valves and so on that Holm was handling and removing from the boat, on the Wednesday morning, I think it was, following the fire. Do you remember what your interest was centered on at that time?

A. My interest then was entirely, getting the boat out of the boat, and making the funeral arrangements for the body.

Q. You were asked about the employ of Schlappi as engineer on other boats other than the Seminole. Will you tell me where your authority came from, as to that?

A. From the persons who owned those boats.

Q. And was it general or specific authority? That is, did you have general authority to do that; or, when a boat was going to be used, did you get specific authority?

A. In the case of Schlappi, he had proved satisfactory as an engineer, and I had general authority.

Q. Well my point is not quite that. Who was it wanted an engineer when you hired Schlappi for the Iolanthe, for example?

A. The owner wanted an engineer, J. S. Phipps.

Q. As I understand it then, it was the owner that decided that he wanted an engineer, and it was you who decided that he would have Schlappi at that time?

A. Yes, sir.

Mr. Underwood:

That is all.

Mr. Botts:

Listen to this; I want to ask a question and see if this is agreeable: It is stipulated that the document produced by the witness, from which he stated he refreshed his memory as to the date when he and Mr. Phipps visited the Seminole, consists of an itemized list of groceries, and that the only date appearing on it is a pencil memorandum, August, or Aug.—1932.

Mr. Underwood:

Will you read the last part of that to me.

(Statement was read.)

The only pencil memorandum as to date?

Mr. Botts:

As to date, I mean, yes; I said, the only date is a pencil memorandum, August 1932.

Mr. Underwood:

That stipulation is satisfactory to me.

Mr. Botts:

Then we won't have to file the document in evidence.

Mr. Underwood:

That makes it necessary for me to ask a couple of more questions:

Q. When did you find this document?
A. This morning.
Q. Was the date, Aug. 1932, on it when you found it?
A. Yes, sir.
Q. And in whose presence did you find it?
A. Yours and Mr. Alley's and Mr. Anderson's.

Re-Cross Examination.

By Mr. Botts:

Q. As I understand it you found that document this morning?

A. Yes, sir.

Q. Now then, when, previous to today, had you last seen that document?

A. I don't know, Mr. Botts; it has been a long time ago.

Q. Back in 1932, perhaps?

A. Perhaps, I just don't remember when the last time I saw it was.

Q. Now then there is nothing on that document remotely referring to a visit to the boat Seminole or the Pilkington yacht basin, is there?

A. No, sir, not to my knowledge.

Q. Then the connection between this document, and the visit, so far as there is any, is purely in your mind, isn't it?

A. That is right.

Q. Now did you ever have any other grocery list for the Seminole?

A. Yes, sir, I think there have been some others.

Q. Weren't there grocery lists—weren't there groceries bought for the Seminole in 1931?

A. I don't remember whether there was a trip in '31 or not.

Q. You don't know?

A. No, sir.

Q. Well, after all, about the only connection between the two is that you found a grocery list and that you have some recollection in your mind that the year that those groceries were bought, was the year that you and Mr. Phipps visited the Seminole, is that it?

A. Yes, sir, that is the only trip that I can remember, that was taken during the summer; that was in August.

Q. And your impression now is that in the spring—I believe you fix it about April, to the best of your knowledge?

A. Yes, sir.

Q. —prior to this trip, was the time when you and Mr. Phipps visited the Seminole at Pilkington's yacht basin?

A. Yes, sir.

Q. And that is your best recollection at this time?

A. Yes, sir.

Q. Now then I understood from you in answer to Mr. Underwood's question, that after you had procured these two gasoline slips, the original and the carbon, and had them photostated, you then delivered the original to Mr. Alley and you retained photostats for your file, is that correct?

A. That's the way I remember it.

Q. Yes. Now then this was just about the time, or shortly after you had the photostats made, that you delivered the original documents to Mr. Alley, was it?

A. Yes, sir.

Q. So that would probably be some time in the early part and maybe up to the middle of August, 1935, when you delivered those slips to Mr. Alley? That would be about the time wouldn't it?

A. From the middle of July on through. I don't know just when it would be.

Q. Well, I think the bill for the photostating, I have it in my mind, that is in August.

Mr. Matteson:

August 9th.

Mr. Underwood:

That is the date on the Seminole Boat Company vouchers, but it doesn't follow that that is the date the photostating company was paid.

Mr. Botts:

All right, I just wanted to get it straight in my mind.

Mr. Underwood:

If that date is important we will try to dig out from our files the original bills from the photostating company.

Q. From the time that you first had your attention called to this carbon copy of the slip up until the time that you delivered the same to Mr. Alley, it was continuously in your custody and under your control?

A. Yes, sir.

Q. And from the time that you—probably on the same day as you indicated, secured the original of the slips from the filling station, until you delivered both the documents to Mr. Alley, that original was in your possession, is that right?

A. Yes, sir, except—

Q. Except the time when it was being photostated?

A. Yes, sir.

Q. And that delivery might have been any time from sometime in July to as late as perhaps the middle of August,—that time of delivery to Mr. Alley?

A. Yes, sir; I can't place—I mean I can't designate the exact time.

Q. But anyway, during that whole period you have had the documents?

A. Yes, sir.

Mr. Botts:

That is all.

By Mr. Matteson:

Q. Mr. Riley, this slip from which you refreshed your recollection, this typewritten page, it has no typewritten date on it of course, but the date of August 1932 is written across the top.

A. Yes, sir.

Q. Is that a memorandum of yours? Did you write that?

A. No, sir.

Q. I notice that the charge—I suppose it is a charge, the word, boat, is written at the top of page 2?

A. Yes, sir.

Q. Who wrote that?

A. That looks like mine; I wouldn't be positive, but it does look like my writing, yes, sir.

Q. And various little pencil corrections down the page, do you know who made those?

A. This pencil correction of Hormel is mine; and table and packs. I believe that is all of them.

Mr. Matteson:

I would like to have this marked for identification.

Mr. Underwood:

I have no objection.

(Thereupon the said typewritten list was marked Libelants' Exhibit 108 for identification.)

Q. You say you attended Alabama Polytechnic for a year?

A. Yes, sir.

Q. What were you studying there?

A. Architecture.

Q. With respect to this charge appearing on the Seminole books for gasoline and for photostats, dated August 9, 1935, you said in the first part of your testimony this morning that that was not the date on which it was paid. Later on I gathered that you just didn't know whether it was or not; is that the fact?

A. No, I said I feel positive that that is not the date that we made the check out, Palm Beach Company's check to pay that gasoline account.

Q. But you don't know, that is just your thought about it?

A. Yes, sir.

Mr. Underwood:

I will get the check if you have and interest in its exact date.

Mr. Matteson:

At this particular juncture, I don't care.

Q. Where was the Iolanthe at the time of the fire?

A. It was at Palm Beach.

Q. And was Schlappi working on her at that time?

A. No, sir.

Q. This trip that Mrs. Guest made to Bimini on the Iolanthe, to whom were the expenses of that trip charged?

A. I can't say offhand. Mr. Phipps may have given her the trip, or she may have paid for it. I really don't know, without going to the record.

Mr. Matteson:
That is all.

Mr. Botts:
Just one more thing.

Q. What is the name of this man that runs this filling station? Is it Harkness or Harkins?
A. Harkins.
Q. Harkins?
A. Yes, sir.
Q. Now, when you went to Mr. Harkins to get this original of this slip, what explanation did you make to him as to why you wanted it?
A. I just told him I wanted it.
Q. Didn't tell him why?
A. Asked him if he had it.
Q. Didn't tell him why you wanted it, or anything?
A. No, sir, I don't remember telling him.

Mr. Botts:
That is all.

(Witness excused.)

2037 MR. R. A. ALLEY was recalled as a witness on behalf of Respondents and further testified as follows upon:

Further Cross Examination.

By Mr. Botts:
Q. Mr. Alley, you have heard Mr. Riley's statement with reference to the original and carbon of these gasoline slips being delivered to you?

A. That is right.

Q. You recall the circumstance of that delivery to you, do you?

A. Yes, I remember it.

Q. I don't suppose you recall the exact date?

A. No, I couldn't now.

Q. From the time when Mr. Riley delivered those documents to you have they been,—and up until I will say you delivered them to Mr. Underwood, who produced them here in Court,—have those documents been continuously in your custody and control?

A. They were either in my control or in the control of Mr. Scott. That is, I don't recall whether I delivered personally to Mr. Underwood, or whether I sent them to Mr. Scott to deliver them to Mr. Underwood.

Q. You kept them in your safe or files there in Palm Beach until they were ultimately sent to New York, either directly to Mr. Underwood, or for delivery to him, is that right?

A. That is correct.

Mr. Botts:

All right, that is all.

Re-Direct Examination.

By Mr. Underwood:

Q. What was the first you knew about this gasoline ticket?

A. Mr. Riley called me as soon as he had received the bills from the Palm Beach Service Station and told me that he had this gasoline slip, it was a carbon of the gasoline slip. And I suggested to him that he go to the service station and get the original.

Q. When, with respect to the time Mr. Riley called you and told you that he had this carbon that you told

him to go get the original, did you first see the gasoline slips yourself? In other words, did you see the carbon before you saw the original?

A. I did.

Q. Or did you see them both at the same time?

A. I saw the carbon, I think I saw the carbon the day he called me to tell me that he had the carbon.

Q. Was that before or after he had gotten the original?

A. It was before he secured the original. I think when he told me that he had the carbon, I saw it at that particular time, on the same date.

Q. Were the words Seminole Boat Company on that carbon when you first saw it?

A. They were.

Q. Did you give him any instructions about this photostating of the gasoline tickets?

A. I did.

Q. Was it on your instructions that he did that?

A. It was.

Q. What was the purpose of that?

A. I think Mr. Riley gave a very good explanation of that; it was to have a complete record of what had taken place.

Q. How soon after they were photostated did the two tickets themselves come into your possession, do you remember?

A. The two tickets, to my recollection, came into my possession immediately after being photostated.

Q. How soon after that did you turn them over to someone else?

A. I can't recall that; I don't recall the particular time they were sent on to you.

Mr. Underwood:

That is all.

Re-Cross Examination.

By Mr. Botts:

Q. It was very shortly after that, they were sent on to New York, was it?

A. That is my impression.

Q. All right. Now, Mr. Alley, did it occur to you as a lawyer, that the original, of which you had a replica or carbon copy in your possession, would bear far more evidences of credibility and integrity if it remained in the possession of the filling station until called for, rather than both the original and the carbon remaining in the possession of the same person? I say, did that occur to you?

A. Well, I don't recall whether it occurred to me or not.

Q. It occurs to you now, doesn't it?

A. Well, of course that is true; if a slip came through a source that it had been in all the time up until the time of trial, why that is the better way.

Q. In other words, if, when that carbon was produced, if you had left it with the filling station man and it was brought in in that way, it would have kind —wouldn't have been so good for us, would it?

A. Perhaps that was a mistake I made.

Mr. Botts:

That is all.

Further Re-Direct Examination.

By Mr Underwood:

Q. What was your purpose in getting the original?

A. In the first place I wanted to see the original; in the second place I wanted to be sure that the original was preserved. I think those are the two reasons.

Mr. Underwood:

That is all.

The Witness:

If we had it in our possession, we knew it would be preserved.

Further Re-Cross Examination.

By Mr. Matteson:

Q. Mr. Alley, in your position there in Palm Beach, I think that you have at least two capacities; you were the vice president of the Seminole Boat Company and you are also the representative of Mr. Phipps and the other members of the family, is that right?

A. I think that is true, yes.

Q. In your capacity as vice president of the Seminole Boat Company, I should have thought that your reaction to this slip would have been "Well, this is just too bad; it is not of any value to the Seminole Boat Company"; is that right?

A. Well, I suppose that is strictly true. It does show that the work was done for the Seminole Boat Company, that is very true.

Q. And in your capacity as representative of Mr. Phipps, it appeared to you as a very good piece of evidence, is that right?

A. Well, it certainly to my mind, fastened the responsibility on the party it was on. As you say, I represented mixed parties. I don't remember which particular party's advantage it would be to, at that particular time; but it certainly recorded the true facts.

Q. Then I take it that the interest that you were principally serving, in attempting to authenticate and preserve this evidence, was Mr. Phipps, rather than the Seminole Boat Company; is that right?

A. Well, you are probably right about that, yes. I don't think there is any question about that; no kidding about it.

Further Re-Direct Examination.

By Mr. Underwood:

Q. Did you have in mind that the time for whom you were acting in preserving this thing, or whether you were doing something for one that would be disadvantageous to another?

A. Well, I can't recall my exact mental processes at the time. It may be true that I felt it would protect someone else more than it would the Seminole Boat Company; it probably was true.

(Witness excused.)

(Thereupon an informal recess was taken for three minutes. And thereafter discussion was had between counsel and Court as to the question of handwriting.)

Mr. Matteson:

I am perfectly willing to state on the record, that the exhibits S and S-1, and also a certain number of the tickets that are included in the bunch that have been labeled Exhibit 7, small initials in ink near the corner, at one place I think on the ticket, F. M. H. are the initials of those of one of several handwriting experts—rather of persons whom we have consulted with respect to the authenticity of the handwriting.

Mr. Underwood:

And that those are the initials of Mr. Holt of Jacksonville.

Mr. Matteson:
That is right.

(Witness excused.)

(Mr. Edward J. Anderson was called as a witness on behalf of Respondents.)

Mr. Underwood:
Before proceeding with this witness, your Honor, I would like to offer in evidence the deposition of Anthony Schinigoi, taken at New York on April 19, 1939; the reason being that he was bound north and wouldn't be here in this district at this time. He was the cook on the Seminole on the last cruise.

Mr. Matteson:
(Following discussion.) The question and answer recorded at page 15 addressed to this witness, who was the steward of the Seminole, is this: "You say there were two Mr. Phipps that were on this trip?"
"A. Yes." "Q. How do you recognize the difference between them? Is one an older man and one a younger man, or how is it?" "A. Mr. Phipps—the one that I believe was the owner of the Seminole—I know him a little more because he chartered the Molly-O the year before; and the other Mr. Phipps is maybe a little different—and that is the difference between the two." There is an apparent omission but I think Mr. Underwood is willing to agree that Mr. Phipps who chartered the Molly-O the year before, was Mr. John S. Phipps. Is that correct?

Mr. Underwood:
That is correct.

(Thereupon the said deposition was admitted in evidence and marked as Respondents' Exhibit 4-C.)

2045 MR. EDWARD J. ANDERSON, as a witness on behalf of Respondents, was sworn and testified as follows:

Direct Examination.

By Mr. Underwood:

Q. What is your name, please?

A. Edward J. Anderson.

Q. Where do you live?

A. West Palm Beach, Florida.

Q. And you are employed by whom?

A. Bessemer Properties, Inc.

Q. How long have you been employed in that office?

A. Since August, 1927.

Q. What is the nature of your work as—

A. Accountant.

Q. What experience have you had as an accountant,—what training?

A. I had a course in accountancy at the City Business College, Chattanooga, Tennessee. I had several years training in—in the office of a C. P. A. and also additional study in the International Accountants Society.

Q. How long have you been working as an accountant?

A. Since 1921.

Q. Have you examined the books of the Seminole Boat Company,—and by that I mean, the document heretofore marked Exhibit 76, Y and Z?

A. I have.

Q. Did you keep those books at any time for any period?

A. Those books were given to me around the first of the year, 1934. I have kept the record since January 1st, 1934.

Q. Are you familiar with the books and—

A. I am.

Q. Have you gone through them and made an analysis of them, at my request?

A. I have.

Q. Is that a copy of your analysis?

A. That is.

Mr. Underwood:

I offer that for identification. This is the document, copies of which were handed to counsel, yesterday.

(Thereupon the said document was marked Respondents' Exhibit 4-D for identification.)

Q. Now, Mr. Anderson, can you tell me how much cash the Seminole Boat Company got in 1928, and from what sources?

Mr. Matteson:

If your Honor please, the books were not kept by the witness at that time. I haven't any objection to what he has read from the books, subject to these facts on cross examination, of course. But I want it understood that he is merely testifying as to what these purported books show.

The Court:

That is all you offer it for?

Mr. Underwood:

That is all I offer it for if your Honor please. I thought that this would be a simple way of getting be-

fore the Court, what these books show as to certain things. * * * It is understood that unless the witness speaks of his own knowledge, that he is testifying to what the books show.

Mr. Botts:

With reference to this summary, is this summary that you have, a summary from the ledger, and does it reflect merely what this journal ledger shows? Or does it also include the information from the voucher files which have been filed in evidence?

A. It is an analysis of the general ledger of the Seminole Boat Company, in connection with these journal vouchers.

Q. Do you mean by that, this information as it appears on this analysis, is taken from both?

A. Both.

Mr. Botts:

You refer to this book which seems to be number 76, that is a combination journal and ledger, is it not?

A. To a certain period, yes.

Mr. Botts:

Now then this summary reflects the data as shown by this exhibit 76 and also 77 and 78? Am I correct?

A. That is correct.

Q. Will you tell me, Mr. Anderson, whether, from the accountant's standpoint, the journal voucher files are considered part of the books?

A. They are.

Q. This analysis which you have made, does it correctly reflect what the books show as to the disbursements made by the Seminole Boat Company,—disbursements made for the Seminole Boat Company by others, and repayments made by the Seminole Boat Company for such persons?

A. It does.

Q. Does this analysis likewise correctly disclose the payments made by the stockholders of the Seminole Boat Company, to repay those disbursements made on behalf of the Seminole Boat Company by others?

A. It does.

Q. I notice that at the upper half of the first page of this analysis there is a narrative; what was the source of the information contained in that narrative? You may look at the analysis if you want to know what I am referring to.

A. The stock register, the general ledger, and the Seminole Boat journal and check-voucher files.

Q. Does that narrative correctly reflect the facts as they appear from those books?

A. It does.

Q. Now prior to the time when the books came to Palm Beach, can you tell me the course of the transaction when a payment was made on behalf of the Seminole Boat Company by the Palm Beach Company?

Mr. Matteson:

You are speaking now as to what the books show, too?

Mr. Underwood:

Of course.

Mr. Matteson:

He has no knowledge himself of what happened before the books came to Palm Beach.

Q. That is right; this is all what the books show.

A. Palm Beach Company would make a disbursement for an expense of the Seminole Boat Company; they would be debit or charge Phipps Realty Account and credit their cash account.

Q. Do you mean by that to say that when the Palm Beach Company in those years made a payment on behalf of the Seminole Boat Company the Palm Beach Company would be repaid by the Phipps Realty Company?

A. That is true.

Q. I take it you have no personal knowledge of how the Phipps Realty Company handled the transaction from then on?

A. Only from information from the records that are available here.

Q. Well, speaking from those records, tell me as much as you can about the transaction from that point on.

A. The Phipps Realty Company would advise Boulevard Mortgage Company of such items; Boulevard Mortgage Company in turn would set up an account crediting Phipps Realty Company and debiting Seminole Boat Company.

Q. That is after the Phipps Realty Company had paid the Palm Beach Company, the Boulevard Mortgage Company would pay the Phipps Realty Company?

A. Not at that time.

Q. Well, eventually?

A. Eventually, yes.

Q. Credit it first on the books and then later pay?

A. That is correct.

Q. And, still as reflected by those books how would the Boulevard Mortgage Company be paid?

A. Phipps Realty Company would collect from the stockholders and notify Boulevard Mortgage Company of such collections; and then of course the entry would be to offset the previous entries made for the disbursement.

Q. Let's see if I understand that. On the collecting end the Phipps Realty Company would debit the stockholders, or in other words collect the money from them, is that right?

A. That is correct.

Q. Having collected the money from the stockholders, would credit the Boulevard Mortgage Company with the amounts on those collections?

A. That is correct.

Q. And on the books of the Seminole Boat Company, those amounts would then be entered as debits to the Boulevard Mortgage Company,—or in other words reflect the fact that Boulevard Mortgage Company had been paid?

A. Would reflect the fact that the Boulevard Mortgage Company had been paid?

Q. Now following the time when the books came into your possession, was there a change made in the method of handling these charges?

A. Do you mean, the company handling the charges?

Q. Let me put my question in another way: Following the time the books came into your possession, they were at Palm Beach?

A. Yes.

Q. Now at that period, when the Boulevard Mortgage Company made a payment on account of the Seminole Boat Company, can you tell us the method by which that payment reaches the books of the Seminole Boat Company?

A. Exactly the reverse.

Q. Of the previous method?

A. Of the previous method.

Q. By that do you mean Boulevard Mortgage Company would charge Phipps Realty Company?

A. Right.

Q. And Phipps Realty Company would credit Boulevard Mortgage Company?

A. Correct.

Q. And Phipps Realty Company would charge Palm Beach Company or Seminole Boat Company?

A. Palm Beach Company.

Q. Palm Beach Company; and Palm Beach Company would credit Phipps Realty Company?.

A. Correct.

Q. And then Palm Beach Company would charge Seminole Boat Company?

A. Yes, sir.

Q. And Seminole Boat Company would credit Palm Beach Company?

A. Correct.

Q. Now when the stockholders repaid those expenses, how did those repayments move?

A. Money was received by the Phipps Realty Company.

Q. From the stockholders?

A. From the stockholders. Palm Beach Company was notified—that relieved them of their account.

Q. You mean by that, the Palm Beach Company was credited?

A. That is correct.

Q. With those payments?

A. That is correct.

Q. Palm Beach Company in turn would credit Seminole Boat Company?

A. Seminole Boat Company.

Q. And Seminole Boat Company in turn would charge Palm Beach Company on its books with those credits?

A. No.

Q. Well, you tell me.

A. When the funds had reached—I mean the journal entry had reached the Palm Beach Company's books, crediting Seminole Boat Company, Seminole Boat Company would then transfer its liability to Palm Beach Company, its liability to Palm Beach Company to the stockholders, on the basis of their reimbursement, which was customarily one half each.

Q. In other words, the payment from the stockholders would flow through Phipps Realty Company, Palm Beach Company, down to Seminole Boat Company.

A. That is correct.

Mr. Botts:

And the final offsetting payment would be a charge on the books of the Seminole Boat Company against the stockholders,—or credit?

A. Credit to them:

Q. Now there is one thing I would like to have you tell me a little more about, on this analysis. On the fifth page, under the year 1935, expenses paid by Palm Beach Company, the total is $5,503.36 and that does not appear to include the cost of the Prigg boat; yet on page 7, for the year 1935, Palm Beach Company, opposite the word "Expenses etc. paid" the total is $6453.36. Will you explain that difference please.

A. Under the year '35 are listed expenses paid by Palm Beach Company account of the Seminole Boat Company. The purchase of the Prigg Boat is a capital disbursement, and therefore would not appear under the expenses.

Q. How was it set up on the ledger?

A. As a capital account.

Q. It appears as an expense in one place, but as a capital account in the other?

A. Yes, sir, that is correct.

Q. That accounts for the difference?

A. The difference.

Q. Now at what time did you begin to charge Mrs. Guest with a proportionate share of these expenses, instead of Mr. H. C. Phipps?

A. For one half of the expenses, beginning January 1st, 1935.

Q. Do you remember when you were advised that that was to be the practice?

A. About March of '35.

Q. Now, Mr. Anderson, I show you voucher number 52 in the voucher file Exhibit Z. Some question was raised about that, when Mr. Hawkins, I think was on the stand, and he denied that he was an accountant and could explain it. Can you tell me what this voucher means?

A. It means that Boulevard Mortgage Company has set up on its accounts, an account receivable from Seminole Boat Company for certain expenses paid, outside of the Boulevard Mortgage Company's office.

Q. And what is the amount?

A. $541.50.

Q. And what does that mean as to the accounts payable by the Seminole Boat Company? Does it record anything as to Seminole Boat Company's obligations?

A. It shows their obligation to Boulevard Mortgage Company of $541.50.

Q. For the items, the three items enumerated,—repairs and maintenance $116.50, storage $25.00 and wages $400.00?

A. That is correct.

Q. I show you bill of Captain Pilkington; I show you voucher number 1190 of the Palm Beach Company dated May 2, 1931; can you tell me whether or not so much of that as reflects the storage on the houseboat Seminole, $25.00 is the same item recorded on the table before you, journal voucher number 52?

A. That is correct.

Q. That is the same thing?

A. The same thing.

Q. Now the Palm Beach Company duplicate voucher to Seminole Boat Company, $25.00, written on it in typewriter, in the first instance, is that correct?

A. That is correct.

Q. Was the Seminole Boat Company crossed out and Phipps Realty Company put in, at the Palm Beach office or elsewhere?

A. Elsewhere.

Q. Is that in line with what you have told us about the way these debits and credits moved from the Phipps Realty Company?

A. It is correct.

Q. Did you have a breakdown of the wages, $400.00, as it appears on voucher number 52?

A. I have a statement showing these; I don't have the supporting data.

Q. I show you letter dated June 23, 1931, with a paper attached marked at the top Boulevard Mortgage Company in account with Phipps Realty Company. Can you tell me whether or not that was the source of the information from which journal voucher 52 was made up?

A. That is correct.

Q. This letter of June 23, is addressed to Mr. Handley at Miami and signed by Mr. LeCount, is that right?

A. That is correct.

Q. On the attached statement there appears, Captain Pilkington storage charge of $25.00.

A. That is correct, and wages totaling $400.00.

Q. Yes.

A. That is correct.

Q. And the other item is $116.50?

A. That is correct.

Q. So that the pencil notation at the right, $541.50 is the total of the charge shown on journal voucher 52?

A. That is correct.

Mr. Underwood:

I offer the letter and the statement attached.

A. May I suggest that for the sundry items under $116.50, that you refer to items as listed above.

Q. As they appear in pencil on the statement attached to the letter.

(The said paper was admitted in evidence and marked Respondents' Exhibit 4-E.)

Q. Now before we leave this, I show you Palm Beach Company check and voucher number 111 dated April 30, 1931. Can you tell me whether or not that is the basis of the $200.00 charge in respect to Captain Bryant as it appears on the statement which is now a part of Respondents' Exhibit 4-A?

A. It is.

Q. That also shows that Captain Bryant's pay for that month was originally charged to the Palm Beach Company, against Seminole Book Company?

A. That is correct.

Q. And that charge was changed elsewhere to Phipps Realty Company?

A. That is correct.

Q. Do you know whether that was made at New York?

A. To the best of my knowledge it was.

Q. Where did these duplicates go from your office?

A. To the Palm Beach Company office or Bessemer Properties, now.

Q. In the north.

A. In the north.

Q. It was either New York or Jersey City?

A. Jersey City.

Mr. Underwood:

I offer the voucher and the original check.

(The said papers were admitted in evidence and marked Respondents' Exhibit 4-F.)

Mr. Underwood:

If your Honor please, I could illustrate the way this was done, by innumerable transactions; but at the present time at least I don't think it is necessary to encumber the record by further instances. * * *

Q. Now, Mr. Anderson, Mr. Alley made a suggestion to me which I think I should have thought out myself. When you came down here the other day, a day or two ago, did you go up to the Boulevard Mortgage Company and get out from their files their journal voucher 350, referred to in Seminole Boat Company journal voucher 52?

A. I requested them to get it out.

Q. Is that the document they handed to you?

A. Yes.

Mr. Underwood:

Now it may be I haven't strictly proved it; I can if necessary bring somebody down from the Boulevard Mortgage Company to identify for us their journal voucher 350, which is the one referred to in Seminole Boat Company journal voucher 52. So I offer that in evidence, to show the corresponding transaction on the books of the Boulevard Mortgage Company.

Mr. Matteson:

I have no objection at the moment; reserving my right to ask further proof of examination from the man who made the entries.

Mr. Underwood:

All I ask is on that point, that if further proof is going to be demanded, that it be demanded before the trial closes. * * *

The Court:

It will be admitted subject to that.

(The said paper was admitted in evidence and marked Respondents' Exhibit 4-G.)

Q. Mr. Anderson, can you turn to the journal voucher which shows the first payment by the stockholders paid for expenses incurred during the year 1935?

A. We have two journal vouchers regarding the disbursements and expenses for 1935; one for a period January 1, to May 1, and one for May 1 through December 31.

Q. What is the total for the period, January to April?

A. $2449.81.

Q. What do the books of the Seminole Boat Company show as to the source of that money?

A. That it was advanced by Palm Beach Company.

Q. And who repaid it, and in what amount?

A. It was repaid by M. J. S. Phipps, one half, and Mrs. F. E. Guest one half.

Q. The difference between the halves is a penny?

A. That is correct.

Q. Now I show you a letter dated May 31, 1935, addressed to you by Mr. LeCount of New York, with a statement attached of Seminole Boat Company, January to April, 1935, and tell me please whether or not that is the source of the information, as the result of which you made up this journal voucher number 96 from the books of the Seminole Boat Company.

A. That is the supporting data for journal voucher number 96.

Mr. Underwood:

I offer that.

Mr. Matteson:

I have no objection of it, as his statement of the source of the information from which he made the entries.

Mr. Underwood:

Not to prove the expenses were incurred, of course; but to prove the course of dealings and the whole transaction.

Mr. Matteson:

But this is the source of information from which he prepared this voucher number 96.

The Witness:

That is correct.

Mr. Matteson:

That is what it is offered to show?

Mr. Underwood:

As well as how the charges themselves were made and allocated and repaid.

Mr. Matteson:

Well, this document only relates to the source of the information he got, doesn't it?

Mr. Underwood:

That is correct. * * * I offer it to show whatever it shows.

Mr. Matteson:

Well, I object to it as evidence of disbursement.

Mr. Underwood:

I don't contend for a moment that it shows that these moneys were actually paid by anybody.

(Discussion.)

(The said paper was admitted in evidence and marked Respondents' Exhibit 4-H.)

Mr. Underwood:
I think that is all.

(Following discussion between counsel and the Court as to reporting costs, hearing was adjourned until 2:15 o'clock p. m. of the same day.)

Afternoon Session.

Mr. Underwood:
It is stipulated by all parties that Loyal Randall, a witness on behalf of the Respondent Phipps, who is presently available, would, if called, testify that on April 16, 1935 he went to othe Seminole at Pilkington's and removed therefrom certain bed springs and/or beds or cots from the alleyway abaft of the engineroom, and that he did not go into the engineroom at all on that date, and that he brought with him on that occasion a letter dated April 16, 1935, addressed to Pilkington's Boat Yard signed J. F. Riley, heretofore marked Libelants' Exhibit 53, and delivered the same to Captain Pilkington.

Mr. Botts:
We agree to that.

Mr. Matteson:
That is all right.

2062 Thereupon EDWARD J. ANDERSON, a witness produced in behalf of the Respondent Phipps, resumed the stand and was examined and testified further as follows:

Cross Examination.

By Mr. Matteson:
Q. Mr. Anderson, you have described to us the manner in which these disbursements were made and were

charged to the Seminole Boat Company and reimbursed, and, as I understand it, it was entirely a matter of debits and credits, and it never represented the passing of any cash or funds through the treasury of the Seminole Boat Company.

A. Are you referring to the expenses paid by the Boulevard Mortgage Company and Palm Beach Company?

Q. Yes; subsequent to the closing of the bank account of the Seminole Boat Company.

A. Those entries were made by journal.

Q. And they did not represent the cash transactions as far as the Seminole Boat Company was concerned?

A. They did not.

Q. So, as I understand it, taking this typical transaction that we have been through, the disbursement was first charged on the books of the Palm Beach Company as a debit to the Seminole Boat Company and a credit to their own account?

A. That is correct.

Q. And periodically a statement of those debits and credits would be sent to the chief auditing office in the north, is that right?

A. That is correct.

Q. Then later you would receive from the same office a statement of the debits and credits that had been forwarded after they had been approved in the chief auditing office?

A. That is correct.

Q. And at a still later time you would be notified of a credit established in favor of the Palm Beach Company on the books of the main office in the north?

A. That is correct.

Q. So, that then your debits and credit on the books of the Palm Beach Company would be canceled out?

A. That is correct.

Q. As far as those items were concerned the transaction would be then complete?

A. It would be a closed transaction.

Q. A closed transaction?

A. Yes.

Q. And that would be true even though there never was any record made on the books of the Seminole Boat Company?

A. Yes; those entries would be made.

Q. So the only purpose of transcribing these entries that had already been made in the books of the Palm Beach Company on a book or record, which you call the record of the Seminole Boat Company, would be merely to record something that had already taken place?

A. That is correct.

Q. Then, as I take it, the final approval of all of these interlocking transactions was with the chief auditing office in the north?

A. Not altogether.

Q. Well, you would send them to them in a certain form and then they would be audited there?

A. May I explain the reason for such procedure?

Q. Surely.

A. Disbursements made through the Palm Beach office for account of Seminole Boat Company and disbursements made in Miami by the Boulevard Mortgage Company for account of Seminole Boat Company would have to be formulated for certain periods before they would enter the books of the Seminole Boat Company, and it was merely for the purpose of getting these two sources of disbursements together into one group before making entries in the books of the Seminole Boat Company.

Q. I appreciate that, but what is in the books of the Seminole Boat Company is merely a transcript of already completed transactions which are fully stated on the books of the Palm Beach Company and/or Biscayne Boulevard Mortgage Company.

A. That is correct.

Q. And the final auditing of those transactions was in the hands of the chief auditing office in Jersey City, or in the north, or wherever it was?

A. That is correct.

Q. So that in keeping any books of the Seminole Boat Company you are separately performing a ministerial act, if you call it that, of recording there the records that already appear on the books of the Biscayne Boulevard Mortgage Company or the Palm Beach Company?

A. That is correct.

Q. For instance, you have referred to this first voucher, number 90, in Phipps' Exhibit "Z", which consists of three pages; it consists of three pages, does it not?

A. It does.

Q. The only thing that you had to make that up from was just this carbon copy of a typewritten statement that came from the office of Mr. LeCount at 465 East 57th Street, New York City?

A. That wasn't the entire supporting data used in preparing these so-called entries.

Q. This letter that I have referred to, Respondents' Exhibit 4-H, is what you used in making up voucher number 90?

A. May I look at the totals; it wasn't used in preparing journal number 90, but journal number 96.

Q. 96?

A. Yes.

Q. Then to change the question, this carbon copy of a typewritten statement that you got from New York with this letter, Respondents' Exhibit 4-H that I have just referred to, was all that you had to make up this voucher 96 from?

A. No, it was not.

Q. What else was there?

A. The original records of disbursements of the Palm Beach office.

Q. They had been sent to New York sometime previous to this?

A. The Palm Beach office retains copies of all—

Q. Of course. Then, I take it, that what you mean is that of course you have your own records and they have been sent to New York and used as a basis of making up the statement there which comes back to you in the form of Exhibit 4-H, and from those records you can determine whether what you sent to New York has been fully approved and recorded on this statement; is that right?

A. In total, yes.

Q. And you can use the Palm Beach Company's records for checking that, but when you make up this record, voucher 96, you make it up from this slip attached to Exhibit 4-H rather than from your own records, don't you?

A. Not entirely.

Q. In what respect can you supplement the typewritten slip, Exhibit 4-H, in making up voucher 96?

A. With the copies of any entries of disbursements.

Q. What purpose was that used for?

A. For the detail; this is a consolidated statement and it doesn't carry the items in detail.

Q. So that when this slip comes back from the New York office it gives you enough information to identify the different items and you apply the details from your own record, is that right?

A. That is correct.

Q. So, as I understand it, the original and the only record, so far as the Seminole Boat Company records are concerned, are found in these vouchers; I mean beginning from the time that the books came down to you beginning with 90 and running through 103?

A. Yes, sir.

Q. I do not mean to mislead you by saying "only record", but I would like to ask you this: Are the items

set forth in these vouchers, numbers 90 to 103, afterwards posted into the various ledger accounts which are kept in this book, Libelants' Exhibit 76 for identification?

A. The procedure is to post all entries from the journals on the general ledger.

Q. Then you refer to this book, Libelants' Exhibit 76 for identification as the general ledger?

A. I do.

Q. So that after these voucher sheets, 90 to 103, were made up from them you made postage of the various items into the general ledger, is that right?

A. That is correct.

Q. So that these voucher sheets, 90 to 103, are made first, and from them postings are made into the general ledger?

A. That is the procedure.

Q. Now, just taking another example at random, I pick up the first voucher in the file of Pilkington, vouchers for the year 1934, which indicates a payment to Captain Pilkington of $75.00, and a division of that charge on the duplicate voucher shows a part charged to the Dorothy, charged part to the Seminole and part to the Iolanthe, and the charged parties respectively, Mr. F. E. Guest Boats, Phipps Realty Company and Mr. J. S. Phipps Boats; is that right?

A. That is correct. May I say that the original check prepared in the office of Palm Beach Company bears a charge to Seminole Boat Company rather than to Phipps Realty Company. The charge to Phipps Realty Company was applied at a later date.

Q. After the voucher left your office?

A. That is correct.

Q. By the way, the vouchers are made in triplicate?

A. They are.

Q. Where does the duplicate go?

A. To our northern office.

Q. Is that returned to your office?

A. It is retained in the north.

Q. So that this particular voucher, which is a duplicate, apparently came from the files in the north?

A. That is correct.

Q. While we are discussing this, I note that the description of the items is for storage on the Dorothy so much, storage on the Seminole so much and storage on Iolanthe so much, this appearing in carbon copy, and the rest in original typewriting. I suppose that that means that the part that appears in carbon appeared also on the upper half of the original check and that the part that appears in regular typewriting appears only on the duplicate and triplicate copies.

A. That is correct.

Q. Now I would like to follow the transaction from this point exactly as it would occur in your office. I notice that there are headings here; Extensions checked, entered, certified correct, approved for pay, payee", and under certain of these headings initials appear. Those represent different stages of the transaction in your office, I take it?

A. That is correct.

Q. What is the first stage; what is the first state, is that the checking?

A. Of the original invoice.

Q. And that is indicated by the initial under the word "check"?

A. That is correct.

Q. What are those initials on this particular invoice?

A. J. M. Gorham.

Q. What is the next step?

A. The check is then passed on to me and I check it and initial it as to its correctness, and I also "approve for pay" at that time.

Q. First of all, Mr. Anderson, you put your initials under the word "correct", is that right?

A. Correct.

Q. Then you put your initials under "Approved for pay"?

A. That is correct.

Q. Now, Mr. Anderson, I see some other initials under "Approved for pay." What initials are those?

A. In that instance it is R. C. A.; Mr. R. C. Alley.

Q. Then before the transaction goes any further, after you have approved it for payment, it is also approved for payment by Mr. Alley?

A. At that time the check required two signatures, and at the time I approved this that was indication that it was approved for payment and signed and is ready for delivery.

Q. So the "Approved for pay" is put on at the same time the check is signed by the same people who put their initials under "Approved for pay"?

A. That is correct.

Q. Then what is the next thing that happens?

A. The duplicate and triplicate are separated, and the duplicates are periodically sent to the northern office; the triplicates and in some instances the duplicates. In this instance Mr. Gorham at the time marked "Entered J. M. G." which was a practice that was discontinued at a later date, because it was confusing to put it both on the original and the duplicate; it was confusing in the New York office.

Q. I take it that the change that was made was that originally Mr. Gorham would put his initials under the word "Entered" both on the duplicate and triplicate?

A. Well, only on the duplicate. You see, when this check is completed and signed by both parties it is recorded in the check register and assigned a number. A short time before that time or after that time it is entered in the check register, and for some period of

time—I don't know how long—we made our entries from the duplicates, before forwarding, but at some period since 1927 we discontinued so stating on the duplicate and entirely made that notation on the triplicate.

Q. The triplicate being kept or retained in your office?

A. That is correct.

Q. And that change must have been made sometime after this date of January '17, 1934?

A. That is correct.

Q. But the initials "J. M. G." under the word "Entered" would indicate that from the copy this was posted into the books and entered in some book, is that right?

A. That is correct; in what is known as a check register.

Q. What is the book of the Palm Beach Company in which this transaction is entered as indicated by Mr. Gorham.

A. That is entered in what we call the check register, giving the bank account on it, its number, crediting that account and debiting the various accounts as charged.

Q. You call that the check register?

A. That is correct.

Q. Then what is the next stage so far as your office is concerned?

A. That is as far as our accounting in the Palm Beach office goes.

Q. You say the bank is credited and certain parties are debited. Where do those debits appear?

A. The check register.

Q. In the check register?

A. It is a columnar book with spaces so headed.

Q. For instance, how many columns in that book?

A. It varies. It depends on the number of different accounts that you carry. You can use fly-leaf, and you can have ten, twenty, thirty or fifty, or as many as required.

Q. You mean you have as many as twenty or fifty columns occasionally?

A. That is right.

Q. And among these columns would be there one for the Seminole Boat Company?

A. It is possible that there is one for the Seminole Boat Company; it is also possible that at that time the charges were few and it wasn't necessary to carry a column, and would be carried under miscellaneous and so marked as a charge against Seminole Boat Company.

Q. If it was in the miscellaneous column it would be with a lot of other miscellaneous items, most of which were not charged to the Seminole Boat Company, is that right?

A. Yes, that is correct.

Q. I suppose that you must have some other record that gathers together the items chargeable to the Seminole Boat Company, is that right?

A. We have no records of Palm Beach Company other than the check register book.

Q. Didn't you have a ledger into which you posted from the check register?

A. We didn't keep the books of original entry of Palm Beach Company in the office at that time.

Q. There seems to me that there must be some other record in your office correlating these others than the check register?

A. We carry various records for our information, not for bookkeeping purposes, but purely for information of the officials and heads of the departments; we carry them for reference, so that they at any time can know what accounts are being paid and in what amounts.

Q. What are those books?

A. I can't give them a title; merely a running account.

Q. Running account?

A. Yes.

Q. As a type of ledger account; do they correspond to a ledger account?

A. The difference between the account that is kept and a ledger account is that it is not balanced out at any period of time; it doesn't carry the capital accounts, and it is not closed out year after year; it is simply totaled across.

Q. What is the description or name you give to these books so that we can have something in common to talk about?

A. You can call it "Summary ledger."

Q. Summary ledger??

A. Yes.

Q. In the summary ledger would there be a sheet headed "Seminole Boat Company?"

A. There would.

Q. And another one headed "John S. Phipps Boats?"

A. That is correct.

Q. Would there be other accounts of John S. Phipps?

A. Yes.

Q. How many different accounts do you suppose you had relating to John S. Phipps personally?

A. That is hard to say.

Q. Just give us some idea.

A. Some ten to twenty, depending on the type of work that was in progress at that time.

Q. Various matters in which he was personally interested?

A. Yes.

Q. In this voucher that we were talking of originally, which is number 5426, I see in this file there are attached to it three bills which aggregate the amount for which the voucher is drawn. Mr. Anderson, I take it the bills are what you call the supporting data, is that right?

A. That is correct.

Q. Does that supporting data remain in your office with respect to the various items paid by the Palm Beach Company?

A. Generally it is attached to the duplicate.

Q. And then that goes to the office in New York?

A. That is correct.

Q. And does it remain there?

A. It does.

Q. It is not returned to you?

A. It is not, unless requested for some reference.

Q. So that these three bills attached to this voucher we have been talking about came back from New York?

A. That is correct.

Q. Apparently for a special purpose, that is, by some special request.

A. By special request.

Q. Taking the various items that are described in this sheet attached to Exhibit 4-H, the supporting data for all of these items would be in the New York office and not in your office?

A. They should be, with few exceptions.

Q. Do you know whether, Mr. Anderson, as a matter of fact you had or have in your office the supporting data for the items on this list attached to Exhibit 4-H?

A. I don't. May I correct that? I don't know what I answered before.

Q. I think that was the purport of your answer.

A. All right.

Q. Taking this voucher number 90, which is the first one that appears here, it says at the bottom of that voucher, "Record disbursements as per statement from New York for year 1934 for account of Seminole Boat Company charged to account of Palm Beach Company". Does that indicate that this voucher number 90 was

taken from a sheet similar to this one that is attached to Exhibit 4-H?

A. It was prepared in connection with the sheet, using our office records enough to give us the details necessary to formulate the journal entry.

Q. And it was a sheet such as that just described here of this nature that I just read as a part of the statement from New York?

A. That is correct.

Q. Do you have that statement with you?

A. I do not.

Q. Now this voucher number 91 is simply a statement of depreciation in reserve set up on the books of the Seminole Boat Company, and it relates to no other corporation at all, is that right?

A. That is correct.

Q. Now this voucher number 92, where does the information for that come from?

A. From the preceding journal entries recording the expenses for the year 1934.

Q. In other words voucher 92 is a summary of 91 and 90?

A. Not exactly; it is not called a summary; that is the entry that closed the operating expenses in the profit and loss for the year.

Q. But as a matter of fact, without being technical about the language, the items that appear on voucher 92 are the summary of the same items that appear on vouchers number 90 and number 91, are they not?

A. That is correct.

Q. Which simply means that you are now preparing a voucher which charges to profit and loss the entire expense represented in the other two vouchers, expenses and depreciation.

A. Yes.

Q. This next one, number 93, covers partial reimbursement to the Palm Beach Company for 1934 disburse-

ments for the account of the Seminole Boat Company. Where does the data for that sheet come from?

A. In the form of advice from our northern office.

Q. That means that you received a statement from the northern office that H. C. and John S. Phipps had been debited with the amount shown and that Palm Beach Company had been credited?

A. No, sir. I received advice that they had paid their expenses for that year.

Q. Of course that transaction took place in the north?

A. Yes.

Q. And you merely received advices of it?

A. Yes, sir.

Q. And the same applies to voucher number 94, which is a statement showing the completion of the reimbursement to Palm Beach Company for the disbursements for the year 1934, is that right; in other words, what you stated about the other one applies to this one, too?

A. Yes. May I explain that?

Q. Yes.

A. You say that Palm Beach Company was reimbursed prior to that time. That merely is an entry for the books of Seminole Boat Company to show that the liability for accounts payable on the books of Seminole Boat Company to Palm Beach Company had been shifted or transferred to Mr. J. S. Phipps and Mr. H. C. Phipps.

Q. I notice this check says "Check for Bessemer Investment Company $220.35"; is that the source of the reimbursement.

A. In that instance it was; we received a check for this one reimbursement.

Q. And that appeared on the books of Palm Beach Company?

A. That is right.

Q. So that came from the books of Palm Beach Company and not from the north?

A. Yes, sir.

Q. Where is the office of Bessemer Investment Company?

A. I don't know.

Q. Is that in the north?

A. I presume it is.

Q. It was from that point that you received this check for reimbursement?

A. This is the check that I received, yes.

Q. Now this next sheet states that it is to cover the purchase of Mr. H. C. Phipps' one half interest by Mrs. F. E. Guest. What does this represent; does it represent the transfer to the credit of Mrs. Guest of the book value of the stock in the corporation, or just what is it?

A. That has nothing to do with the stock. On March 23rd Mr. H. C. Phipps sold his one half interest in the Seminole Boat Company to Mrs. F. E. Guest, and in making this purchase Mrs. Guest received the liability of Seminole Boat Company to Mr. H. C. Phipps in the amount of $12,947.00.

Mr. Underwood:

Does that represent an acknowledgment on the books of the Seminole Boat Company that it owes Mrs. F. E. Guest $12,000 and odd dollars in lieu of H. C. Phipps?

A. That is correct.

By Mr. Matteson:

Q. Now this next entry, voucher number 96, shows reimbursement to Palm Beach Company for advances for expense in operation of "Seminole" for the period January, 1935 to April 30, 1935. What does that represent?

A. It represents the payments by the stockholders for the operating expenses for that period.

Q. How was that paid?

A. That was in the form of a letter advising payment.

Q. A letter from New York?

A. Yes, sir.

Q. Now take this next voucher we are talking of, voucher number 96. We were speaking of the last entry which shows reimbursement. Preceding that on the same sheet are expenses and the charge to the corporation for what period?

A. For the period of January 1st to April 30th.

Q. Now where were these items taken from; where did you get the information to make up that sheet?

A. From the original records or duplicate records or triplicate records in the Palm Beach office, and the statements supplied as customary from the northern office.

Q. Then there was a statement from the northern office which was the general basis for the making up of this voucher, is that right, as supplemented by your own record?

A. May I make a statement there, please?

Q. Yes.

A. For this period to the best of my knowledge there were no disbursements included in this journal other than those made in the records in the Palm Beach office.

Q. Even so, the vouchers were sent to the New York office in the usual way?

A. They were.

Q. And after being approved there a statement came back simliar to the statement attached to Exhibit 4-H?

A. I wouldn't say that.

Q. That would be the customary thing, wouldn't it?

A. Not unless there were other entries to be considered or combined in this statement.

Q. You don't know whether there was or not?

A. I do not. To the best of my knowledge there wasn't any.

Q. Then we come to voucher number 97. What was the source of the information from which that was made up?

A. Records in the office of the Palm Beach Company, to the best of my knowledge.

Q. They were forwarded to New York in the usual way?

A. They were.

Q. Did a statement come back from the New York office similar to 4-H?

A. I cannot say.

Q. You do not know?

A. No.

Q. Voucher 98 is simply a writing off of the value of the yacht Seminole as a result of the fire, is that it?

A. Yes.

Q. Charged to profit and loss?

A. Yes, sir.

Q. Voucher number 99 represents a collection of 1935 expenses, which I take it, is more or less a summary of the two preceeding vouchers, is that right?

A. It is a summary of the operating expenses for the year 1935.

Q. As represented in the two preceding vouchers?

A. In the preceding vouchers. I do not say the two preceding vouchers; I didn't check the vouchers.

Q. Voucher number 100 consists of two pages recording expenses charged to the account of Seminole Boat Company during the year 1936, is that right?

A. That is correct.

Q. And vouchers for those expenses were sent to the New York office in the usual way?

A. They were.

Q. Did a statement come back similar to the one marked 4-H?

A. I don't know; to the best of my knowledge I would say that it did not come back.

Q. Why do you say that?

A. Because of the entries originating in the office of Palm Beach Company which I had access to.

Q. In the natural course of events you sent all of your vouchers for that year to New York, and didn't you receive some kind of a statement from New York with respect to them?

A. It is not customary when it is not requested and it is not unusual.

Q. Voucher 101 is a similar summary of expenses for 1937, is that right?

A. Yes.

Q. All vouchers were sent to New York, of course?

A. Yes.

Q. Was there a statement from New York with respect to those?

A. To the best of my knowledge there was not.

Q. Voucher 103 represents expenses for the last three months of 1938, does it?

A. Yes.

Q. Can you tell us whether there was any statement from New York with respect to those expenses?

A. To the best of my knowledge there was not.

Q. These last statements—with respect to these last three statements you said you were quite sure that there had not been a statement from New York. Where would the supporting data be with respect to those items?

A. In the northern office.

Mr. Matteson:

I do not want to unduly encumber the record, but I would like to have a chance to examine the supporting data for all the items represented in vouchers 90 to 103, inclusive. Can that be arranged?

Mr. Underwood:

That can be arranged, however it will take some time.

Q. The initials on the vouchers would represent the man who entered the transaction in the check register, would they?

A. Generally speaking, yes.

Q. Well, why "generally"?

A. Because there are some irregularities to that due to absences from the offices, absence from the office, and it being necessary to get the items posted and, as I said before, the initials were customarily put on the duplicate voucher at the beginning.

Q. Let me get this right: Do you mean say that if you post an item you might under some circumstances put down Mr. Gorham's initials?

A. No, I wouldn't.

Q. Or that if he posted an item he might put down your initials?

A. No, I do not mean that. I mean that in all instances there might not be initials as to who entered it; it might be a blank.

Q. Well, the man who makes the entry is supposed to initial the voucher when he makes the entry?

A. Not necessarily; I do not know of any rule requiring it.

Q. But it is customary, isn't it?

A. In books of original entry, yes.

Q. Your check register is a book of original "record"?

A. They are for us only and not for accounting purposes or balancing general ledgers.

Q. You wouldn't make an entry and not make your initials and then several days later put your initials on it, would you?

A. No.

Q. The very purpose of having a place for "entry initials" is so that you will initial it right then and know that it is done and you won't have to refer to it again, is that so?

A. Not necessarily.

Q. Well, as a matter of bookkeeping practice, Mr. Anderson, that is good bookkeeping practice?

A. When you are keeping general books, yes, books of original entry, but when you are keeping memorandum accounts you do not always adhere to the rules that apply to "Books of record."

Q. You don't think these accounts you keep in the Palm Beach office are of sufficient importance to follow good bookkeeping practice?

A. We did follow good bookkeeping practice.

Q. Good bookkeeping practice requires that you put down your initials when you make the entry, doesn't it?

A. Not necessarily.

Q. As an accountant of many years' experience would you say that?

A. I would yes. I will say that many entries are made in check registers without any notation, because the checks are numerical and because you couldn't skip one, and in many instances there is only a check mark made, which will show that the voucher had been entered, and it is not necessary to initial a voucher to indicate that it was entered in the cash books.

Mr. Underwood:

You mean "check book"?

The Witness:

They are the same. Check register.

Q. The very purpose of having a place for "initials" is so that when an entry is made you are able at any

moment after that to determine who entered it, is that right?

A. There is never a question on that point as far as this check register we are referring to is concerned.

Q. If you entered an item you would want to have it in such shape that anyone would be able to know who made the entry?

A. That depends on the entry I was making.

Q. You don't think that is important with respect to these books that you keep in Palm Beach?

A. I do not.

Q. Now in these books that were kept in Miami they had similar voucher sheets except that they were all hand written, is that right?

A. I don't know; I didn't check them up. Generally they are hand written.

Q. They have the same spaces at the bottom that you have on your own sheets?

A. Yes, sir.

Q. All of these vouchers that were kept in the Miami office have at least two sets of initials on them, don't they?

A. I haven't examined them to determine that.

Q. Well, we can determine that. Let me ask you about this top voucher number 103; it bears your initials "E. J. A."

A. Yes.

Q. When did you put those initials there; the reason I ask is because I observed that when the document was first produced in this Court there were no initials there.

A. I would not attempt to say that. Ordinarily I would say I would put them on when I posted it.

Q. Isn't it a fact that you put these initials there within the last three days?

A. The fact is I think I put them there last evening. I recall now that I put them there last evening.

Q. And that is true of the second page, is it not?

A. I do not believe it is. You say you have evidence that it wasn't there before and I don't recall that, but I do remember initialing the sheet last evening.

Mr. Underwood:

As a matter of fact, it was done before last evening, was it not?

The Witness:

Maybe it was; it was within the last two nights.

Q. How many sheets did you initial night before last?

A. I don't recall initialing but one sheet; I don't recall initialing two sheets.

Q. You say that you didn't initial the second sheet appearing in this file night before last?

A. I didn't say that.

Q. You don't deny that, do you?

A. I recall initialing it in the last two nights.

Q. Let me get this straight: You recall initialing the first one night before last, but you don't recall initialing the second one night before last?

A. That is correct.

Q. But you don't deny that you may have done it night before last?

A. I don't.

Q. Now I call your attention to the fact that it appears from these records that the vouchers have been both made by and approved by yourself and not by any other person; is that right?

A. As to the posting, yes, but as to approval of the charges in the beginning, from which the vouchers were made, no; they were approved by various department heads.

Q. These original transactions from which these were taken, of which these are summaries, were approved in regular normal course?

A. Yes.

Q. But these voucher sheets that we have here in this file, which you say represent the records of the Seminole Boat Company as it is now constituted, are in no case approved by anyone else than yourself and in many cases are indicated as being approved as well as paid by yourself, is that right?

A. Yes.

Q. And that you recognize as a substantial variation from the method of keeping books in Miami where there are always two initialing, one indicating approval and the other indicating the making and posting.

A. May I be permitted to explain why?

Q. Yes.

A. In the Miami office they have several bookkeepers whose duties are to do certain things. In our office I have duties to perform that several or as many as four perform in the Miami office.

Q. Are you the only bookkeeper in the Palm Beach Company's office at Palm Beach?

A. No.

Q. What other bookkeepers do you have?

A. We have one assistant.

Q. Is Jack Gorham there now?

A. No.

Q. Who is your assistant?

A. Mr. Anthony.

Q. Wouldn't the normal practice be for you to have these made up by your assistant and the approval by you?

A. It wasn't in this case, because I did it.

Q. Now, Mr. Anderson, let me ask you this: You have not said, and I will ask you whether you will say

now: Whether these sheets, vouchers, 90 to 103 were made contemporaneously with the events they record or whether they have been made at some later time. Will you tell me when you made up these sheets?

A. Generally I make up the vouchers for Seminole Boat Company sometime during the first quarter of the following year.

Q. I am not asking you about what you generally do or about general entries with respect to the Seminole Boat Company; I am asking you about these particular sheets that are here in this file that I pointed out to you, and which are a part of Phipps's Exhibit "Z", and I want you to tell me when these particular sheets were typewritten and made.

A. That I could not do.

Q. Isn't it a fact, Mr. Anderson, that all of these sheets were made up at the same time, and at a later date from the records that you had in the Palm Beach office?

A. They were not.

Q. Let me show you the first of these vouchers, for instance, number 90, which bears a date in 1934, and I will ask you when that was made.

A. To the best of my recollection it was made between January and March of 1935. I can refer to this and probably tell you exactly.

Q. Now I will ask you to compare this sheet, which you say was made in 1935, with the sheet which I suppose was made in 1938 or 1939.

A. 1939.

Q. I will ask you to compare the bottom sheet with the top sheet and state if there is not every indication that they were made at the same time, whether or not they are in the same state of freshness and as a matter of fact weren't they made at the same time?

A. My answer to that would be that they show the same signs as the prior vouchers of similar years. For

instance, I see no difference between the voucher 89, dated December 30, 1933, and the one here (pointing) dated December 16, 1931, so far as freshness is concerned.

Q. They are all a good many years old; all going back prior to 1933?

A. Yes.

Q. Now, there are two sheets right in here, right in the middle and they happen to bear the initials "B. H." which are initials other than yours, and I will ask you to look at these and see if they don't look substantially older than the first one I referred to in 1934.

A. I put these initials on myself to indicate that I didn't prepare it, but the stenographer wrote this for me, and those are her initials, however.

Mr. Underwood:

You mean that those are her initials?

The Witness:

I put them down myself so I would know that she typed it.

Q. Mr. Anderson, I am not suggesting any bad purpose on your part because, as I understand it, the records in the transactions would have been complete on the records of the Palm Beach Company, whether these records were kept at all, but I am asking you as a matter of fact if it is not the fact that from 1934 on for a period of years these records were not made up contemporaneously, but at some later time you made these up, going all the way back to the beginning.

A. I did not.

Q. You deny that?

A. I do. I am positive that the one made in 1934 was entirely separate from any others. My statement being that all of these "journals" you referred to were not made up at one time.

Q. Now in your last statement you said that you were positive that the one for 1934 was separate from any others. How about the ones following 1934?

A. 1938 I would say definitely was not prepared at the same time. As to 1935, 1936 and 1937 I could not commit myself, because I do not recall the exact dates that they were prepared.

Q. Why do you remember 1934 better than you do 1935, '36 and '37?

A. Because it was the first year I closed the books of the Seminole Boat Company.

Q. Is it a fact that you made the 1934 sheets in the early part of 1935 and then that you made the 1935, 1936 and 1937 sheets at some later time than indicated?

A. I recall making probably two years at one time.

Q. Which years were those?

A. I would not attempt to say.

Q. When did you make those?

A. If that was the case, I made it in the following year of the last entry that was made.

Q. You mean, assuming for the moment, that they were 1935 and 1936,—you mean that they would have been made together sometime in 1937, is that right?

A. Yes.

Q. And that may be the case?

A. It is possible, yes.

Q. Is it possible that you made three years together?

A. I think not.

Q. What records did you make in 1938?

A. In '38?

Q. Yes.

A. I made in 1938 journal entry number 102 to record the disbursements for the period of January 1, 1938 through September 30, 1938.

Q. As I understand you, there were two years at some period when there were no entries made in the Seminole

Boat Company's books but they were made at the close of that two year period?

A. Yes.

Q. You can't remember when that was?

A. I do not remember.

Q. Now, I want to ask you this, Mr. Anderson: There have been from time to time advances made of payments made by the stockholders to make good the recurring deficits of the company, have there not been?

A. What?

Q. There have been payments made by the stockholders of the corporation from time to time in various ways to make good the recurring deficits of the company?

A. Yes.

Q. And those advances or those payments, if you are going to set up books, have to be put down on the books of the company in some fashion, do they not?

A. They do.

Q. In other words, you have got to have a ledger account into which can be put or posted everything that the company receives or pays out.

A. Are you referring to Seminole Boat Company?

Q. Any company.

A. Yes.

Q. In other words, you have got to have that to balance your books.

A. Yes.

Q. So I take it that when those advances have been made by the stockholders you have set up an account or there has been set up an account in the books in the names of the stockholders and under which they are credited with these payments, is that right?

A. Yes.

Q. And as a matter of bookkeeping that shows a credit to the stockholders and a debit to the corporation?

A. Yes.

Q. Now you do not suggest that there have been any notes given to the corporation by the stockholders for these payments, do you?

A. I know of no notes—do you mean by the Seminole Boat Company?

Q. So that when you referred to this voucher back here, number 95, showing a transfer of Mr. Henry S. Phipps' interest to Mrs. F. E. Guest, what you were telling us was that the amount that stood on the books in the ledger account in the name of H. C. Phipps is credit representing these payments that had been made had been transferred to another account in the name of Mrs. Guest?

A. Yes.

Q. I am looking for a page in the ledger that has entries and postings running over a period of years, and I happen on this one which is headed "Medical expense, Seminole fire." There are entries in there in the year 1935, the year 1936, the year 1937 and the year 1938; is that right?

A. Yes.

Q. And you tell me that the entries in the ledger are taken from these voucher sheets that we have just been discussing, numbers 90 to 103?

A. Yes.

Q. Now during this two year period when you didn't make up any voucher sheets that you can recall, then of course there were no postings in the ledger?

A. Yes; there were no posting in the ledger.

Q. So that for at least two of these years the entries must have been made in the ledger simultaneously, is that right; approximately simultaneously?

A. Approximately, yes.

Q. How many of these years from 1935 through 1938 in this particular ledger account were made at approximately the same time?

A. To the best of my knowledge I would say, referring to ledger sheets, that the years 1936 and 1937 were made approximately at the same time.

Q. You do not include 1938?

A. No, I do not.

Q. You do not include 1935?

A. I do not.

Q. Do you say that all of the entries, beginning in 1935 and running through 1938, are not of approximately the same age?

A. They are not.

Q. They were all made by you?

A. They were.

Q. So wherever we find it in this book, without taking time to go through and look at a lot of different accounts, we can take it that your testimony is that the entries with respect to 1936 and 1937 were made sometime in 1938?

A. I did say only that it was probable they were; I don't recall definitely that those two years were made at the same time; it is possible they were made two or three or six months apart.

Q. But you deny that the entries that relate to the year 1934 were made in any year other than 1935?

A. I do.

Q. Or that the entries in the year 1935 were made in any other year than 1936?

A. To the best of my knowledge they were not.

Q. How much or how large a staff do you have in the Palm Beach office?

A. Generally we have a stenographer, her assistant, myself, my assistant, and Mr. Riley, as far as clerical work is concerned.

Q. You have not named the assistant bookkeeper, have you?

A. That is Mr. Anthony; my assistant.

Q. That is the entire staff in the accounting department; is there any other department?

A. Mr. Riley has the department of operations and maintenance.

Q. Does that have a staff?

A. Yes.

Q. Is that in the same office with yours?

A. It is.

Q. Just what does the Palm Beach office in Palm Beach consist of?

A. The main office, filing rooms and three private offices.

Q. Who have the private offices?

A. The first private office is occupied by Mr. Henry C. Phipps when he is in Palm Beach; the second private office is occupied by Mr. John S. Phipps when he is in Palm Beach, and Mr. Riley occupies the other office.

Q. When Mr. John S. Phipps is in Palm Beach he occupied that office, does he?

A. From time to time.

Q. Is he there quite a bit of the time?

A. I would like to know what you mean by "quite a bit of the time."

Q. You tell me.

A. Sometimes he is there every day, and sometimes he goes for three or four days hand running, and then he will skip a week; it is hard to say what portion of the time he is in Palm Beach that he is in his office.

Q. He just spends a considerable time there?

A. No, not a considerable time.

Q. He takes a great deal of interest in the affairs of the company?

A. As far as my knowledge is concerned I do not know of any personal interest that he showed; I had no conversation or instructions pertaining to the company from Mr. Phipps since my connection with the Company.

Q. His office is next to the one of Mr. Riley?

A. No; the one next to Mr. Riley is Mr. Henry C. Phipps.

Q. The first office is that of Mr. Henry C. Phipps, then Mr. John S. Phipps and then Mr. Riley's office?

A. Mr. Riley's office is the small office leading off of the foyer; Mr. Henry C. Phipp's office is the larger office, and then Mr. J. C. Phipps' office joins Mr. Henry C. Phipps' office on the south. My connection with Mr. John S. Phipps would be to greet him "Good morning"—

Q. Sometimes he comes in pretty early in the morning?

A. I am not there to know.

Q. How many times was he there before you?

A. I never saw him there before I was.

Q. I would hardly think that you would. You have never known of an occasion when Mr. Phipps arrived before you did?

A. I have not.

Q. What time do you go to the office?

A. In the summer time at eight o'clock and in the winter time at nine.

Q. You say Mr. Gorham is no longer with you?

A. No.

Q. Where is he?

A. He is connected with the Coastal Realty Company in West Palm Beach.

Q. What other employees have you still in the office that were there in 1935?

A. In the accounting department?

Q. Yes.

A. Mrs. McDougall, Mr. Riley and myself.

Q. Are they all there now?

A. Yes.

Q. That is all?

A. May I make one correction as to the personnel of the accounting department?

Q. Yes.

A. Mr. Riley, has Mr. Glazier who takes care of his errands and so forth, and he also pinch hits as a time-keeper on the payrolls—

Mr. Matteson:

That is all.

Cross Examination.

By Mr. Botts:

Q. Mr. Anderson, as I understand, these Seminole books, so far as being an actual record of what has transpired, are more or less a superfluity, is that right?

A. I would not say that it was a superfluity.

Q. All right; those simply reflect what has already been recorded in some other books of record, is that true?

A. Yes.

Q. And those other books and records are of the Palm Beach Company primarily, is that right?

A. It depends on the period covered.

Q. From 1934 on?

A. Yes.

Q. Then the actual disbursements from 1934 would be reflected in the books of Palm Beach Company and in the ledger account of that company?

A. It would be reflected in the Palm Beach Companies books up to January 1, 1937 and in Bessemer Properties' books from 1937 on.

Q. And this Seminole Boat Company was not an active trading company or anything of that kind?

A. Not to my knowledge.

Q. So that as a matter of fact, for all practical purposes, just occasionally when you had the time you would go in and bring the Seminole Boat Company's books up to date; was that the way it was handled?

A. Not exactly.

Q. Well, it was something along that line, wasn't it?

A. I did it at the first opportune time for the preceding year in the first part of the next year as possible.

Q. For instance, I notice here under the account of "Salaries", that there are some twenty or thirty entries all under date of December 31, 1935. Now that was an accumulation of practically the whole year, is that right?

A. Are you referring from this period of 1935?

Q. Yes.

A. To—

Q. To where the account seemed to end?

A. Yes, that is an accumulation.

Q. Now getting over to these medical expenses, those were all entered for 1935 under date of December 31st, weren't they?

A. Yes.

Q. And the same is true under this sundry account for 1935; that is all reflected under one date, I believe?

A. No. It is reflected in June and December, and at this time I would like to make a statement of one or two instances as shown by the journal vouchers posted to this general ledger; during some years there was a statement made and generally prepared for a part of a year and it wasn't carried over to the following year.

Q. When you allowed this two year period to elapse without posting anything to the books of the Seminole Boat Company, did you receive a request from anybody to bring these up to date?

A. Not to my knowledge.

Q. You just happened to get around to it after a couple of years?

A. Not exactly that.

Q. How was it?

A. For instance, one of the principal reasons for holding up, if I did, 1936 and 1937, was to know the charges of medical expenses to the Seminole fire.

Q. You knew them as you went along, didn't you?

A. Yes.

Q. You mean you wanted to find out how they wanted you to charge it, is that right?

A. Yes.

Q. You didn't know whether they were going to charge it to Mr. J. S. Phipps, the Seminole Boat Company or Palm Beach Company or just how?

A. I won't say that. I definitely knew that we wouldn't charge it to Mr. J. S. Phipps.

Q. How do you know that?

A. The same as I know they wouldn't charge it to me or to you. There would be no occasion to charge it to him.

Q. You didn't know whether to charge them to Palm Beach Company or Seminole Boat Company?

A. I won't say that, because Palm Beach Company had already disbursed it.

Q. You entered it in the books of Palm Beach Company?

A. Yes.

Q. And you just waited to find out whether or not they wanted you to go through the formality of setting up these entries in reference to this corporation that had no assets and was performing no functions, and you just wanted to know whether they wanted you to go through the detail of writing it down, is that the idea?

A. It is not.

Q. There must have been some reason for waiting.

A. I stated my reason.

Q. All of these items were charged to somebody when they were first made?

A. Charged on the books of Palm Beach Company to Seminole Boat Company. Before placing them on the books of the Seminole Boat Company I had to find out whether it was proper to put it on there. At that time

there was no one present that I could get the information from or to advise me what I should do with them.

Q. You mean Mr. Phipps wasn't there?

A. Mr. Riley. I had never consulted Mr. Phipps relative to charges.

Q. Mr. Riley was there all the time, wasn't he?

A. I don't believe Mr. Riley is capable of passing on whether a charge should be put on the books or not.

Q. Who was it that you waited to get advice from?

A. Mr. Alley.

Q. He was there all the time, wasn't he?

A. Yes.

Q. Why did you wait two years to get that advice from him?

A. Waiting for the approval of it before posting it.

Q. You waited two years to get his approval?

A. I haven't said that I waited two years.

Q. Did you?

A. I said if it was two years, 1936 and 1937, then I waited two years for that purpose.

Q. Now, Mr. Anderson, you know whether it was two years or not, don't you?

A. No, I don't.

Q. Don't hedge with us; you know now, don't you?

A. I don't know whether it was 1936 or 1937; I told you I thought I held up postings for two years.

Q. Now, don't you know?

A. I don't.

Q. Your memory is an absolute blank on that question?

A. It is not. To the best of my memory I did hold up two years, but which two years I don't remember.

Q. Let's just assume that your memory has not failed you entirely and that you did hold it up for two years,—now that wouldn't be a violent assumption, would it?

A. No.

Q. So then for two years you held up making these entries because you wanted to get advice from Mr. Alley who was there daily in the office; is that your explanation?

A. Mr. Alley maintains an office in West Palm Beach.

Q. He was in the office daily, wasn't he?

A. No.

Q. He was in the office weekly, wasn't he?

A. He was not.

Q. How often did you see him?

A. Oh, on many occasions.

Q. And those many occasions over the period of two years,—you had no occasion during those two years to see Mr. Alley to get advice from him; is that your explanation?

A. I merely requested authority to post my books and waited for authority, and when it was given to me I posted my books.

Q. I see. Then you asked for authority and they didn't tell you for two years; is that the idea?

A. If that is the case, yes.

Q. If it is the case; don't you know?

A. I am not admitting that I wanted two years before posting the books. I said there was a possibility that there were two years posted at one time, and if I am given sufficient time I could check my records and find out about that.

Q. That is a rather unusual bookkeeping custom, is it not?

A. What do you mean by unusual bookkeeping practice?

Q. To delay two years with reference to posting your books.

A. Yes.

Q. And the only explanation is, as I understand it, that you asked Mr. Alley for advice as to how you

should post it and then he delayed for approximately two years in giving you that advice, and therefore you delayed in making the entries; is that your explanation??

A. I can only repeat—

Q. Just tell me is that your explanation? Answer that yes or no.

A. I can't answer that yes or no. As I said before, if there were two years posted—

Q. You know there were two years, don't you?

A. I don't. I will admit that if there was any delay in posting of the entries in the books of the Seminole Boat Company for any period, that it was due to the fact that I was waiting for advice or authority to post it in the books.

Q. And it took them two years apparently to decide how they wanted them posted?

A. I can't answer that.

Q. As a matter of fact you have dodged here several times; isn't that a fact; that is the fact, isn't it?

A. It is not. I am not saying that I didn't wait for two years and then have my records contradict me.

Q. We will be liberal; we won't hold you to "exact two years"; we will say approximately two years. Will that help you any?

A. No, it wouldn't be of any help.

Q. Now then, Mr. Anderson, your recollection about the actual facts of the posting for this period of time is quite hazy, is that right?

A. Yes.

Q. Then how do you know that you didn't post for three years during that time?

A. For the reason that my records before me indicate that I did not.

Q. How do you know that 1935 or 1934 was not included in that hiatus period?

A. For the simple reason that it was the first year that I closed out the books of the Seminole Boat Company, and I discussed the depreciation rates with Mr. Riley for that year.

Mr. Underwood:
What year was that?

The Witness:
I was answering for the year 1934.

Q. For the year 1934 you discussed some depreciation rates for practice with Mr. Riley before you made your entries?

A. That is correct.

Q. Then you made your entries for 1934?

A. Correct.

Q. Am I right in the understanding that at approximately the same period you made your entries for the entire year 1934, is that right?

A. I don't understand the question.

Q. My understanding is that the posting of your Seminole Boat Company's record was a sort of skip and stop proposition. That is, you would post them for a considerable period of time, and then allow a period to elapse and then you would post them up again?

A. Yes, sir.

Q. Did you post for the entire year 1934 at one time; can you tell me that?

A. May I have my journal entry, please?

Q. Certainly.

A. Yes.

Q. Then for the year 1935 when did you do your posting there; what is your best recollection?

A. That year was divided. I posted the period of January 1, 1935 to April 30, 1935 sometime after April,

1935, a short period of time; the exact period of time I don't know.

Q. You posted up to that time and the balance of 1935 was posted at one time probably in 1936?

A. In 1936, yes.

Q. Then there was this hiatus of approximately two years covering the years of 1936 and 1937. Now during that hiatus period you didn't wait to make the entries in the Palm Beach or Bessemer properties' Books for the same period, did you?

A. In those periods I merely recorded the checks and entered the receipts on the cash books, having never posted the general ledger or the records of the Palm Beach Company.

Q. You mean these disbursements in those years, which amounted to substantial sums of money, were carried in suspense in the records of Palm Beach Company as far as permanent ledger records are concerned?

A. I couldn't answer that question because I didn't keep the records.

Q. You were in charge of the records of the Palm Beach Company?

A. I was not.

Q. Weren't you the bookkeeper for Palm Beach Company?

A. The books of the Palm Beach Company were kept in the northern office.

Q. Didn't you keep some books there?

A. I kept the running accounts only.

Q. And that is all you kept?

A. That is all I kept.

Q. You didn't have any ledgers there in Palm Beach as to the Palm Beach Company or Bessemer Properties?

A. I did since the year 1937.

Q. All right; 1937 was one of those "Suspense" years; how did you reflect these expenses in your ledger ac-

counts during 1937; for instance, you didn't hold those in suspense, did you, until you got advice from Mr. Alley?

A. I will have to refer to the accounts to see if the Phipps Realty Company reimbursed me for those years. I cannot remember the account. The general procedure was that all charges for "Account Seminole Boat Company" by Bessemer Properties were reimbursed by Phipps Realty Company.

Q. Now is there any difference between the journal record there for the year 1935, for instance, and that of 1936 and 1937?

A. Is there any difference?

Q. Yes.

A. As to what?

Q. As to their general nature.

A. There should not be.

Q. Is there; you have them.

A. I will have to examine them to see.

Q. Do so.

A. They are generally in the same form.

Q. What I am trying to get at is this: How can you refer to these journal records and say that 1935 was posted definitely at a certain time and you cannot give the same information with reference to 1936 and 1937? Will you enlighten us on that subject?

A. Due to the records as posted here, they indicate clearly that the posting for the year 1935 was a separate date, also coupled with my knowledge of the setting up of the depreciation for the year 1934; and the year 1935 indicates from the postings that it was posted separately; 1936 and 1937 are very similar in posting, and I can remember 1938 because it was recent postings.

Q. What is it with reference to 1935 from which you draw the conclusion that 1935 was posted prior to 1936 and 1937?

A. It has come to my memory since looking at the postings in the journals that at the time of the first journal entry here, at the time of the purchase of the Seminole, we prepared an entry to determine liability at that time, and it was afterwards that I was informed that Mrs. Guest would bear one half of the expenses from the first of the year.

Q. That was posted at the end of 1935?

A. No; it is a split journal entry; it was posted for two periods.

Q. How do you know that that was posted at any particular date?

A. Because I prepared it and posted it.

Q. You prepared and posted others, didn't you?

A. I did, yes, and I have an incident to refresh my memory on due to the fact that at that time Mrs. Guest bought a one half interest in the Seminole, and for that period I prepared the journal entry and posted it and determined the liability.

Q. You are talking about postings you made up to April, 1930. How do you know the postings for 1935 were made in 1936?

A. Those postings were made probably in the first part of 1936, to the best of my knowledge.

Q. Probably, but you don't really know.

A. I won't say definitely, because I haven't had any occasion to determine that.

Q. Did you get the authority from Mr. Alley at this—at the time you made the postings for the year 1935, which you stated you made early in 1936, you got the information from Mr. Alley then as to how to make these postings, did you?

A. Let me refer to this (book) and I will tell you.

Q. All right.

A. I believe, to the best of my knowledge that the journal entries for 1935 were posted early in 1936, but

under what circumstances and conditions I do not recall.

Q. Then after that posting you probably waited for about two years before you made any other postings, is that right?

A. I probably waited, yes.

Q. Now, then, as I understand it, your reason for the delay of about two years was to get an answer from Mr. Riley as to how they were to be posted; right?

A. That is correct.

Q. Now then would you mind pointing out to me what the substantial difference is between your postings for the latter part of 1935 and the ones for 1936 and 1937 that would cause you to have any especial advice; I refer particularly to the accounts here designated "Medical Expense" and the "John Thomas Expense".

A. Assuming that I had authority for the posting of the latter part of 1935, I would have secured the same before posting 1936; giving me authority to post the latter part of 1935 would not give me authority to post 1936.

Q. They are identical character of items?

A. Generally speaking they are.

Q. You still waited for two years to frame the—

A. I do not admit that I waited two years.

Q. I know that, and I don't think that is a violent presumption, is it?

A. All right.

Q. Now there hadn't been anybody that came down to you and suggested "We might be taking testimony pretty soon in this case and we had better get these books in shape"?

A. They did not.

Q. You are sure about that?

A. I am positive.

Q. That's fine. Now then you have a summary here summarizing these books from the organization of the

Seminole Boat Company to its substantial demise when the boat was burned in 1935 and from then on; would you mind telling me during that periol of time, the entire period, how much Mr. John S. Phipps contributed?

A. According to the books?

Q. I want the facts.

A. I can't give you the facts other than the books.

Q. How is that?

A. I base my statement on the books.

Q. All right.

Mr. Underwood:

What is the period?

Mr. Botts:

From the beginning to the demise of the Seminole Boat Company.

Mr. Underwood:

What do you mean by "demise"?

Q. To the present time.

A. My statement I prepared doesn't cover the present time.

Q. Up to what point does it cover?

A. June 22nd, 1935.

Q. From the beginning and up until that period what was the contribution, please, of Mr. J. S. Phipps and Mr. H. C. Phipps and Mrs. Guest individually?

A. Mr. J. S. Phipps $13,665.63, Mr. Henry C. Phipps $12,440.72 and Mrs. Guest $1,224.90.

Q. Now since that time the stockholders or either of them as far as you know have not contributed officially and irrevocably anything to the Seminole Boat Company, is that right?

A. To the best of my knowledge they have not.

Q. Palm Beach Company during that period has disbursed how much and charged the same to the Seminole Boat Company?

A. I will have to refer to the records to give you those figures.

Q. Do it.

A. I do not have them before me.

Q. This summary of yours doesn't cover that?

A. It does not.

Q. Could you from these books?

A. I can give you the items.

Q. If you will give us the items maybe we can total them.

A. Do you wish the net amount?

Q. I would like to have the various items, if you don't mind.

A. Do you want them individually?

Q. Yes; give us the individual items and then the totals.

A. For the year 1935, $4,003.55; for the year 1936, $7,952.81; for the year 1937, $1,008.00 and for the year 1938, $615.00 and $300.00.

Q. Total?

A. $13,879.36, less $950.00 representing sale capital assets "Prigg Boat", being the price as set up on the books of the Seminole Boat Company.

Q. As I understand it, these net amounts, totaling slightly over $13,000.00, are charged on the books of the Palm Beach Company against Seminole Boat Company.

A. They were, yes; but whether these were reimbursed to us by cash by Phipps Realty Company, I will have to refer to the books to give you an answer.

Q. So far as you know that amount has not been reimbursed indirectly from the stockholders of the company as yet?

A. I don't know whether it has been reimbursed or not.

Mr. Botts:

That is all.

By Mr. Matteson:

Q. You have not ever received any pay from the Seminole Boat Company, have you?

A. I have not.

Q. Your employment has been entirely with the Palm Beach Company and its successor company?

A. Yes.

Q. I understood you to say that you have so many accounts that you did about four times as much work as bookkeepers in the Miami office?

A. No, I did not mean to infer that; they have a bigger volume of work, and it requires more employees.

Q. In other words, this matter of the Seminole Boat Company's books was just some additional work to what you already had?

A. Yes.

Q. You spoke of your recollection about 1935 being fixed by the transfer of certain disbursements from H. C. Phipps to Mrs. Guest. Do I gather from what you stated that you had made a charge to H. C. Phipps and that you had to change it?

A. I was instructed to.

Q. You were instructed to change it?

A. At first I was instructed that Mr. H. G. Phipps would pay in one half of the expenses to the date of sale; later I was informed or instructed that Mrs. Guest would assume the one half of the expenses from the first day of January, 1935.

Q. Did you in the first instance make up a journal voucher showing the charge of this expense to H. C. Phipps?

A. I will have to refer to that journal.

Q. The one that you have here now shows that it is charged to Mrs. Guest, but from what you said I rather

gather that you may have made up one charging it to H. C. Phipps.

A. Before the journal is prepared we make up a working paper.

Q. You have this voucher here, voucher number 96, which shows the charge to Mrs. Guest and Mr. J. S. Phipps. What I am asking you is whether you had previously made up one like this which was necessary for you to discard and substitute this.

A. No, the journal vouchers were actually prepared.

Q. This voucher 90 for 1934, has that been recopied since it was first made?

A. No.

Q. Have any of these documents been recopied since they were first made?

A. Not to my knowledge.

Q. Are these supposed to be the original sheets as originally prepared, is that right?

A. That is correct.

Mr. Matteson:

That is all.

Re-Direct Examination.

By Mr. Underwood:

Q. Mr. Anderson, you have stated that there was a time when some payments were held up and not posted for a period; that is correct, is it?

A. Yes, sir.

Q. Although they had been paid by the Palm Beach Company, is that correct?

A. Yes.

Q. Now were other items held during that period that were not posted in the books of the Seminole Boat Company after you got your advices from Mr. Alley; in other

words, were you holding up other items in addition to those which you later posted in the books of the Seminole Boat Company?

A. Do you mean to infer that of the items I was holding that some were eliminated and not posted on the books of the Seminole Boat Company?

Q. Yes.

A. Yes.

Q. Do you remember how you posted those other items when you were finally given instructions?

A. I don't recall now.

Q. Let me ask this to refresh your recollection: Did you post these items as legal expense against the account of John S. Phipps?

A. I hesitate to say because I don't recall.

Q. Do you remember what the question was that caused the delay in posting certain items during certain periods?

A. The question was whether they were legitimate charges for Seminole Boat Company.

Q. As I understand it, you do not now remember how you posted the other items that you were instructed not to put in the books of the Seminole Boat Company?

A. No, I do not.

Q. Now, Mr. Anderson, I would like to get from you a picture of these books as they existed at the time of the fire. As I understand it, all of the journal vouchers in Exhibit "Y" had been made long prior to the fire, the last one being dated in November, 1929.

A. Yes.

Q. Which is the last voucher in Exhibit "Z" that was made prior to June 24, 1935?

A. To the best of my knowledge number 96, for the period of April 30, 1935.

Q. Can you tell me definitely whether or not that journal voucher was made up and entered in this book or this file prior to June 24, 1935?

A. To the best of my knowledge it was.

Q. What date does it bear?

A. To the best of my knowledge, June 22nd.

Q. You can read that on it?

A. Yes; I presume I posted it the day that I made it.

Q. I was not asking you about posting these figures in the ledger. I was asking you about the making up of the voucher itself, these two sheets of paper which are dated June 22, 1935, and bearing voucher number 96. When, with reference to the date June 22nd, were those pages of paper typewritten?

A. On that date.

Q. Was or was not these two sheets of paper a physical part of the records of the Seminole Boat Company on the morning of June 24, 1935?

A. They were.

Q. Would it be possible for you to go through the ledger and pick out the entries that were made in that book on or before June 24, 1935?

A. Yes.

Q. Perhaps, I can cover that by general questions. I notice that these sheets in the ledger have two columns headed by the word "date". What is the date that is entered in these books, the date when the expenses are incurred or the date that the entry is made?

A. The date when the entry is made.

Q. Is it a fact that every entry in this book that bears date before June 24, 1935, was in this book on that date?

A. It was.

Q. Now, you were asked, Mr. Anderson, about the initialing of the voucher number 103. Will you tell me the circumstances of that?

A. I recall looking at it and I said, "Well, this hasn't been initialed; I had better initial it".

Q. Do you remember saying anything when you did it?

A. I believe I said something but I don't recall the comment.

Q. Did anybody tell you to do it?

A. No; free will.

Q. Do you remember where that occurred?

A. In my room at the hotel.

Q. It was my room, wasn't it?

A. Yes, it was your room.

Q. Were you sitting on a little settee?

A. Settee, yes.

Q. In front of the desk?

A. That is right.

Q. And that was the evening those books were delivered to me or to my room by Mr. Matteson's messenger?

A. Yes. I believe that Mr. Riley was the one that commented when I initialed it.

Mr. Matteson:

Do you remember what he said?

The Witness:

No, I don't.

Q. Now, you were asked about your voucher 102. Do you remember whether when you put your initials on that it was at the same time or previous?

A. That was the previous day.

Q. You did that previous to the date of the voucher?

A. It should have been the same day.

Q. What is your recollection of that; I want your recollection and not what it should have been.

A. That it was the 30th of September, 1938.

Q. I notice another voucher here, number 96, bearing date June 22nd, 1935. That voucher doesn't seem to have any initials on it at all, is that correct?

A. That is correct.

Q. So it is not unheard of that vouchers are made up an filed without being initialed?

A. That is correct.

Q. Did you at any time go to this voucher file for the purpose of initialing the vouchers that had not been initialed?

A. No. I had my pencil in my hand and I noticed that the initials were not on it; I just glanced at it, and I noticed the initials were omitted and I said, "I had better put it on here."

Q. You did it spontaneously?

A. Yes, without considering it.

Q. Without previous discussion?

A. Correct.

Q. Is that the fact?

A. That is correct.

Q. Now about these other journal vouchers, Mr. Anderson; there has been so much cross examination on them that I am not quite clear about one or two things: Voucher 97 bears date December 31, 1935; is that the date through which the records go or is it the date when the journal entry was made?

A. That is the date through which the records go.

Q. What is your best recollection as to when that was made up and put in the file?

A. To the best of my recollection it was put in the files in the early part or the first of the year 1936.

Q. Now there is some question in the minds of some of us about the purpose in sending your duplicate vouchers, with the supports, to New York, and the purpose of the Boulevard Mortgage Company doing the same thing. Will you tell me what the purpose of that was?

A. Because the books of original entry were in that office.

Q. Just what do you mean by books of original entry? To us lawyers I think it means something else.

A. It is books of account, books in which the corporation shows its profits or losses.

Q. You do not mean that those are the books in which the entry is first made in point of time?

A. No.

Q. For expense incurred by the Palm Beach Company the books which you kept there are those which in point of time the original entries are made, is that correct?

A. That is correct.

Q. I would like to have it clear how these expenses incurred on behalf of the Seminole were posted in the books at Palm Beach.

A. Merely on a memorandum account headed "Seminole Boat Company."

Q. They are actually charged as accounts receivable from Seminole Boat Company, is that right?

A. That is right.

Q. When is that charge made with reference to the issuance of the checks in payment of these expenses?

A. As approximately as close to the date of the checks as possible.

Q. You were asked whether or not the supporting data for the vouchers were retained in New York and I think you said that was true of the Palm Beach Company. Do you know whether that is true of the Boulevard Mortgage Company's expenses?

A. I don't know.

Q. You were not testifying as to that company?

A. I was not.

Q. Mr. Anderson, I note that journal vouchers 90, 91 and 92 and 93 bear pen and ink date "12/31/34". Are those your figures?

A. They are.

Q. What does that date indicate?

A. That is the year for which the voucher covered.

Q. Look at journal voucher 92. Is that made with reference to the books of any other company or is it made solely for the purpose of the Seminole Boat Company?

A. Solely for the purpose of the books of the Seminole Boat Company.

Q. How about voucher 93?

A. That is made solely for the books of the Seminole Boat Company.

Q. How about 94??

A. That is made solely for the books of the Seminole Boat Company.

Q. No other company involved?

A. No other company involved as far as that journal itself is concerned.

Q. These we have just talked about are made up solely as a part of the records of Seminole Boat Company?

A. That is correct.

Q. No other purpose served by them?

A. No other purpose whatsoever served by them.

Q. How about 95?

A. The same.

Q. How about 96?

A. The same.

Q. How about 97?

A. The same.

Q. Tell me whether or not that is true of the balance, 98 to 103, inclusive.

A. It is.

Q. What was the purpose of making up those journal vouchers?

A. To record the expenses and happenings of the Seminole Boat Company on their books of entry.

Q. It was put to you that these were entries of transactions that had already been closed. Will you tell me whether or not that is true of the Seminole Boat Company prior to the time these journal entries were made?

A. I don't believe I am qualified to state whether or not they were closed entries at the time these journal vouchers were prepared.

Q. Will you tell me whether or not entries in account books generally are made to record transactions that have already taken place?

A. Except that way.

Q. That isn't true exclusively of those journal vouchers of the Seminole Boat Company?

A. No.

Q. Or the ledger accounts?

A. No.

Q. Will you tell me whether or not entries in the books of the Seminole Boat Company recording its liability to others was for the purpose of recording that liability?

A. Yes.

Q. Will you tell me the names of the persons in the office at Palm Beach in 1935 as well as you remember those who had desks in the office, those who had office employment as distinguished from those on the outside.

A. Mrs. McDougall, Mr. Gorham, myself and Mr. Riley.

Q. Have you omitted the stenographer?

A. I can't recall whether we had a stenographer at that period or not.

Q. How many sets of books did you keep there at that time?

A. Memorandum records and running accounts for the Palm Beach Company, the Seminole Boat Company, Ocean Island Corporation, Beach and Pool Operating Corporation and Lakeworth Company.

Q. How about Boca Raton Company?

A. We didn't keep the books of the Boca Raton Company.

Q. How long of each day has Mr. Phipps been in the habit of spending in the office when he comes in?

A. Anywhere from five minutes to an hour or two.
Q. Has it been his practice to stay there all day?
A. I never knew him to.
Q. Who is the elder Phipps, H. C. or J. S.?
A. Mr. H. C. Phipps.

Mr. Underwood:
That is all.

Re-Cross Examination.

By Mr. Botts:
Q. Just to complete the record would you mind taking a pencil and writing on that pad "Seminole Boat Company?
A. Do you wish "company" spelled out or abbreviated?
Q. Just "Co."
A. (Witness complies.)

Mr. Underwood:
Suppose you write your name on there.

The Witness:
As I sign my signature?

Mr. Underwood:
Yes.

The Witness:
(The witness complies.)

Q. Write it a couple of more times down below there, if you don't mind.
A. (Witness complies.)

Mr. Botts:
You can just file this as Mr. Pilkington's next exhibit.

(Thereupon the paper upon which the witness made notations at the request of Messrs. Botts and Underwood was marked Pilkington's Exhibit number 10.)

Mr. Botts:
That is all.

Re-Cross Examination.

By Mr. Matteson:

Q. Mr. Anderson, I want to be clear about this. You say now that on voucher 103 you wrote your initials night before last, is that right?

A. That is correct.

Q. On voucher number 102 you wrote it approximately the date it bears at the top of it, which date is September 30, 1938?

A. To the best of my knowledge, yes.

Q. Is that the fact or is it not the fact?

A. To the best of my knowledge.

Q. Well, Mr. Anderson, did you write the one on the second page within the last two days?

A. I did not.

Q. You are positive of that?

A. I am.

Mr. Matteson:
If your Honor please, I would like to ask a privilege here. Night before last when I had these books in my possession I made a very careful record of the initials appearing on the various sheets, and I have this record in my hand at the moment, and I would like to have it marked for identification and then I would like to entrust it to the stenographer.

The Court:
How do you want it marked?

Mr. Matteson:
For identification.

(Thereupon the document produced by Mr. Matteson above referred to was marked Libelants' Exhibit 109 for identification.)

Mr. Underwood:
May it be agreed that that paper has been in the Court-room the entire day?

Mr. Matteson:
Yes; it was in my valise and I slipped it out after the witness testified with respect to the initialing of these sheets, and that is the first time I had seen it today.

The Court:
All right. Does that conclude Mr. Anderson's testimony?

Mr. Underwood:
Yes.

Mr. Botts:
I think so.

The Court:
We will adjourn until 9:30 Monday.

(Thereupon an adjournment was taken to 9:30 A. M. Monday, May 15, 1939.)

Monday, May 15, 1939, 9:55 o'clock A. M.

(Hearing was resumed pursuant to adjournment: and discussion was had as to calling of handwriting experts.)

2134 MR. JAMES F. RILEY, JR., was recalled as as witness on behalf of Respondents, and further testified as follows:

Direct Examination.

By Mr. Underwood:

A. Mr. Riley, have you found the original bill of the Palm Beach Service Station, covering gasoline for the month of June, 1935?

A. Yes, sir.

Q. Is that the paper?

A. Yes, sir.

Mr. Underwood:

I offer that in evidence.

Mr. Matteson:

If your Honor please, I haven't any objection to the bill as a bill, as it was rendered by the Palm Beach Service Station, but there are some writings on there that haven't been referred to, and I object to those.

Mr. Underwood:

I will prove those.

(Said paper was marked Respondents' Exhibit 4-I for identification.)

Q. Mr. Riley, towards the bottom of this exhibit I see the words "Less Seminole Boat Company Chg." In whose handwriting is that?

A. In my handwriting.

Q. When did you write that?

A. I wrote that when I checked the bill and found that one of the tickets was a charge against J. S. Phipps.

Q. "O. K. J. F. R." who wrote that?

A. I wrote that.

Q. And towards the left of the bottom, check number 486, who wrote that?

A. I think Mr. Gorham wrote that.

Q. And below that, "Pd."—standing for paid, I presume, 7-22-35, who wrote that?

A. I believe that is Mr. Gorham's writing also.

Q. Was "July 1, 1935" on there, and "J. S. Phipps" at the top, on there, when you received the bill?

A. Yes, sir.

Q. And the ink entries of dates and amounts of gasoline, and dollar figures, were they on there when you got the bill?

A. Yes, sir.

Q. Who made the subtraction of 2.19 from 24.86?

A. I did.

Mr. Underwood:

I offer it in evidence.

Mr. Matteson:

No objection.

(The said paper previously marked for identification, was admitted in evidence and marked Respondents' Exhibit 4-I.)

Q. Mr. Riley, I show you a check; will you tell me whose check that is?

A. That is Mr. John S. Phipps' personal check for—

Q. What is the amount?

A. $22.67.

Q. Do you know what that was paid for?

A. That was paid for that statement there that I just identified.

Q. Did that payment include the amount of $2.19 charged to the Seminole Boat Company?

A. No, sir.

Mr. Underwood:

I offer this check.

Mr. Botts:

No objection.

(Said check was admitted in evidence and marked Respondents Exhibit 4-I-1.

Q. I show you a Palm Beach Company triplicate voucher; will you tell me what that is for?

A. That is for the charge to the Seminole Boat Company, 2.19; in payment of the ticket for that amount dated June 24, 1935.

Q. That is the payment of the balance to the Palm Beach Service Station?

A. Yes, sir.

Q. Have you telegraphed for the duplicate and the paid portion of the original?

A. Yes, sir.

Q. They haven't come yet?

A. No, sir.

Mr. Underwood:

I offer the triplicate.

Mr. Matteson:

No objection.

(The said paper was admitted in evidence and marked Respondents' Exhibit 4-I-2.)

2141 MR. ROLAND A. SCHLAPPI, as a witness on behalf of Respondents, was sworn and testified as follows:

Direct Examination.

By Mr. Underwood:

Q. What is your full name?

A. Roland A. Schlappi.

Q. And what is your business?

A. Why I guess engine repair work, mostly.

Q. Where do you live?

A. West Palm Beach; I live Kelsey City now,—my home.

Q. How long have you been familiar with gasoline motors?

A. Ever since about 1907.

Q. What sort of experience have you had with gasoline engines?

A. Pretty near all kinds; repairing, from bottom up.

Q. Have you taken down and reassembled them?

A. Yes, sir.

Q. And in what sort of vessels have you had to do with gasoline engines?

A. Why mostly smaller vessels, about 85 feet.

Q. Have you had experience with gasoline engines in other places than boats?

A. Aviation service during the war.

Q. What was your experience with gasoline engines there?

A. Well, I was mostly trouble shooter, going out, fixing up forced landings, stuff like that.

Q. How much of the time since 1907 have you been doing that sort of work?

A. Well, I have been doing it practically all the time.

Q. What was your first employment on the Seminole?

A. Why, I went as engineer, my first employment.

Q. Do you remember when it was?

A. It was in August, I think it was 1930.

Q. And who talked with you before you were hired, at that time?

A. Captain Bryant hired me.

Q. Did anybody else talk to you before you were hired?

A. Not on that trip.

Q. Now from 1930 on down to the time of the fire in 1935, did you work again on the Seminole from time to time?

A. Yes, sir.

Q. And do you remember about how many different times?

A. About three different times.

Q. And on the other occasions, who engaged your service?

A. Well, Mr. Riley would notify me to come down and get her.

Q. Did you ever talk with Mr. J. S. Phipps about your employment on the Seminole, just before you were employed?

A. No, sir.

Q. Did he ever hire you?

A. No, sir, never.

Q. Was your employment on the Seminole always as engineer?

A. Yes, sir.

Q. Now what kind of motors did she have?

A. Two Wintons, six cylinder, 120 horse.

Q. Are you familiar with those motors?

A. Yes, sir.

Q. How were they started?

A. By air.

Q. Tell us what was necessary to do, to start those motors?

A. Well, you had to prime them first. Through the pet cocks in the cylinder head.

Q. How many pet cocks were there?

A. Six on each motor.

Q. One in each cylinder?

A. One in each cylinder.

Q. Did you have to prime each pet cock?

A. Yes, sir.

Q. Can you identify that little thing?

A. That is one of them.

Q. Is that one of the pet cocks from the Seminole?

A. Yes.

Q. Removed from her since the fire?

A. It looks like it.

Mr. Underwood:

I offer that in evidence.

Mr. Matteson:

No objection.

(The said pet cock was admitted in evidence and marked Respondents' Exhibit 4-J).

Mr. Botts:

Did the witness say this was one, or like the one? I didn't understand.

A. That's one of them.

Q. Where were the gasoline tanks situated with respect to the engine?

A. Well, they was in a bulkhead just forward of the motors.

Q. How many were there?

A. Four.

Q. Will you tell me whether or not there were any pans below the gasoline tanks?

A. They were set in trays.

Q. Do you know what the trays were made of?

A. 3/16 sheet metal; not sheet metal, iron.

Q. Do you know what the gasoline tanks themselves rested on?

A. Well, they was cushioned in the tanks on wooden stringers.

Q. You mean that wooden stringers were in the pans?

A. In the pans.

Q. And the gasoline tanks themselves rested on those?

A. Yes, sir.

Q. Now will you describe the method by which the gasoline tanks were filled with gasoline?

A. Well, there was a reservoir right across the top,—two inch reservoir—two inch brass pipe and the filler runs back about six feet and come up over the back of the engine room deck.

Q. Where did it come out on deck?

A. It come out just alongside of the hatchway you come out of the engineroom.

Q. Alongside of the engineroom hatch?

A. On the back of the engine house deck.

Q. About how far above the deck did that protrude?

A. About eighteen inches.

Q. What sort of a fitting was there where that pipe went through the deck?

A. Just a deck plate.

Q. Just what do you mean by a deck plate?

A. Well, a plate come down over the pipe and screwed down onto the deck.

Q. Do you know whether any gasoline could get through that opening if spilled in the course of filling?

A. No, sir; it was put there to protect water leaks and stuff, you know.

Q. Did you ever see anything drip through that opening?

A. Not a bit.

Q. Now where did that pipe run in the engineroom after it passed through the deck?

A. Well, it run forward to a manifold that went in the tank.

Q. A manifold ran athwartships across the bulkhead?

A. Right across the front of the tanks.

Q. How did it get from the manifold into the tanks?

A. Well, there was a globe valve, a big two inch globe valve,—I wouldn't say a globe valve, but a big valve, and you could fill any tank you wanted to. The way it went in, you filled your first tank quicker than you did the rest, it looked like.

Q. Each tank had a valve?

A. Yes.

Q. So that you could fill any combination of tanks at a time?

A. Yes; you did that so you could equalize it; put a filter on it,—a tank filter.

Q. What gauge or gauges did you have in the engineroom to indicate the quantity of gasoline in the tanks?

A. Had a gauge that went right up to the bulkhead,—a glass gauge.

Q. Where did that feed from?

A. It fed out of the feed line manifold.

Q. And how high was that as compared with the height of the tanks?

A. It was to the top of the tanks.

Q. How was that secured?

A. It was secured with brackets, that the glass gauge set in; and there was rods on each side of the gauge, to hold the gauge.

Q. And will you describe for us the fitting where the glass gauge was connected with the manifold?

A. Well, it was a kind of a T-type fitting, with a union on the top of it; a union nut, and your glass went in there and packed with wicking, and pulled down on it.

Q. Did that ever leak?

A. Never did.

Q. Was there any vent on the gasoline tanks?

A. Yes, vent—they was all connected at the four tanks and went out the side.

Q. Which side?

A. The port side.

Q. Where did the vents leave the tanks?

A. They left right out of the top of the tank and come down the port side and went on top of the gun'ale,—gunwale.

Q. Do you know how thick that pipe was?

A. It was half inch pipe.

Q. Did you ever have any trouble with that vent?

A. No, sir.

Q. Do you know whether the tanks were secured in that compartment??

A. Well, I don't know just how they was secured; I know I was out in pretty rough weather with them and never had any trouble, no leaks or anything on the trip.

Q. When was that?

A. That was when we carried her up to Ft. Lauderdale in August.

Q. Of what year, do you remember?

A. 1930.

Q. Have you ever been in that compartment where the tanks were?

A. It was pretty hard to get in there before—you would have to take that bulkhead apart, part of the bulkhead loose, to get in there.

Q. Did you ever get in there?

A. No, sir.

Q. Did you ever see, then, how the tanks were secured?

A. No, sir, I didn't.

Q. From your observation on the boat can you tell us whether or not they were secure?

A. Why—

Mr. Botts:

I object; he stated that he does not know, and necessarily any explanation he could give would be a conclusion. I object on that ground; and he has answered the question.

Mr. Matteson:

I think he has already answered the question as well as he is able to do it.

The Court:

He might have some information on that. If it is subject to the objection, why then I will consider it that way. I overrule the objection.

(The last question was read.)

A. Well, I don't know just how they was secured.

Q. Did you ever see any signs of their shifting?

A. No signs at all?

Q. What sort of weather have you been in, in that boat?

A. We went up outside from Miami to Ft. Lauderdale, a pretty heavy northeaster, and pretty near a trough sea, and she would go pretty far both ways; she was high on top of the water.

Q. Do you mean that she would roll?

A. Yes.

Q. Did you have any difficulty with your tanks on that occasion?

A. Not a bit.

Q. Did you ever see any signs of those gasoline tanks leaking?

A. No, sir.

Q. How could you investigate to see whether those tanks were leaking?

A. Why, you could,—there was a hole about that big around; you could look in around the fittings through the bulkhead.

Q. Indicating about six inches in diameter?

A. Yes.

Q. That was where? Where were those holes?

A. That each feed line come out of, from the tanks.

Q. What could you see when you looked in there?

A. Why, you could see the tray,—the bottom of your tray just in front.

Q. Did you ever see any drippings from those tanks in those trays?

A. No, sir, and I never smelled any either.

Q. What kind of batteries did she have?

A. She had Edisons.

Q. How many?

A. 100 cell battery.

Q. Where were they?

A. They was up on the starboard side.

Q. In the forward starboard corner of the engineroom?

A. Yes, sir, right up against the bulkhead, in two tiers.

Q. One above the other?

A. One above the other.

Q. How much current did they provide?

A. 110 volts.

Q. What was the condition of those batteries in 1935?

A. They was in good condition.

Q. Did you have any trouble with them that year?

A. Not a bit.

Q. Now there was some auxiliaries in addition to the two main motors. Will you tell me what they were?

A. Well, she had a main generator motor.

Q. Where was that situated?

A. It was on the port side, just on the port of the port motor.

Q. Between the port motor and the port side of the boat?

A. Yes, sir.

Q. And how was that operated?

A. By gas.

Q. Where did the gasoline come from?

A. Come out of the main feed line,—the main reservoir feed line.

Q. The main tanks?

A. Yes, sir.

Q. Did you have a bilge pump?

A. Yes, sir.

Q. How many did you have?

A. Had one hand pump and one electric motor driven pump.

Q. Where was the motor driven pump?

A. It sits on a bench right in front, right up against the front bulkhead.

Q. There was a bench on the forward bulkhead?

A. Yes, sir.

Q. In the forward port corner of the engineroom, there was a little toilet?

A. Yes, sir.

Q. And that bench ran—

A. Ran towards the center of the boat, from there.

Q. How far over did the bench run?

A. Not quite to amidships.

Q. What was there amidships?

A. There was a desk.

Q. What was to the right of the desk.

A. The batteries.

Q. How close was the desk to the battery shelves?

A. About eighteen inches.

Q. That bilge pump motor rested on that shelf you have told us about?

A. It rested on that shelf.

Q. Did you have a sanitary pump or pumps?

A. Had sanitary—they fit right under the battery trays on the floor.

Q. How many were there?

A. Two.

Q. How were they driven?

A. Electric motor.

Q. Both electric motor?

A. Yes.

Q. Did you have a fresh water pump?

A. Yes, sir; they was both the same; one a sanitary and one a fresh water.

Q. One of these that you speak of under the batteries, was a sanitary, and the other was a fresh water pump?

A Yes, sir.

Q. Where was the fresh water tanks?

A. They was in the forward part of the boat, under the deck.

Q. In the bilges?

A. Yes, sir.

Q. And did you have anything in the nature of an emergency lighting motor?

A. Had a small universal motor for emergency.

Q. Where was that situated?

A. It was in under this bench under the bilge pump.

Q. Was that electrically driven?

A. No, sir; that there, you have to have the generator,—gasoline.

Q. That was a gasoline driven motor?

A. Yes, sir.

Q. To provide electricity in emergency?

A. Yes, sir.

Q. Where did that get its gasoline supply?

A. Out of the main tank line.

Q. The line that ran from the main manifold, in some way?

A. Yes, sir.

Q. Now let's talk about this gasoline manifold. When the gasoline line came out of the tanks, how did it run?

A. The pipe run all the way across, and it come out with a globe valve,—or a valve, out of each tank; and then there was a T made up with unions.

Q. Was there a valve at each tank?

A. Yes, sir.

Q. How big was that gasoline manifold line?

A. It was quarter inch.

Q. What was it made of?

A. Brass pipe.

Q. After you got to the starboard end of that manifold line, what did the line do?

A. To the starboard end?

Q. Starboard end.

A. It has a draw-off valve there; it was connected on there and come back to the center of the boat, with two drain-valves.

Q. You mean that after the manifold line ran across the four tanks, it doubled back?

A. Yes, sir.

Q. And came back towards amidships again?

A. Yes, sir.

Q. And on the end of that line that doubled back, you say there were two valves?

A. Yes, sir.

Q. Now, how was that line supported, from the time when it doubled back?

A. It was supported through the desk legs, I imagine; bulkheaded right down to the floor in each side, and the pipe was supported through there.

Q. Those legs to the desk, did they go down to the floor, or back to the bulkhead?

A. They was regular solid boards, nailed right down.

Q. And what did the gasoline line that led to these draw-off valves, do, about those legs?

A. It was supported by them?

Q. Was the line held to the legs by brackets, or did it pass through the legs, or how was it fitted?

A. Put through the legs, put right through the legs.

Q. The line went through the legs?

A. Yes.

Q. How far from the port legs were the valves? How much pipe extended beyond the port leg until you came to the valve?

Q.[A.] Between six and eight inches; there wasn't any more than that. There was just enough so you could get anything under there to draw gas.

Mr. Underwood:

Do you have those exhibits,—the valves and pipes and things?

The Witness:

That drain pipe was enlarged.

Q. Which drain pipe?

A. The one that went through the desk.

Q. What size pipe was that?

A. Half-inch.

Q. The manifold itself, you say, was one--quarter inch?

A. Yes.

Q. And both were brass pipe?

A. Yes.

Q. Now the valves where the lines come through the bulkhead right from the tanks, did you ever have any trouble with those valves?

A. No.

Q. Did they leak?

A. One was just put on there for emergency, that extra one.

Q. I am not talking at the moment about drain valves. I am talking about the valves right at each tank where the manifolds come through the bulkhead; those valves never leaked?

A. No.

Q. Now we will talk about the two draw-off valves. Can you remember what kinds of valves those were?

A. I am not sure what kind they were; they were either Crane or Lunkenheimer; they both look so much alike, and I worked on so many boats.

Q. Do you remember what size they were?

A. Half-inch valves; one of them was fixed so you could put a three-quarter connection on there if you wanted to.

Q. Rollie, I show you these two valves which are marked Libelants' Exhibit 11. Do you recognize these?

A. Yes, sir.

Q. Are these the drain valves from the Seminole?

A. Yes.

Q. Did you ever have any trouble with those?

A. No, sir.

Q. Did they ever leak?

A. No, sir.

Q. About how far was the right-hand end of this two-valve assembly from the desk leg?

A. That wasn't far—not very far, because you could just get a can under there, one of these regular filler cans.

Q. Could you tell us about how many inches it was, or if you can't, just tell us so.

A. That whole business stuck out there between eight and ten inches; that was a long time ago.

Q. Now, where did the feed lines for the motors leave the manifold?

A. They left right under the edge of this bench that came across ther for the port hole.

Q. Where did the starboard line leave the manifold?

A. It come out on the right side of the desk.

Q. Which way did these lines lead?

A. Down under the floor and up through the carburetor.

Q. Now was there any trap in these lines?

A. The trap was right next to the manifold.

Q. Between the manifold and the floor?

A. Yes; it was pretty close up to the manifold itself.

Q. Was there any other fitting between the trap and where the line led through the valve?

A. The valves to shut off the gas on the motor.

Q. How many sets of valves?

A. One to each motor.

Q. One on each feed line?

A. Yes.

Q. What was in the bottom of that trap that was in the feed line to the starboard motor?

A. It was a plug.

Q. Do you remember what kind of a plug?

A. No, I don't; some of them were hard and some of them were flat and solid.

Q. What was in the bottom of the trap that was in the feed line of the port motor?

A. A union connection?

Q. What kind of a connection?

A. Well, it was copper tubing, a copper tubing feed line.

Q. Where did that run?

A. It runs to the small motor there, that emergency motor.

Q. That is the one that was beneath the bench?

A. Yes.

Q. There wasn't any plug in that port trap?

A. No, sir.

Q. Now where did the feed line to the generator motor leave the main feedline?

A. I left right on the port tank, right on the end of the port tank.

Q. You mean at the port end of the manifold that runs across the front of all four tanks?

A. Yes.

Q. How did they run?

A. It run right direct under the floor and came up right at the front carburetor, the port carburetor.

Q. What was that line made of?

A. Copper tubing.

Q. A line of copper tubing?

A. Yes, sir.

Q. Did you have backfire arrestors there?

A. Yes; they was in the mouth of the carburetor.

Q. On each motor?

A. On the two main motors.

Q. Was any part of these motors and feedlines painted?

A. The manifolds was all painted black.

Q. How about the feedlines from the manifold?

A. Down to the floor they was all painted.

Q. Were they painted where they come up through the floor to the carburetors?

A. Yes.

Q. Are they painted below the floor?

A. No.

Q. How about the motors themselves, were they painted?

A. Yes.

Q. What color was the paint on the motors?

A. A light grey.

Q. What color was the paint on the feedlines?

A. Black.

Q. You were on the Seminole on a cruise in the spring of 1935, were you not?

A. Yes, sir.

Q. During that time what examination did you make to see whether there were any leaks in all of this gasoline equipment?

Mr. Matteson:

I object to that. He has not said he made any examinations. Let the witness testify.

Mr. Underwood:

I will withdraw that question and ask another one.

(By Mr. Underwood):

Q. Tell us first Rollie, whether you ever made any examinations during that last cruise, to the leaving of the boat at Pilkington's,—whether you made any examinations of these gasoline tanks and feedlines?

Mr. Matteson:

I object to that as leading.

The Court:

I don't think it is leading. The objection is overruled.

A. I cleaned them all up and painted them right down here at Royal Palm Docks, and repaired them.

Q. What else did you do, if anything, about these lines during the time you were on her that year?

A. Well, I didn't have any trouble with them; they were packed good and tight; oiled the valves is about all.

Q. How often did you look at these lines?

A. Quite often.

Q. Well, how frequently does that mean, Rollie?

A. Well, every time we went to draw gas you would look at them pretty much.

Q. How about when wou were not drawing gas?

A. Well, if you don't smell no gas or anything, I don't think it is necessary to examine them every day.

Q. When you looked at those feedlines and manifolds and so forth, tell us what you found.

A. They were in good shape.

Q. Did you find any leaks in that feedline or manifold?

A. Not in the feedline.

Q. Did you find any leak anywhere there?

A. I had a leak in the union on the filler pipe one time.

Q. When was that?

A. That was when we were gasing up to go to the keys.

Q. What year was that?

A. 1935.

Q. What did you do about that?

A. Well, I got a fellow that was filling on a gas boat—I got his wrench—he came over there with me and we tightened it; it took the two of us.

Q. When was that?

A. That was when we were filling to go to the Keys.

Q. That was at the Royal Palm Dock?

A. Yes.

Q. The time that you spoke of going to the Keys, was that in the spring of 1935?

A. Yes.

Q. Tell us how near the place where the filler pipe came through the deck that that leak occurred?

A. Just about half way between each of the—between it and the tanks.

Q. And where was the leak?

A. It was right in the ground-seat union, where the unions connected together.

Q. There was a union in that line between the place where the filling came through the deck and the filling manifold, is that right?

A. Yes.

Q. And that leak was there?

A. Yes.

Q. From that time on did you have any trouble with that union?

A. No, sir. I stopped them from filling, and he came along with the wrench, and we fixed it up.

Q. Did you fill more after that?

A. We finished filling after that.

Q. Now was there any leak at that union after you fixed it and while you were completing the filling?

A. No, sir.

Q. How close to the deck head or the ceiling of the engineroom was that filling line at that place?

A. Now, I wouldn't know—I wouldn't know just exactly how close to say.

Q. Just approximately.

A. I would figure it was about ten inches. I didn't pay too much attention to it.

Q. Was or was not the filling line at that place above the level of the tops of the gasoline tanks?

A. Yes,—no, it wasn't, because the filler lines went in—

Q. Was or was not that place above the level of the place where the filling lines went into the tanks?

A. I imagine it was; it run kind of on a slant, like that.

Q. Which way was the slant?

A. Towards the tank. You see, the tanks are about that much higher, much higher from the bottom of the tank than the reservoir.

Mr. Botts:

Indicating about four inches.

Mr. Underwood:

That is right.

Q. About how far from the tops of the tanks was it where the filling lines went in to the tanks?

A. From the tops of the tanks?

Q. Yes.

A. About that far (indicating).

Q. Is that the distance you just mentioned?

A. Yes.

Q. Now apart from the leak that you mentioned in the filling union, did you ever find any other leak?

A. No, sir.

Q. Did you know the difference, Rollie, between a seep, weep or leak?

A. Well, some people call them seeping and some weeping; just where you have a sign of a leak—

Q. Did you ever see anything like that in the engine-room of the Seminole?

A. No.

Q. Did you ever smell any gasoline vapor in the Seminole?

A. No, sir; only when we were drawing or priming the motors.

Q. Now where was the main switchboard located?

A. On the back bulkhead between the two motors.

Q. How did the wires run from the battery to the main switchboard?

A. Through a regular conduit.

Q. Now where was the first switch that had to be closed in order to put electricity from the batteries on the switchboard?

A. The first switch to be pulled was on the starboard side of the bottom of the board.

Q. You say "starboard" side, Rollie, but I notice you used your left hand.

A. Well, the starboard side of the boat.

Q. That would be your left?

A. Facing the switchboard would be on the left.

Q. Was it high or low, on the switchboard?

A. It was on the lower corner.

Q. When you closed that switch how far did that put electricity on the board?

A. It just puts it on the board.

Q. How much of the board did it put it put it on?

A. It put it up to your charge and discharge switch.

The Court:

You will have to speak a little louder. I cannot hear you.

Q. Where was that switch?

A. It was right in the center of the board.

Q. When you closed or opened that switch, Rollie, show us which way you moved your hand; I mean was it vertical or horizontal?

A. It was horizontal, the discharge and charge switch was.

Q. Now the first switch that you spoke about down in the lower starboard corner, was that horizontal or vertical?

A. It was vertical; you threw it up and down.

Q. Going back to the charging and discharging switch, which way was the charging position?

A. The charging position you threw it to the right,

Mr. Matteson:

Let the record show considerable thought and delay in answering.

Mr. Underwood:

I think the record will probably show that as to this witness about a great many witnesse. Is there anything wrong about that; is there any criticism of the witness, if so, please state it.

The Court:

Suppose we proceed. I think it is rather difficult to read into the record anything in regagrd to that particular answer; it is difficult to characterize it; it is a different situation, but I think we had better proceed without any comments at this time.

(By Mr. Underwood):

Q. Rollie, what do you call this switch that was at the lower starboard corner, the first switch that you use to put electricity on the board?

A. The main switch.

Q. After you close the main switch, then which switch do you have to close to get electricity on your field switches for lighting?

A. You have to throw it on the discharge side.

Q. And that you indicated would be thrown to the left as you face the board.

A. That is a long time to remember.

Q. Tell us your best recollection.

A. Well, as near as I recollect we threw it to the left.

The Court:

If you want to read in the record there, Mr. Matteson, that it was with some hesitation that he answered some question, you can do so.

Mr. Matteson:

I do not care to encumber the record because the witness is before you and makes his own impression, so it is not necessary to encumber the record.

The Court:
All right.

(By Mr. Underwood):

Q. Where did the electricity go when you closed that switch on the discharge side?

A. It went up to your field switches.

Q. By "field switches", tell us what you mean.

A. Well, those four different compartments and stuff on the boat.

Q. Lighting switches?

A. Yes, sir.

Q. What was the uss of this charge and discharge switch?

A. Well, when we were using the generator you would have to throw it to the opposite side.

Q. To the opposite side?

A. Yes.

Q. Which way would the current flow when you closed it on the charge side?

A. It would flow into the battery room.

Q. What type of switches were those on the board?

A. Some people call them "throw-switches" and some people call them "knife switches".

Q. Were they covered in anyway?

A. No, sir.

Q. How long have you been on boats that were operated by gasoline motors?

A. How long have I been on them?

Q. Yes.

A. Well, I worked on a lot of them, but I never made an actual business of working on them, working on them as engineer.

Q. What do you mean by "not working on them as an engineer"?

A. Well, an engineer generally takes a steady job and works on a boat. My business generally—by business was mostly repairing and stuff like that.

Q. Have you seen switches on other boats during the course of that business?

A. Yes.

Q. Can you tell us what type of switch was in general use in 1935?

A. Mostly knife switches on the switchboard?

Q. Enclosed in any way?

A. No, sir.

Q. Have you used the switches on the Seminole?

A. Yes.

Q. And this last time you were aboard of her, in the spring of 1935, what was your experience with these switches in using them?

A. Well, they worked all right.

Q. Did you see any sparks?

A. Well, you broke—when you pull a switch you make very much of an arc in changing from generator to discharge side, you know.

Q. You are referring to some particular switch?

A. That is the discharge and charge switch.

Q. How about the main switch?

A. Well, after you break your discharge and charge switch, why you would pull your main switch out without making an arc.

Q. How about the field switches?

A. They would make a little arc when you break them or throwed them in.

Q. How about the closing of these switches, do they make any arc then?

A. Well, nothing like it does when you are pulling them away.

Q. Will you describe what happened when you closed these switches?

A. If you closed a switch quick you will hardly notice any arc at all.

Q. Did you ever see any sparks in closing these switches?

A. Not enough to speak of.

Q. Now, what ventilation was there in the engine-room?

A. There was two big cowl ventilators that went up through the deck, right off the front main motor.

Q. What windows were there?

A. There is a window in the engineer's bedroom, and on the side, on the port side.

Q. What was there on the starboard side?

A. There is a hallway that went through the quarters; there is a door that opens into the engineroom; it is more of a door than a window, because it opened out into the engineroom.

Q. When you left her the last time at Pilkington's how were the cowl ventilators left?

A. They were left open.

Q. How were the windows left?

A. The one on the outside of the boat was left open, the screen door—the screen was all that was closed on it.

Q. How did that window open; in what direction?

A. It opened right up to the top of the boat; you lifted it right straight up.

Q. Was it opened on hinges?

A. Yes, sir.

Q. How was the window from the alleyway to the engineroom left?

A. It just swung out against the side, against the side of the shelf.

Q. When you left the boat at Pilkington's the last time how was that window left?

A. Well, that window, as well as I remember, was open.

Q. Do you remember the windows in the alleyway, from the alleyway to the outside of the boat?

A. No, sir, I don't.

Q. Do you know anything about those windows?

A. I don't know whether they were open or not.

Q. When you left her at Pilkington's, how did you leave the engineroom hatch?

A. Let it down and locked it.

Q. How about the skylight?

A. The skylight was always open on that boat.

Q. When you left it at Pilkington's the last time, how was it left?

A. It was open; there was a screen in the skylight to keep anything from going down in there.

Q. Now one witness in this case has mentioned some gooseneck vents that were on deck. Will you tell us how many of those you knew about?

A. I know there was some along each side of the boat; I couldn't say how many there was; they run about ten feet apart, it looked like; I never counted them.

Q. Do you know where they led?

A. No, I don't.

Q. Have you been in the bilges of the Seminole?

A. Yes, sir.

Q. How could you get into the bilges from the forward part of the boat?

A. There was a big hatch right in the hallway; you pulled the rug back and lifted it up on the side, and walked right down the steps.

Q. How much room was there in the bilges in the forward part of the boat?

A. I would say about four feet.

Q. What was kept in the bilges there?

A. Water tanks.

Q. Anything else?

A. Water tanks and the anchor chain.

Q. As you went aft from that place, did you come to any bulkhead?

A. You come to a bulkhead just behind the water tanks.

Q. Where was that with reference to the gasoline tanks?

A. It was about between eight and ten feet forward.

Q. The bulkhead was eight or ten feet forward of the gasoline tanks?

A. Yes, sir.

Q. How far down did that bulkhead go?

A. Right down to the bilges.

Q. Was there any way you could go through that bulkhead into the bilges?

A. No, sir.

Q. And could you get in the bilges abaft that bulkhead?

A. There is a manhole plate right under the desk.

Q. In what?

A. In the bulkhead beyond the tanks.

Q. What was the type of that?

A. Square.

Q. When you went through there where could you go?

A. Go up to the forward bulkhead, up to that bulkhead, and your steering device and all was set in there.

Q. Now the engineroom floor, what was that made of?

A. Wood.

Q. What did it rest on?

A. It rested on girders and wood springers, too.

Q. How could you get in the bilge in the engineroom?

A. You could lift it up—take the whole floor right up in the engineroom,

Q. How big in sections was the floor?

A. Well between the engines was just one section wide and two sections long; two hatches.

Q. How about the balance of the engineroom?

A. In front you could lift it up—right in front of the engine there is a hatch right in front—

Q. How much space was there between the wooden floor of the engineroom and the bottom of the bilge, amidships?

A. I would say about eighteen inches; it was so flat that it didn't make much difference.

Q. Now on the starboard side of the engineroom what was there, if anything, underneath the floor of the alleyway?

A. There was no floor under that; it was all pipes for your water-manifold and the different manifolds and stuff.

Q. Was there another wall or bulkhead between the space under the alleyway and the engineroom?

A. No.

Q. That was open?

A. Yes.

Q. There was a bulkhead across the after-end of the engineroom, was there not?

A. Yes.

Q. How far down did that go?

A. Went right down to the girders, and they came across.

Q. Could you pass through that bulkhead?

A. No, sir.

Q. How wide was the bulkhead; was it as wide as the boat or did it stop short?

A. It stopped right in the alleyway.

Q. If you got into the space under the alleyway how far aft could you go before you got to a bulkhead that stopped you?

A. Well, that bulkhead under the alleyway was across, but it wasn't all the way up.

Q. So that the after engineroom bulkhead went all the way across the engineroom?

A. Yes.

Q. And continued across to the starboard side of the boat beneath the passageway?

A. Yes.

Q. How could you get in the bilges abaft that engine-room bulkhead?

A. You had to go up along this alleyway and into the first stateroom, and behind that bulkhead you lifted up a hatch on either side.

Q. Where did that take you?

A. Took you right into the bilge where your air tanks and stuff was.

Q. Now when you got down in the bilges there how far aft could you go?

A. You could go back to right under the galley or kitchen.

Q. What stopped you there?

A. A kind of bulkhead.

Q. Could you get through that bulkhead?

A. Yes.

Q. Pardon me.

A. Yes.

Q. You could go through that bulkhead?

A. Yes.

Q. Tell us how you could get through that bulkhead.

A. You got through in the center between the shafts.

Q. What was there?

A. Stuffing boxes where your driving shafts went out.

Q. Was there any bulkhead after that one?

A. No, sir; I am not sure of that.

Q. Do you remember any now?

A. I know you had to go down there to get to your stuffing-boxes to tighten them up; I am pretty sure there wasn't no bulkhead in there.

Q. Can you tell us how many of these bulkheads, if any, were watertight?

A. There wasn't any of them watertight.

Q. In the spring of 1935 what kind of work were you doing before you were employed on the Seminole?

A. I was fishing.

Q. Who talked to you about working on the Seminole that spring?

A. Mr. Riley called me up and asked me if I wanted to go down to meet Captain Baker and take the Seminole down to Miami.

Q. Who was it that hired you?

A. Mr. Riley.

Q. Did you talk to Mr. Phipps about that?

A. No, sir.

Q. Did you discuss anything about how much you were to be paid?

A. No, sir—yes; wait a minute. I think I asked him for $8.00 a day.

Q. Who was it that you asked?

A. Mr. Riley.

Q. Did you agree with him on a figure?

A. Yes.

Q. Did you ever have any discussion with Mr. Phipps about the rate?

A. I never talked very much to Mr. Phipps at all.

Q. Now after you were hired for the Seminole, where did you join the boat?

A. At Fort Lauderdale.

Q. Who was Captain of her?

A. Captain Baker.

Q. Where did you go with the boat from there?

A. We brought it to the Royal Palm Dock.

Q. How long did you stay on her at that time?

A. Eighteen days—let's see—I was there overhauling her 18 days.

Q. What were you doing on during that time?

A. Well, I tore out a generator motor and repaired it, cleaned and oiled, and took oil and stuff out of the big motors, and put new gaskets on them all around.

Q. Do you remember anything else that you did at that time?

A. Scraped and painted.

Q. Scraped and painted what?

A. Her motors.

Q. Do you remember anything else that you did at that time?

A. Well, I took her out on a trial trip a couple of times.

Q. How much of the gasoline feedlines did you see during that period?

A. I saw them all during that period.

Q. Did you observe any leaks during that time?

A. No, sir.

Q. Any weeping or seeping?

A. No, sir.

Q. Do you remember how you got paid for that time?

A. I got paid for a whole bunch of work at one time that spring.

Q. I show you a paper which is a part of Exhibit 3-U, voucher Number 8032. Can you tell me, Rollie, whether that is the top half of the check that you got for that work?

A. Yes.

Q. Now you have spoken of 18 days. I show you an item on there "Seminole Boat Company, 18 days at $1.50".

A. That was when I was eating at the restaurant.

Q. That $1.50 covers your food, is that right?

A. Yes, sir.

Q. It says at the top, "Seminole Boat Company, 22 days". Can you tell me what those 22 days were?

A. That was the same time I was working on her.

Q. Did you work on her 22 days?

A. I couldn't say I worked 22 days. I came down and took her to the Boatyard down there on trip, and that "18 days" was when I was eating at the restaurant there.

Q. Where was the boat at that time?

A. At the Royal Palm Dock. I came down one day and took it out to the Coconut Boat Yard, Coconut Grove Boatyard, and then the next two or three days I took her back; I guess that is where the 22 days comes in.

Q. I notice on here "bus fare, five trips at $1.20".

A. Yes.

Q. Can you tell me what that covers?

A. That is when I was coming back and forth to haul her out.

Q. While we are talking about this, I notice a charge on there, "Mr. J. S. Phipps Boats, 31 days at $5.00". Do you remember what that work covered?

A. That was on the Iolanthe.

Q. Did you work on the Iolanthe during that spring?

A. Yes, sir.

Q. I see a charge here "Mrs. F. E. Guest Boats, 7 days at $5.00". Can you tell me what that is?

A. I went to Bimini; that was on the Iolanthe, too.

Q. And the other charge on there is "Mr. J. S. Phipps Boats, one day at $8.00". Do you know what that is?

A. I don't quite remember.

Q. Who kept your time?

A. Why, I generally kept it, and then I went to the office and reported it.

Q. To whom?

A. To Mr. Riley.

Q. Who worked out how much you were to get?

A. Well, we would come to an agreement—we came to an agreement on that one when we went to the Keys that time.

Q. After you reported your time to him what happened?

A. Why, he just made it up that way and gave me a slip of paper and I carried it to Mr. Anderson and he would fix it up and give me a check.

Q. Now in that last spring when you were on the Seminole, in 1935, did Mr. Phipps give you any orders or instructions?

A. No, sir; I always took my orders off of the Captain.

Q. Did you see Mr. Phipps in the engineroom of the Seminole that spring?

A. He was in the engineroom one time while we were laying at the Royal Palm Dock, about a week or two before we went to the Keys.

Q. How long was he in the engineroom?

A. About ten minutes.

Q. And what did he do there?

A. He just came in and looked around and said everything looked good and walked out.

Q. Was there any discussion between you and him as to anything about the engineroom?

A. Not a bit.

Q. Did you know Abel?

A. Yes, sir.

Q. Do you know where he was when you were on that cruise to the Keys in the spring of 1935?

A. He was with us on the Clip.

Q. Was he in charge of some boat?

A. He was in charge of the day boat; the name of the boat was The Clip.

Q. Did he have anything to do with the Seminole on that trip?

A. No, sir.

Q. When you took the Seminole from Fort Lauderdale to Miami with Captain Baker did Abel have any part in that?

A. No.

Q. And when the Seminole was at the Royal Palm Dock that spring did you see Abel in Miami at that time at all?

A. Yes; he came down with the boat.

Q. With what boat?

A. With the Clip, and waited around there four or five days for orders, and then he took it and went back to Palm Beach.

Q. Was he on the Seminole to do any work in the way of employment while you were on her at all that spring?

A. No, sir.

Q. Had he been on the Seminole previous to that time, do you know?

A. For work?

Q. At all?

A. He was on the Seminole when we had it up on the dock there—when we had it at the dock there.

Q. Where?

A. Up at Palm Beach.

Q. Do you know what year that was?

A. It was the year before we went to the Keys; I guess it was in 1924; we were doing some work on the bilges there; I guess it was in 1934.

Q. Did he do some work on the Seminole?

A. No, sir, not outside of getting material or something like that.

Q. I am speaking of Abel; did he do any work on the Seminole?

A. No, sir.

Q. Not while you were there?

A. No, sir, not while I was there.

Q. What were you doing on the Seminole at that time?

A. Fixing up the water pipes and stuff around different places; putting in new bolts.

Q. Had Abel, as far as you know, had any instructions in the method of using the switchboard on the Seminole?

A. Yes, sir.

Q. Tell us what you know about that.

A. I showed him where to throw the switches to get a circuit.

Q. When was that?

A. When we had her up at Palm Beach there.

Q. What was your purpose in that?

A. Well, he just wanted to know and I showed him.

Q. Was he doing any work on the boat at that time?

A. No, sir; he was a kind of fellow who would take your orders and get your stuff if you wanted anything, material, or anything like that.

Q. Getting back to this cruise in the spring of 1935, where did the party leave?

A. The party left at Lower Matecumbe.

Q. Where did you go from there?

A. Came up to Miami. You mean when they got off the boat?

Q. After the party left the boat at Matacumbe where did the Seminole go?

A. We came up here to the Royal Palm Dock that night.

Q. What did the crew do there?

A. Some of us went to Lauderdale.

Q. Some of the crew left at Miami?

A. Yes.

Q. How many of you went to Lauderdale?

A. The cock, Elliott Bryant and myself and Captain Baker.

Q. When did you get to Fort Lauderdale; that is, how long did you stay in Miami?

A. We were held up on account of fog a little while; it must have been nine o'clock before it cleared up.

Q. You mean in the morning or evening?

A. In the morning.

Q. Of the next day?

A. Yes.

Q. Then you went to Lauderdale?

A. Yes, sir.

Q. About what time did you get to Fort Lauderdale?

A. About 3:30.

Q. Where did you have your lunch that day?

A. We had lunch at the mouth of the river, just before starting up to Fort Lauderdale.

Q. Where was the boat when you had lunch?

A. We just run her up in a little slip there, just before turning the river; just run her up in there and left the motors running.

Q. Did you get any instructions about what to do with the boat before leaving her that day?

A. No, sir; I did it before, though.

Q. What was the situation as to gasoline in the tanks as you were going up the river that day?

A. There was very little gasoline in them.

Q. How about the motors; how did the motors behave on the way up to Pilkington's that time?

A. They behaved all right outside of one of them got weak on gas.

Q. When you got to Pilkington's where did you put the boat?

A. Left it out there on the outside of the dock, on the south side of the slip.

Q. When you got there how much gasoline showed in the gauge?

A. Didn't any show in the gauge.

Q. How close to the manifold was the top of that tee-fitting out of which the glass part of the gauge led?

A. Well, it would not be over one inch above the main manifold.

Q. Could you see any gasoline in that gauge at that time?

A. No, sir, you couldn't see hardly any when we stopped down there to eat.

Q. When you left her at Pilkington's could you see any?

A. No, sir.

Q. When you stopped the motors that day, can you tell us how you did it?

A. Yes, sir. We shut off the feed-line valves and let them die out.

Q. Which valves do you refer to as shutting off?

A. The feedline from the trap.

Q. You mean the valves below the traps?

A. Yes, sir.

Q. What was the effect of that?

A. Well, that is the way—we made a practice of shutting them off—she had a deep under-water exhaust, and if you cut your switches you are liable to run her—you are liable to let her roll back and fill your motors full of water.

Q. Tell us what else you did in the way of getting the engineroom ready to leave?

A. Well, I shut off all of the overboard connections, valves and stuff.

Q. What else?

A. We flushed all of the toilets and pulled all of the switches.

Q. What else?

A. Painted the copper or brass fixtures with lacquer, to keep them from corroding.

Q. What else did you do, Rollie?

A. I did most of the painting and covering that stuff going up the straight canal; I did that while I was traveling.

Q. What else did you do after you got to Pilkington's?

A. Wiped the motors off and put oil in her plugs, and rolled them over a few times.

Q. When had the drain-valves, these two that are before you there, last been used prior to the time that you got to Pilkington's that day?

A. I used them here at Royal Palm Dock that day, while we were over at the Royal Palm Dock.

Q. For what purpose?

A. Took some gas out and put it in Captain Baker's guide boat. He said that his boat was full when he carried it to the dock here, and he wanted it full, and we wanted to get "shed" of all of that gas that was in the tank, as much as I could, because it wouldn't work good when it gets old that way.

Q. When you finished that what did you do with those valves?

A. Shut them off good.

Q. From that time on did you observe any leak or seep or weep at these valves?

A. No, I didn't.

Q. Will you tell us whether or not you looked at these valves again that day?

A. I always took and run my hands around the top of it and under the bottom to see that they were shut off.

Q. What else did you do there?

A. Right there at the dock?

Q. Yes; do you mean Pilkington's or the Royal Palm Dock?

A. Royal Palm Dock.

Q. What did you find?

A. That they were tight.

Q. When you left the boat at Pilkington's how did you leave these valves?

A. Shut off, just the same as they were.

Q. How about the valves at the tanks themselves, the four tank valves?

A. Everything was shut off.

Q. Who shut them off?

A. I did.

Q. When did you do that?

A. After the motors had stopped.

Q. How tight did you shut them?

A. I shut them just good and tight.

Q. Were you in the bilges at all that day?

A. I was all through the bilges cutting off my overboard connections that day.

Q. Tell us where you were in the bilges; you have told us about the bulkheads and what was in the bilges in the various places,—how many of these different compartments were you in?

A. I was in all of them.

Q. Did you smell any gasoline in any of these bilges?

A. No, sir. And to cut off the deep wafer suction cock for the circulation of your motors you had to lift the floor board to get down to where it comes through the hull.

Q. Where was that, Rollie?

A. There was one on each side, right outside the motors.

Q. That is in the engineroom space, one on the outside of each motor?

A. Yes.

Q. I was asking you about bilges; I would like to be clear just whether or not you were near the bilges on that last day.

A. Yes, sir, I was.

Q. Did you see any gasoline in any of those bilges?

A. No, sir.

Q. Smell any?

A. No, sir.

Q. Did you see any leaks or weepage or seepage any place that day?

A. No, sir.

Q. Now did you have a gasoline can in that engineroom?

A. Yes—

Q. Like that?

A. Yes, sir.

Mr. Matteson:
What exhibit is that?

Q. Exhibit 13. Did you have one like that in there?
A. Yes, sir.
Q. Does that look like the one they had?
A. It looks just like it.
Q. How did you leave that gasoline can?
A. Setting right on the end of the bench there.
Q. Was there anything in it?
A. No, sir.
Q. Which bench do you refer to?
A. The one on the forward bulkhead.
Q. Where the little motor was?
A. Yes, sir.
Q. How about oil and grease, or rags, things of that sort? Tell me anything you have in mind about that, on that day.
A. That was all throwed overboard, all but one can of oil, and I set it out on the dock, set it out through the window.
Q. Did you have any cans with oil in them, in the engine room?
A. Only new oil, sealed cans.
Q. About how many cans of that were there?
A. Well, I wouldn't be sure; maybe six or seven.
Q. How big were they?
A. Five gallon cans.
Q. What kind of oil was it? I don't mean, the brand; was it cylinder oil?
A. Cylinder oil.
Q. Did you leave any in the engine room, any oil cans that had been opened?
A. No, sir.
Q. Did you leave any rags in the engineroom?
A. No, sir. There was about a half a bale of new waste, I took and set it right up on top of the toilet.

Q. Had any part of that been used?

A. No, sir, never been out of the bale.

Q. Now in what condition did you have the batteries that day?

A. They was all full, in good shape.

Q. Had you experienced any shorts or grounds in the Seminole that year?

A. No, sir; I didn't have a ground in it on the trip.

Q. How about ashore?

A. No, sir, I didn't have any.

Q. Had you ever had any shorts on the Seminole?

A. Did on a spot light, one year.

Q. What year was that?

A. I fixed it when they had it at Palm Beach.

Q. Was that 1935, or some other year?

A. '34.

Q. What do you mean by spot light?

A. Upon the deck of the boat.

Q. A search light?

A. Search light.

Q. Up around the pilot house?

A. Yes, sir.

Q. After you fixed it, did you have any trouble with it?

A. No, sir.

Q. About what time did you leave the Seminole that last day?

A. We left pretty close to six o'clock.

Q. And did you leave it alone, or with somebody?

A. Why, if I remember right, Captain Baker and the cook was waiting on his car to come when we left.

Q. Whom do you mean by, we?

A. Bryant and myself.

Q. Elliott Bryant?

A. Yes, sir.

Q. And how did you get back to Palm Beach?

A. Mrs. Pilkington carried us to Ft. Lauderdale; we caught the bus from there.

Q. And you left Pilkington's yard about what time?

A. I imagine it was about six o'clock.

Q. Did you have anything to do with the Seminole's keys that day?

A. No, sir, only to unlock the lock to the engineroom.

Q. Did you handle the keys that day?

A. I don't—I think I did; the lock was locked onto the pipe guard; I think I handled the keys to unlock the lock.

Q. What kind of a lock was it?

A. One of those kind of bicycle padlocks, those long shank.

Q. A long shank on it, you say?

A. Yes, sir.

Q. What was the padlock used for?

A. It locked down on the hatch, engine hatch.

Q. After you used the keys to unlock that lock, what did you do with the keys?

A. Well, I don't know whether Elliott Bryant took them, or the cook, to lock up the silver and stuff.

Q. How many keys did you have, do you remember?

A. I believe there was four keys on the ring.

Q. You say, on the ring; what kind of a thing was it that held the keys together?

A. It was a piece of hard string, used for a ring.

Q. Was there anything else on that string besides the keys themselves?

A. No, sir.

Q. Do you remember a tag of any sort?

A. Well, there was no tag on it then.

Q. Are you sure who you handed the keys to?

A. No, sir, I am not.

Q. Did you take off any keys from that ring before you delivered the keys up?

A. No, sir.

Q. Now from the time you left the boat that day, were you on her again before the fire?

A. No, sir.

Q. What was the first you knew about the fire?

A. I was called up Tuesday evening about four o'clock, and they asked me to come down to show them where the holes was in the boat.

Q. Who asked you that?

A. Mr. Riley; so they could pump her out.

Q. Did you go down there?

A. Yes, sir.

Q. About what time did you get there?

A. I went down there between six and six-thirty.

Q. That was the day after the fire?

A. The day after the fire.

Q. And what did you do that evening?

A. Why I showed Mr. Holm where the openings was in the boat, and where to plug them up, so as to stop the water from coming in.

Q. Did you go aboard the boat?

A. Yes, sir.

Q. What was her situation when you got there?

A. She was sunk.

Q. Was there any pumping done that night?

A. They pumped it out that night.

Q. About what time did you begin pumping, do you remember?

A. Well, the tide was still up, when we got the holes plugged; and we waited there quite some time for it to get low; and I would say, eight or nine o'clock.

Q. Do you remember what time the pumping stopped that night?

A. Between one and two, I guess.

Q. That would be Wednesday morning?

A. Yes, sir.

Q. What was the situation of the boat at that time?

A. She was afloat.

Q. Was there any water in her, still?

A. Yes, sir, there was some, on account of coal and stuff laying around, you couldn't pump it much without cleaning it out.

Q. On account of what lying around, Rollie?

A. Ashes and wreckage and stuff.

Q. Do you know or remember whether the water was at that time down as low as the floor, the wooden beams in the engineroom floor?

A. It was just about with them.

Q. Do you remember how thick those beams were?

A. No, sir.

Q. Could you give us any idea of how thick they were?

A. Do you mean the girders,—the steel girders, or the wood?

Q. The wood.

A. No, I haven't.

Q. Did you see any gasoline in the Seminole that night?

A. No, sir.

Q. Did you see any oil, or smell any gasoline or oil, anything of that sort?

A. Well, the smell of oil all over the place.

Q. By all over the place, what place do you mean?

A. All over the boatyard itself, all over the basin.

Q. When pumping stopped that night, was anything still burning?

A. There was some of those posts burning on top.

Q. You mean, the posts that had been part of the shed?

A. Yes, sir.

Q. Anything else?

A. No, sir,

Q. Did you see any gasoline leaking anywhere that night?

A. Yes, sir, I saw plenty of gasoline leaking, but it was on the motor we was pumping out with.

Q. Where was that?

A. It was on a barge, a little barge setting alongside of the Seminole.

Q. Who provided that motor, do you know?

A. I think the man's name was West.

Q. What did you see there?

A. There was a young fellow running that motor for him.

Q. What did you see?

A. Well, there was a pet cock on the tank, and the motor was on very poor foundation, and it shook the pet cock loose on the tank, and there was gasoline running out of that.

Q. How long did that last?

A. It didn't last long, because I saw it.

Q. What was done about the pet cock?

A. Closed it off.

Q. Who did that?

A. We did—he did. I told him—that young fellow; I never did know his name.

Q. You refer to the young fellow who was running the pump?

A. For West.

Q. Did you see any other gasoline leak that night?

A. No, sir.

Q. Did you see anything that looked like a spring of gasoline or anything else in the Seminole that night?

A. There was water running out of a pipe that had broke off. The water mixture.

Q. Which pipe was that?

A. The pipe that was broke off on that.

Q. You mean the pipe that these two valves, Exhibit 11, were broken off of?

A. Yes, sir.

Q. What was running out of there?

A. Well, it was a mixture, mostly water, see. The boat sunk, and when the tanks filled up, when she come up the water, naturally run back out.

Q. Where did you see that running from?

A. Well, from the top of the engine hatch you could see it.

Q. And where did you see the liquid that was running out of this pipe?

A. Right in under,—in about the middle of the boat.

Q. How much of that pipe was visible above the water at that time?

A. Six or eight inches.

Q. Could you see the end of it off which those two valves broke?

A. Yes, sir.

Q. Was that above the surface of the water at the time you speak of?

A. Yes, sir.

Q. Did you see anything that looked like a bubbling up of gasoline or any other substance from the surface of the water, in the Seminole?

A. No, sir. In fact you couldn't see much around there that night nohow.

Q. Because of what?

A. Dark, and raining; only had a spot light,—a flash light.

Q. What was the condition of things in the engine-room, generally?

A. Pretty bad wrecked up.

Q. You mean there was a lot of debris in there?

A. Yes, sir.

Q. Now how long did you stay there that night,—Tuesday night and Wednesday morning?

A. I stayed there all night.

Q. Where did you sleep that night?

A. On a big barge that was on the north side of the shed.

Q. A steel barge with tracks on it?

A. Yes, sir; this boy and myself stayed there.

Q. You mean the boy that had been running the pump?

A. Yes, sir.

Q. Did you go aboard the Seminole the following morning?

A. We did later on in the day; went in for breakfast, and when we come back it was raining, and after the rain let up we went aboard.

Q. Did you observe the wooden stringers on which the motors rested at that time?

A. Yes, sir.

Q. What was their condition?

A. They was charred a little, but not burned too bad.

Q. How about the wooden floor boards of the engine?

A. In the center they was burned out—pretty much burned out.

Q. By "in the center" what do you mean?

A. In between the motors—

Q. How bad—go ahead and finish.

A. Right next to the generator motor there was some of the floor still there.

Q. How bad on the starboard side of the starboard motor?

A. It was pretty well gone.

Q. How about between the forward end of the motors and the forward bulkhead?

A. It was pretty well gone.

Q. Did you see the remains of the switch board that day?

A. Yes, sir.

Q. What was its condition, and where was it?

A. It was laying right down betwen the two motors, kind of catercornered between the two motors.

Q. Was it all in one piece?

A. No, sir, it was broke.

Q. In many pieces, do you recall?

A. No, sir, it wasn't so you couldn't put it together.

Q. Did you observe about the positions of the switches on that board at that time?

A. Well, there was—the switches—generator switch, discharge and charge switch, had been inserted, because one part of the knife was inserted to turn it.

Q. On which side?

A. On the discharge side.

Q. Did you find the main switch or any part of it?

A. No, sir.

Q. Did you see any of the field switches, the lighting circuit switches?

A. Yes, sir, found those.

Q. What position did you find those in?

A. They was all open, hadn't been closed at all.

Q. There is a piece of switch some place; do you remember that little brass piece? * * *

Mr. Botts:

Here you are, Mr. Underwood. * * *

Q. Now, Rollie, I show you a piece of brass or copper, marked Exhibit 18; do you recognize that?

A. That's it, a piece of one of the switches, all right; the knife.

Q. Could you say which switch that came from?

A. No, sir. There was a switch like that on the generator side, to cut the generator circuit together; and your main switch if big like that.

Q. That might be a piece of either?

A. It could be a piece of either, because there was two switches just alike, just about the same location, on each side of the board.

Q. Rollie, here is a piece of funnel, Exhibit 14. Did you have anything like that on the Seminole?

A. Yes, sir.

Q. Does that look like anything you had on the Seminole?

A. Yes, sir.

Q. I show you this instrument, Exhibit 17; did you have anything like that on the Seminole?

A. Yes, sir.

Q. Can you recognize what that was?

A. That's the drain trap.

Q. Where was that situated?

A. Set—this one set right under the corner of that bench against the forward bulkhead.

Q. Was this on the port or the star board line?

A. This was on the port line.

Q. Now there is one piece of pipe that ends up in a valve.

A. Yes, sir.

Q. See that? Where did the line run from out of that valve?

A. That runs in the feed to your port motor.

Q. Now this other piece—is that a valve? It is a T with a plug, isn't it?

A. No, sir, this year runs up on your bulkhead, and there was a mechanical gauge for filling, but it never did work. There was a regular disc.

Q. You mean, a round gauge?

A. Yes, sir.

Q. With a hand in it that is supposed to move back and forth?

A. Yes, sir. I don't remember just how they checked it, but it never did work, anyhow. This pipe run right up to the top of the tank and back into the gauge.

Q. You mean from the T that is in this other segment of this Exhibit?

A. Yes, sir.

Q. A disc gauge ran?

A. Yes, sir.

Q. Where did the line go from the end of this piece?

A. It went to your next tank.

Q. I show you another piece, Exhibit 2 I believe it is; do you recognize that?

A. No, sir. (Examining Exhibit.)

Q. Is that the same style or type of pipe and fittings that you had on the Seminole?

A. Yes, sir.

Q. Can you tell whether that came from the Seminole?

A. I can't just place where that did go.

Q. Well, we will pass that for the time being; it may come to you as you look at it; put it down there. Where did you sleep on the Seminole?

A. On the port side in the back, next to the bulkhead.

Q. In what sort of a place?

A. Well, it was about four and a half foot on the bottom, and it widened up over the engine—over the port engine, to about six or seven foot.

Q. That little space was right in the engineroom?

A. Yes, sir.

Q. But separated by walls; right?

A. Yes, sir; it sit out over about half of the generator motor.

Q. Now you have told us that there were valves in each of these feed lines beneath the traps. Were there any other valves in those feed lines between there and the carburetors?

A. No, sir.

Q. Were any valves back by the carburetors?

A. No, sir.

Q. Was there any connection between the bilge pump and the gasoline tanks, or the gasoline feed lines?

A. Bilge pump?

Q. Yes.

A. No, sir.

Q. Was there any method of pumping gasoline from the tanks of the Seminole into anything else, by means of a pump?

A. No, sir, not rigged up to do it.

Q. You mean you could have rigged it up?

A. Oh yes.

Q. Now what was the condition, from your observation, of the conduit in which the wires ran in the engineroom?

A. Well, they was all pretty well exposed, they looked good.

Q. Which was exposed?

A. Conduit.

Q. You could see the conduit?

A. Yes, sir.

Q. What was it made of?

A. That is below deck. Now I didn't see it on top of the deck.

Q. I am speaking, Rollie, about the conduit in the engineroom.

A. It was good in there.

Q. What was the condition of your carburetors in that last string?

A. Carburetors was in good shape.

Q. Did they leak?

A. No, sir.

Q. You have told us how you turned the engines off on that last occasion. From your experience with that boat, what gasoline would that leave in the carburetor end of the line?

A. It would leave a little, it would be, after you got below your jets, why it would leave a little in the bottom of your bowls.

Q. Would there be any gasoline in the carburetor?

A. Yes, a little bit.

Q. Was there any electric light in the space underneath the gasoline tanks?

A. Yes, sir.

Q. Where was that?

A. It was right in the middle of the space that was under there.

Q. What was that space used for?

A. That was used to store fittings—oil.

Q. How often did you go in there?

A. Quite often, if I wanted a fitting, or anything.

Q. Did you use that light?

A. Yes, sir.

Q. How was the light rigged up?

A. It was in a regular socket.

Q. How did the wires get to the socket?

A. They was run over there with regular box like thing, regular conduit arrangement.

Q. The wires were in the conduit up to the light socket?

A. Yes.

Q. In your experience, when you went under there, did you ever smell any gasoline under there?

A. No, sir.

Q. Did you ever see any gasoline leaks while you were under there?

A. Never did.

Q. Was it possible to use any part of the batteries while you were charging the other part?

A. No, sir. Do you mean, separate them?

Q. Yes.

A. No, sir, they was all—

Q. All in line?

A. In line.

Q. Now that spring, while you were in the boat, how many times did you take gasoline?

A. One time.

Q. Where was that?

A. Royal Palm Dock, here.

Q. Do you remember how much you took?

A. No, sir.

Q. Do you remember how—I didn't mean to interrupt you.

A. I might be mistaken as to that, because, I believe I took the gasoline to demonstrate it to a party, a time before.

Q. What do you mean by the time before?

A. Well, we was demonstrating it to a person that figured on buying it, and put some gas in then.

Q. This time you speak of, how much gasoline did you take?

A. I don't remember; I filled the tank right up to where the gauge read 2180 gallons.

Q. Filled them practically full?

A. Yes, sir.

Q. How were they when you left the Royal Palm Dock on the cruise?

A. They was full.

Q. Now on that cruise, what was that gasoline used for?

A. It was used for the guide boats and operation of the big boat.

Q. How many guide boats did you supply with gasoline from the Seminole?

A. Three.

Q. How was that done?

A. Through that can there, mostly.

Q. Filled the can?

A. Yes.

Q. Precisely where did you get the gasoline to fill that can?

A. Out of these two valves.

Q. Indicating Exhibit 18. What did you do with the can after you filled it?

Mr. Botts:

Excuse me, you call it the wrong Exhibit number. This is 13—no, this is 11.

Q. Just change it. What did you do with the can after you filled it?

A. Set it down under there under the bench.

Q. I mean after you filled the can, how did you get the gasoline to the small boats?

A. Well, out through the window, most of the time.

Q. The port window?

A. Yes, sir.

Q. Was there any other fitting on these valves, when you used the valves to fill the can?

A. Well, when the tank was pretty well full, we used a hose; but when they got down to level with the window, why you had to use cans to fill them.

Q. When you speak of using a hose, where did the hose run from, and where to?

A. Right out through the window.

Q. Directly from the outer valve, through the window, out into the small boats?

A. Yes, sir.

Mr. Underwood:

That is all.

Cross Examination.

By Mr. Matteson:

Q. Mr. Schlappi, I want to be sure I clearly understood you about that filling line. As I understand it, starting from the filling end, it came down through the deck in the vicinity of the after part of the engineroom, is that right?

A. Yes, sir.

Q. And on the port side?

A. On the port side.

Q. And then it stood about eighteen inches, did you say, above the deck?

A. Yes, sir.

Q. And then how far below the deck did it extend on the bottom side?

A. Well, I wouldn't be sure, maybe eight or ten inches. I am not sure of that.

Q. Well, I don't want anything exact, but I just want to get as clear a picture as I can. Your recollection is, about ten inches?

A. Yes, sir.

Q. Then I take it that where it came down through the deck, was that in the room—within the engineroom?

A. Yes, sir.

Q. At ten inches below the deck, it turned at right angles and ran forward, is that right?

A. Yes, sir.

Q. That would be along the port side of the engine?

A. Just about over the generator motor.

Q. Well, the generator motor would be about the middle of this room, athwartships?

A. No, sir.

Q. What is that?

A. On the side of the boat.

Q. Well, I know, but the room was on the side of the boat, wasn't it?

A. Yes, sir.

Q. And the room came from the side of the boat, and part way over the port engine?

A. Yes, sir.

Q. What I was asking was, whether the filling pipe came down about the middle of that room.

A. Just about.

Q. Just about? And then ran forward through that room?

A. Yes, sir.

Q. And through the forward wall of that room?

A. No, it didn't go through the bedroom or living quarters at all. It started right at the living quarters.

Q. Started right at them; so the filling pipe would come down just forward of the forward end of that room, is that right?

A. Yes, sir.

Q. And then it ran from there to the forward bulkhead of the engine room?

A. Yes, sir.

Q. How long would that piece of pipe be?

A. I wouldn't say over eight feet.

Q. It was two inch pipe?

A. Yes, sir.

Q. Now was it one piece of pipe from the point where it began, eighteen inches above the deck, down to the point where it made the right angled turn?

A. Yes, sir.

Q. And how was that turn made? What was the nature of the connection there?

A. Elbow.

Q. What kind of an elbow?

A. A regular two inch brass elbow.

Q. Threaded connections on both ends?

A. Yes, sir.

Q. Where was this leak that you discovered during the trip?

A. Just about the middle of the pipe, in the union.

Q. There was a union in the middle of the pipe?

A. Yes, sir.

Q. The pipe was in two parts, and joined together in the middle with a union?

A. Yes, sir.

Q. So instead of being one piece eight feet long, it would be two pieces four feet long, or approximately that?

A. Yes, sir.

Q. Joined with a union?

A. Somewhere about that.

Q. Was there anything supporting that pipe, between the elbow and the point where it joined on the filling manifold?

A. There was a strap—I don't know whether it was on the front side of the union or on the back side; a regular strap come down from the girder, supporting it.

Q. There was a strap supporting it?

A. Yes, sir.

Q. By a strap, you mean a piece of iron?

A. Bolted to the girder. You see the top of the engine house is iron.

Q. Then wrapped around the pipe, and fastened?

A. Yes, sir.

Q. —back to the principal part?

A. Yes, sir.

Q. What kind of a union was this?

A. A ground-seat union, two inch brass.

Q. It was a good union, was it?

A. Yes, sir.

Q. Well now, tell me how soon after you started to fill, did that leak appear there?

A. It started pretty quick.

Q. Well, I understand now that you say you took gasoline two different times.

A. Yes, sir.

Q. The time you filled up the tank, was that the time, just before you started on the trip to the Keys?

A. I filled them up then.

Q. How much did you put in at that time?

A. I don't remember the amount.

Q. Well now there was a previous time when you had put in gasoline in the tanks, wasn't there?

A. Yes, sir.

Q. Did you fill the tanks up at that time?

A No, sir.

Q. How much gasoline did you have after you finished that first time?

A. Well, I don't remember.

Q. Were the tanks half full or quarter full? Have you any idea?

A. No, sir, they wasn't half full.

Q. Somewhere between a quarter and a half, would you say? Is that as near as you can come to it?

A. I would say, a quarter.

Q. Now tell me about discovering the leak; how did you discover that?

A. Well, I went in there to adjust the valves, so as to equalize the tanks, see, and it was dripping down.

Q. From the union?

A. Yes, sir, just a drip.

Q. Steady drip?

A. Yes.

Q. And you fixed that by tightening the union, is that right?

A. Yes, sir.

Q. You say it hadn't leaked before?

A. No, sir. Well, it hadn't leaked the year previous to that.

Q. It did leak the first time you filled it in '35?

A. Yes, sir.

Q. Is that right. Let me get this straight; was this leak discovered the first time you pit in gasoline, or the second time?

A. The first time.

Q. The time you put in the smaller quantity?

A. Yes, sir.

Q. I understood you, in answer to questions before, to say you went ahead and filled the tanks up after the leak was tightened; does that refresh your recollection on that?

A. I went ahead and finished putting in gas.

Q. Well, wasn't it the time you filled them up? I just want to get your recollection.

A. No, I am not sure whether it was that time or the time before.

Q. When you think of it now you are not certain about it; is that it?

A. Sir?

Q. As you think of it now, you are not certain of which time?

A. I won't say for sure; it is too long to remember that.

Q. Well, how do you account for the union springing a leak?

A. I don't know, not unless it was kind of a vibration from the deck or something, might have caused it. They will do that, but very little. It was a brass union with clean thread, anyhow.

Q. You say vibration does sometimes cause things like that to happen?

A. Yes, it would.

Q. Do you remember how many turns you took to tighten the union?

A. It didn't take a turn, even; just held one side of the union with one wrench, and put it on the nut and pulled down on it.

Q. Did you take half a turn?

A. Just about; not over half turn; between a quarter and a half.

Q. What did you take the turn out on?

A. On the nut.

Q. On the nut of the union?

A. Yes, sir.

Q. Now the switchboard, Mr. Schlappi, do you suppose you could draw a diagram of the switchboard for us, to show the location of the different switches on it?

A. I am a very poor draftsman.

Q. Well how big was the switchboard?

A. Oh about like that.

Q. You are measuring from your hand to the other end of the table?

A. Yes, sir.

Q. That would be close to four feet, wouldn't it?

A. No, sir; about four feet wide; it wasn't quite as wide as that.

Q. That distance you estimate about four feet, is the horizontal width, is that right?

A. No, sir, that is the vertical.

Q. That is the vertical dimension?

A. Yes, sir.

Q. Up and down?

A. Yes, sir.

Q. And how wide was it?

A. About three feet.

Q. About four feet up and down and three feet across?

A. Three and a half to four feet up and down, and three foot across, would make it pretty close.

Q. Well now, on this switchboard, suppose we draw on here the shape; I will make it a little longer this way. Would that be approximately the shape of it?

A. Yes, sir.

Mr. Botts:

Suppose you write the measurements in there; write top and bottom on there.

Q. I will put top up at this end, is that right?

A. Yes.

Q. And bottom at this end. And then we will say three and a half feet across?

A. Three feet tall.

Q. Three feet across, I will write three feet, giving the dimensions that way; and three and a half to four—was that what you said?

A. Yes, sir.

Q. Three and a half to four feet in the other direction. Now can you place in the corner where you said was the main switch?

A. Right in this corner, right there.

Q. Did that move up and down or horizontally?

A. It moved up and down.

Q. Up and down; how far up from the bottom would it be,—I mean the central poles.

A. That would be six inches from the bottom.

Mr. Underwood:

Let the witness do the marking of the paper.

Q. See if you can mark on that.

A. Something about in here.

Q. Now you have drawn two parallel lines to indicate the switch.

A. It was a double knife switch.

Q. Double knife switch. Now which is the hinged end of the two blades?

A. This is the hinged end here.

Mr. Underwood:

Indicating the bottom—

Q. Let's just make a big dot there.

Mr. Botts:

The dots indicate the hinged end?

A. Yes, sir.

Mr. Underwood:

May we draw a line here and indicate that main switch. (Drawing arrow line to indicate.)

Q. Is that a double throw switch or is it only an open and closed position?

A. It is open and closed position.

Q. So the hinges are at the bottom?

A. Yes, sir.

Q. And the contact points are at the top, is that right?

A. Yes, sir.

Q. And you say the length of the points are at the top, is that right?

A. Yes, sir.

Q. And you say the length of the blades was about six inches? Did I understand you right?

A. No, they was about—I said they was about six inches from the bottom.

Q. How long were the blades?

A. About four.

Q. About four inches?

A. Three and a half or four.

Q. Now where was the charge and discharge switch located?

A. Set right in here. (Drawing). Right in the center of the board.

Q. That was a double throw switch, wasn't it?

A. Double throw; two to your contact, and two over here; and here is your hinge of the switch there.

Q. You might make a little dot there. Now in which position have you indicated the switch?

Mr. Botts:

Excuse me, let's get these points identified. This is in a closed position, one way, and over there would be a closed position the other. Suppose you get some identification points there.

Mr. Matteson:

That is what I am going to ask now.

Q. Have you indicated the switch as being in the discharge position or the charge position?

A. That is in the charge position, I am almost sure; I am not too sure; that is in the forward position.

Q. And if the switch were thrown over to make contact with the points to the left, it would then be what?

A. Discharge.

Q. Is that what you had in mind?

Mr. Botts:

Yes. Suppose you make an H at the point where the hinge of the switch was; and then put C and C for the contact points of the switch.

Mr. Underwood:

We understand that. Would you rather have the witness do it? It doesn't make any difference. * * * Put an H over the hinges, C over the contact points to the charging end; and a D over the contact point at the discharge end.

(Thereupon the hearing was recessed to be resumed at 2:15 o'clock p. m. of the same day.)

Miami, Florida, 2:15 P. M., May 15, 1939.

Afternoon Session.

The Court:

You may proceed.

2219 Thereupon: ROLAND A. SCHLAPPI a witness produced in behalf of the respondent Phipps, resumed the stand and was examined and testified further as follows:

Cross Examination (Cont'd.)

By Mr. Matteson:

Q. Now, Mr. Schlappi, we have two switches on this diagram of the switchboard in the engineroom. Before we leave this charge and discharge switch I wonder if we can indicate that in some way. Suppose you draw a small box around it in some way.

A. (Witness complies.)

Q. I have drawn an oblong line around the marks that you have made here and an arrow from it to the words "charge and discharge switch"; is that right?

A. Yes, sir.

Q. What other switches were there on this switchboard?

A. There was a group of switches up on top here, all the way across the board.

Q. Indicating above the charge and discharge switch?

A. Yes.

Q. How many were there of those switches?

A. I don't exactly remember.

Q. Five or six or can you give us any idea?

A. Between ten and a dozen, to all of the quarters in the boat.

Q. Were they in a single line across the top?

A. Double line; here to here; they were in a straight line but they were separated right in the center.

Q. There was a series of them, one above the over, at each side of the switchboard, is that right?

A. Yes.

Q. About how many on each of these sides?

A. I imagine there were five or six on each side; it was the same number of on side.

Q. How big were those switches?

A. Just small double knife-switches, about two and a half or two inches high.

Q. Did they come down on each side of the charge and discharge switch or were they all above the level?

A. They were all above the level.

Q. The way we have this spaced here (referring to diagram) it would not look to me that there was room for that many switches.

A. It may be a little bit high here, but there was room for them to come right across like that (pointing) up here, way up here to the places you wanted lighted; the names of the quarters was up here, the places you wanted lighted.

Q. Over this switchboard was a label?

A. Yes; the label was all in one panel, and there was stamped on the panel "searchlight, engineroom, boss' room", and things like that. For all the staterooms there was a switch for each one.

Q. A switch for each stateroom?

A. Yes.

Q. Now you have drawn two horizontal lines there. Is each one of these supposed to represent one switch?

A. No, sir; all of those switches came in here (indicating) just like that, and set right close together. See? They were just about one inch apart; just small switches.

Q. What do you call the piece going across horizontally?

A. That is just the line that the switches was in.

Q. Was each switch entirely separate from the other one?

A. Yes, they were insulated separate.

Q. There wasn't any electrical connection between them at all?

A. The ground on the inside of the board was on each one, and they naturally would be to save wiring.

Q. Then this horizontal line that you have down here does not indicate anything except the location?

A. Just the location.

Q. Do you remember the locations of any switches for any particular parts of the boat?

A. No, I don't remember just the locations. I know the searchlight switch was on this side.

Q. Indicating the left side?

A. Yes; it may have been in the middle or off to one side.

Mr. Botts:

May I suggest for the record that we let each of these lines indicate the several switches or something of that kind?

Mr. Matteson:

I will draw an arrow pointing to each of these horizontal lines. I will say "line of separate switches".

A. They just run in a straight line, but they were separated here in the middle a little bit.

Q. How far was the charge and discharge switch from the top of the panel?

A. Just about pretty near to the middle of the board, but not quite; that could have been a little bit lower, but it was pretty close right up there (indicating on diagram).

Mr. Underwood:

I take it that there is no intention to draw this to scale?

Mr. Matteson:

No, sir; it is just a representation.

Q. In other words, we have that charge and discharge switch a little bit too high?

A. Yes, sir.

Q. It was nearer the middle of the board?

A. Yes.

Q. Slightly above the middle?

A. There was a circuit-breaker down here and that would about equalize the distance from the center of the board for them two.

Q. So that the charge and discharge switch, plus the circuit-breaker, were just about the center of the board?

A. Yes, sir.

Q. Was that the way it was?

A. Yes.

Q. What was this circuit breaker?

A. It was there in case your generator stopped; it protected your current and there would be no short or anything.

Q. Was that a sort of automatic switch?

A. Yes, sir.

Q. What other switches were there on the board?

A. They had a switch similar to this on the—

Q. Similar to the main switch?

A. Yes; about the same location; that generator switch was just about the same size.

Q. That is the generator switch?

A. Yes, sir.

Q. I will draw—first I will write "generator switch" with an arrow pointing to what you have just drawn. Were there any other switches on the board?

A. Yes. There was the Frigidaire switch in the center; that had a sort of knife-switch, and then the sanitation and fresh water pump. That was right down at the bottom of the board and the switch for the frigidaire was in the middle.

Q. Will you draw those in for us?

A. Yes. This is a single-throw knife-switch about here, and here is your frigidaire switch, and you pull that right straight out, shove it out.

Q. That is the frigidaire switch?

A. Yes. These are regular button switches here that you turn on and off; shut them off one way and on the other.

Q. Those are represented by the little circle?

A. Yes; one was for salt water pump and the other was fresh water.

Q. Which was which; do you remember?

A. I think this was the salt water pump on the right-hand side.

Q. Is that (pointing) the salt water pump?

A. Yes.

Q. And the other was the fresh water pump?

A. Yes, sir.

Q. I will draw an arrow there and write "fresh water". Do we have all the switches on the board now?

A. No, sir.

Q. All right.

A. The circuit breaker comes right here about like that.

Mr. Botts:

Mark that "circuit breaker".

Mr. Underwood:

You can write that right inside there.

Q. "Circuit breaker"; is that right?

A. Yes. Here is a switch on this board for your auxiliary and small emergency generator, and this is a double-throw right here (indicating).

Q. Now you have indicated here (I will draw a box around it as before) the auxiliary generator switch, is that right?

A. Yes, sir.

Q. That had charge and discharge ends the same as the main charge and discharge switch?

A. Yes, sir.

Q. Did the ends correspond with the charge on the same end as the other one?

A. I don't know; I don't remember that. This is a double throw switch; it didn't have any charge or discharge on it. You used this same switch for that, after you pulled this generator switch off, and you used this switch here to throw your circuit in there to the small generator; that is the way it was.

Q. Why did you have to have two ends to it?

A. They were just on there; I imagine that's the way it was made up. There was another switch in there to use for starting this generator motor over here at the—

Q. Where was that?

A. That sat right up in here at this switch. I don't remember whether they laid in a line at the top of each other; I think they laid in a line to each other on the top. That switch should be here and one here (indicating).

Q. What were these switches?

A. One of them was to start this big generator.

Q. And the other?

A. Was to throw your circuit further on this generator up to this switch.

Q. Did you tell us about one additional switch or two?

A. One.

Q. And that was for starting the auxiliary generator?

A. Yes.

Mr. Underwood:

Auxiliary or main?

The Witness:

Main.

Q. For starting the main generator?

A. Yes.

Q. And that was just to the right of the auxiliary generator switch?

A. Yes, sir.

Q. Can you indicate that there?

A. Yes, if I can rub this out.

Q. You mean the drawing you made of the auxiliary generator switch?

A. Yes.

Q. Yes; you can change it any way you like?

A. (Witness indicates on drawing.)

Q. I will rub this out a little better for you.

A. (Witness indicates on drawing). Here is a switch over here. They are both double throw switches but we never used to throw but one of them.

Q. Now this is the auxiliary generator switch (indicating)?

A. Yes, sir.

Q. Is that right?

Q. What is this (pointing)?

A. That is a switch used for starting the big generator.

Q. Shall we call that "generator starter"?

A. Yes.

Q. Now have we got it complete?

A. Well, we had volt meters and ammeters up across here.

Q. How many volt meters were up there; volt meters and ammeters?

A. Four.

Q. Were they equally spaced across the top?

A. They were spaced like that in a kind of circle like.

Q. You have drawn four circles across the top to indicate the four meters, is that right?

A. Yes, sir.

Q. Now is it fairly complete?

A. Yes. There is a bus bar in here; it sets right in there.

Q. What is a bus bar?

A. Why, that regulates the voltage.

Q. Where there is resistence?

A. Yes, sir.

Mr. Underwood:

Mark that.

Q. Does that represent it?

A. Yes, sir.

Q. I will mark that "bus bar".

A. That's kind of out of my—that is right to the best of my memory.

Q. Well, we won't hold you to exactness on it?

A. It may be above there.

Q. You have indicated it at the side of the charge and discharge switch, but you say it may have been above it, is that right?

A. Yes.

The Court:

Put a question mark at the end of it.

Mr. Underwood:

Why not write across the top there "ammeters and volt meters" and then draw a line from each of them?

Mr. Matteson:

All right.

Mr. Underwood:

I think it is understood that the doubt in the witness' mind is not as to whether there was a bus bar but the doubt is as to the location?

Mr. Botts:

That is correct.

A. There is a bus bar and rheostat on the side, too.

Q. What shape are they?

A. Round.

Q. Circular?

A. Yes, sir.

Q. Are they on the switchboard?

A. Yes, sir.

Q. Are you drawing it there?

A. That slipped my memory; it was a long time ago, but it was here on this side of the board.

Q. How big was that?

A. Just about four and a half inches in diameter.

Q. Round?

A. Yes.

Q. Just draw a circle about where you think it was and we will put a question mark after that, if you are not sure.

A. I am under the impression it was under this switch.

Q. Under which switch?

A. Under this switch or on the side; I think it was under this switch.

Mr. Botts:

As I understand, it was there at the righthand side of the circuit breaker or under the main generator switch?

A. This rheostat was on the righthand side.

Q. As you face the board?

A. Yes. You better put a question mark after that too.

Q. We will mark that "rheostat".

Mr. Botts:

Put a question mark there with reference to the location and not as to the existence of the rheostat.

Q. Then there was a light at the upper lefthand corner of the board to throw light on the switchboard?

A. Yes. When you contact this switch or that switch this light went on automatically; that is the only one we didn't have a switch on.

Q. When you contacted the main switch and the discharge switch the pilot light went on?

A. Yes; right here; it came out from the front of the board like that.

Q. I will draw an arrow pointing to that and say "Pilot light". Now is it complete?

A. Yes.

Q. According to the best of your recollection?

A. According to the best of my recollection?

Q. Yes.

A. Yes.

Q. How far was it from the floor up to the bottom of the switchboard?

A. Up to the bottom of the switchboard?

Q. Yes.

A. I would say about four feet; something like that.

Q. I will draw a line from the bottom of the switchboard downwards and another horizontal line which I will mark "floor". You said it was how many feet?

A. I will say four feet. You had to climb up on a ladder to get to these top switches.

Q. You mean the switches to the different quarters?

A. Yes, sir.

Q. What sort of a ladder did you have?

A. A regular steel ladder.

Q. Was that ladder fixed in place?

A. Yes, bolted in place.

Q. You would have to climb a portion of the way up that ladder to reach the room switches?

A. Yes, sir.

Mr. Matteson:

I offer this drawing in evidence.

The Court:

Let it be admitted.

(Thereupon the drawing above referred to was marked Libelants' Exhibit number 110.)

Q. I think you said something about wooden stringers under the floor of the engineroom. Will you explain to me what those were?

A. They was just on top of the girders to fasten the floor down; for the hatches to set on.

Q. By hatches you mean the floor boards?

A. Yes; they were made like regular hatches, you know, that lift up.

Q. The girders are a part of the steel structure of the hull?

A. Yes.

Q. Did they run fore or aft?

A. They run crossways.

Q. Athwartship?

A. Some of them run crossways and some run forward, too.

Q. Are they all the same height above the bottom of the vessel?

A. No. Those on top are the end members.

Q. These cross-members go above those that run fore and aft?

A. Yes, sir.

Q. So the wooden stringers would have to set on the cross-members?

A. Yes.

Q. What was the size of these wooden stringers?

A. I don't recollect what size they were.

Q. Were they 2 by 4, or bigger or smaller?

A. They were heavier than 2 by 4s.

Q. How were they fastened in place, do you know?

A. You know the engine-bed timbers was lengthways.

Q. I have not come to those yet. These fore and aft timbers were floor supports and they fastened on top of the cross-members—how were they fastened?

A. They were fastened on top like this.

Q. Now we are down to the wooden stringers; you said they went on top of the cross-stringers?

A. I don't know how they were fastened. I never taken any particular notice of it.

Q. You said the engine supports were wide?

A. Yes, sir.

Q. How big were they?

A. Well, they run from pretty good size, they were wide forward and they slanted down to the line of the shafts, and they must have been built up to about 6 x 12 in the front end and they tapered down.

Q. So that at the after end of the engines they would not be as thick as at the forward end, is that right?

A. Yes, sir.

Q. How many of them were there for each engine?

A. Two; one on each side.

Q. You mean one fore and aft support under each side of the motor, under each side of each motor?

A. Yes.

Q. When you left the ship in Ft. Lauderdale did you take up the floor boards or did you leave those in place?

A. I cleaned up all of the oil and stuff.

Q. They floor boards lifted up, they were removed, is that right?

A. Yes, I had to lift them to shut off the water valves.

Q. I was asking you when you left the boat whether they were in place?

A. Yes, they were in place.

Q. So you had to lift them up and you replaced them, is that right?

A. Yes.

Q. You spoke of a place which you said you could look through and look into the trays that the tanks sat in. Is that space shown on this exhibit, Respondents' Exhibit 4?

A. Is that tank 4?

Q. No; that is the number of the exhibit?

A. Yes, you could see right down in here in the tray; that tank has been raised up here. You see this valve came right above the center and floated up.

Q. As it was before the fire the valve would have been just nicely centered in the opening, is that right?

A. Yes, sir.

Q. So this picture indicates that the bottom of the tank has been raised up by the fire or explosion, is that right?

A. Well, the water might have floated it up.

Q. Or something?

A. Yes.

Q. Then if that tank were down in place so that the valve was centered under the hole, the bottom of the tank would be below the bottom of the hole, would it not?

A. Yes.

Q. Do you recognize this picture as a picture of the valve of number 1 tank, that is, the port tank, as it was after the fire?

A. Yes; it looks very much like it. There is the shelf.

Q. What is this bracket that appears to the left?

A. That is what that bilge pump sat on.

Q. That was on the port side of the bulkhead right next to the outlet, is that right?

A. Yes.

Q. And that same bracket is shown in this other photograph, Exhibit 9, just to the left of the mark "number 1", is it not?

A. Yes, sir.

Q. The arrow from number 1 points to the opening through which the valve to the number 1 or port tank came, is that right?

A. Yes, sir.

Q. And that shows the entire bracket?

A. Yes, sir.

Q. Towards the starboard side from the one we have been talking about; were these the two brackets that supported the shelf?

A. Yes.

Q. Over at the starboard side in this same picture

A. Yes.

Q. And the bilge pump was on that shelf?

A. Yes.

Q. Over at the starboard side in this same picture there are a couple of shelves or brackets, or what is left of them, sticking out. Were those the shelves that the batteries were on?

A. Those were the battery shelves, yes.

Q. What is this that is apparently under the batteries?

A. That is the fresh and salt water sanitary pumps.

Q. Those were underneath the shelves where the batteries were?

A. Yes.

Mr. Botts:

Suppose you mark those on that picture?

A. I don't know whether that is true or not, but that is my recollection. This is the salt water pump here. I can see it good now, and the fresh water pump sat right here.

Q. Towards the starboard side?

A. Yes.

Q. I will mark that "salt water pump". The arrow now points to the salt water pump, is that right?

A. Yes, sir.

Q. And the fresh water pump was toward the starboard side from that?

A. Yes, sir; sitting right in a line with it.

Q. As this picture is taken it would be behind the salt water pump?

A. Yes, sir.

Q. This dark spot on the picture indicated by an arrow and the line "A", is that the opening into the space under the tanks?

A. Yes, sir.

Q. How big was that opening?

A. I could crawl through it pretty easy.

Q. How big was it?

A. I would say between 18 and 20 inches.

Q. Square?

A. Yes, sir.

Q. Now between the shelf that was on these brackets and the shelves that held the batteries, did I understand there was another table or desk there?

A. There was a regular desk there.

Q. What did that consist of?

A. It consisted of a table and a slate to write on.

Q. I am trying to get a picture of the desk; was it flat like a table?

A. No, it was on a slant.

Q. On a slant?

A. Yes, sir.

Q. How big was it; how big was the top?

A. Just about two feet square.

Q. How high was it above the floor?

A. Just about like this.

Mr. Underwood:

Indicating a little above your belt, three and a half to four feet?

A. Yes, sir.

Q. Outside of the top of it it was like a shelf; what else was there to it?

A. Nothing but a drawer underneath.

Q. Then did it have legs?

A. No, it was built right straight from the floor.

Q. The front of it was solid?

A. No, the sides of it was solid; it was built right straight up.

Q. That is, the sides were?

A. It was full-sized sides.

Q. The sides were as wide as the table was deep, is that it?

A. Yes, sir.

Q. And they were solid from the floor right up to the shelf?

A. Yes, sir.

Q. You say this drain line that came over from the starboard side was supported where it passed through holes in these sides?

A. Yes, sir; came right to this side over here; right through this side.

Q. Then the drain valves would be between the shelf on which the bilge pump rested and the port side of the desk, is that right?

A. Yes, that is right.

Q. How much space was there between that shelf and the port side of the desk?

A. Well, there wasn't too much space; I would say a foot.

Q. About one foot between them?

A. Yes.

Q. Room enough for these gasoline cans to go in between them?

A. It was so much higher that you don't or didn't have to bother about that; you see this shelf was higher than the desk, too; this drain was below the top of the shelf.

Q. It was below the top of the shelf on which the bilge pump stood, is that right?

A. Yes, sir.

Q. So when you put the cans under the valves to draw off some gasoline, it could go in under the edge of that shelf?

A. Yes.

Q. Directly over this opening through this bulkhead through which you crawled to get under the tanks, I notice some bolts in that plate; what was fastened on the bolt there, do you recall?

A. The ship's clock was up there; that was right over the desk; that is where it was, too.

Q. These four bolts that you see here, are they what held the ship's clock in place?

A. Well, it was on a big mahogany panel.

Q. These four bolts are what held the panel?

A. Yes.

Q. What is this motor that appears in this picture, Exhibit 9, which appears to be more or less under the desk on which the bilge pump sat?

A. That is the auxiliary motor setting under there.

Q. That is the auxiliary generator?

A. Yes, sir.

Q. We noted in this picture the round opening through which the outlet valve of the number 1 tank came. Can you see us here also the other openings indicated by the numbers 2 and 3?

A. Yes, sir.

Q. Are those openings for the number 2 and number 3 tanks?

A. I can see that one all right; those must be back in that other "slip".

Q. It is in the shadow there?

A. Right.

Q. And the forward one would be over in the shadow at the right of the picture where nothing shows clearly, is that right?

A. Yes, sir.

Q. Now turning to Libelants' Exhibit 6, this shows the tops of the tanks, does it not?

A. Yes, sir.

Q. And I see that they come up pretty close to the top of the bulkhead around that part (indicating)?

A. Yes, sir.

Q. What was right over the top of those tanks; was the floor of the deck above pretty close to the tops of the tanks?

A. There was pretty heavy truss work overhead for lifting the hatches and stuff, and it run the full length of the engineroom.

Q. What space in the ship was over this tank compartment, do you know?

A. Well, there was a steel passageway bolted right down—

Q. I don't quite follow you on that. There was a steel plate all over the top of the engineroom?

A. Yes, sir.

Q. Did that cover the tank compartment, too?

A. Yes.

Q. So these tanks as shown in this picture came up within a few inches of the steel ceiling that was over the two compartments, is that right?

A. Well, that truss work I believe that came over—

Q. What do you mean by truss work?

A. To hold up the steel plates that go on top.

Q. Sort of members to hold up the steel plate?

A. Yes.

Q. In this picture, Exhibit 9, the vent line is indicated by this arrow with the words "Vent Line"?

A. Yes.

Q. And this shows that the vent line out of the middle of the top of each tank, and that the line then led aft and joined a common line that ran over to the port side of the ship, is that right?

A. Yes, sir.

Q. And that vent line was a half inch line?

A. Yes, sir.

(Recess.)

Q. I show you this picture, and ask you if you recognize that as being a picture of the wreckage of the forward part of the Seminole, from the tank space, looking forward.

A. Yes, sir; the water tank is here.

Q. That shows the water tanks under the floor on the starboard side?

A. Yes, sir.

Q. In this picture, can you show us where that athwartships bulkhead was that you said separated the bilge from the forward part?

A. Here it is right in there; in behind this water tank here. Just back of this water tank about two foot.

Q. I will draw an arrow indicating water tanks; and the after end of this water tank comes almost to the bottom of the picture, does it?

A. Yes.

Q. So that the bulkhead that you speak of would be just aft of that?

A. Yes, sir.

Q. And were there other tanks on the port side of the ship?

A. Water tanks, yes, sir.

Q. Water tanks on the port side of the ship, opposite this one that I have marked?

A. Yes, sir.

Q. And there was a space between the water tanks, running forward and aft?

A. There was a big tank sitting there, too.

Q. A big tank in there, too?

A. Yes.

Q. Well, can you show us in this picture approximately where that hatch was that you said you lifted up to get down between the tanks?

A. The hatch was sitting right along in here, about the edge of these tanks.

Q. That would be just at the forward end of—

A. Of these tanks.

Q. —of the tanks on the starboard side, right about there?

A. Yes, sir; that hatch was right there.

Q. Right where?

A. Right there.

Q. Well, will you put your pencil down on the picture so I will see where you are pointing?

A. Right there is the site of it.

Q. Right there? (Writing on Exhibit with pen.)

A. Yes, sir.

Q. I draw a second line, with an arrow, and the word, hatch, as I did the first time, and I will make a wavy arrow through the other line that I drew, to show that it is crossed out.

A. Yes, sir.

Q. And that is about where the hatch was?

A. Yes, sir.

Q. And that was forward of the bulkhead that separated the forward bilge space from the engineroom and tank bilge space, is that right.

A. You see when you come by this section here, you come back to the center of the boat again; your hall and staterooms on both sides. Here is where you went through there and turned to come up through the center of the boat.

Mr. Matteson:

I will ask to mark this photograph as an Exhibit.

Mr. Underwood:

When was it taken?

Mr. Matteson:

It was taken last year, sometime.

Mr. Underwood:

1938?

Mr. Matteson:

Yes.

Mr. Underwood:

I have no objection to it as portraying conditions when it was taken, in 1938, or the general structural conditions that time would not change.

(Said photograph was received in evidence and marked as Libelants' Exhibit number 111.)

Q. Here is another picture that was taken about the same time, and shows the upper part of the bulkhead supporting the engineroom from the tank compartment, does it not?

A. Yes, sir.

Q. And there we have the round holes at the top of the bulkhead. Are those the holes through which the filler pipes went?

A. Yes, sir.

Q. Would you point to me the holes through which the filler pipes went?

A. There is one that don't belong there. This one here is a filler pipe; this was a filler pipe, here.

Q. When you say there is a filler pipe, we will mark that with an X.

A. And this one, and that one.

Q. And this one?

A. Yes, sir.

Q. Do you see the fourth one?

A. No, sir, there is something hanging over it.

Q. It would be approximately here, is that right?

A. Yes, sir.

Q. I have made four X's to show the four filler pipe lines: Is that right?

A. Yes, sir.

Q. The one at the starboard side being covered up by some object?

A. Yes, sir. They come right straight and parallel from the bottom right on up; all of the holes in the center of the tanks, and in line.

Mr. Underwood:

This was taken in 1938.

Mr. Matteson:
Yes.

Mr. Underwood:
On the boat which was partially sunk, I take it?

Mr. Matteson:
That is correct.

Mr. Underwood:
I have no objection to it, on the same terms as the previous one.

(Said photograph was admitted in evidence and marked as Libelants' Exhibit number 112.)

Q. Now, Mr. Schlappi, picking up this exhibit number 2, have you been able to identify that yet?

A. I have not; not the way it is burned up.

Q. Of course it has been apparently deformed by being through the fire.

A. Yes, sir.

Q. This valve that is on it, was that similar to the valves that were on the tanks,—outlet valves?

A. That is the same kind of valve, all right.

Q. Same kind of a valve as shown in Libelants' Exhibit 4, is that right?

A. Yes, sir.

Q. Now these valves came out through the holes in the bulkhead, and then they were joined together by one long combination of parts, is that right?

A. Yes, sir.

Q. Could it be that when this was straightened out, it was the connection on one of the tanks, and a combination of pieces of pipe which was part of the manifold line? You would have to bend this piece around, I assume, where it has apparently been bent out of shape.

A. This has been made up—

Q. How is that?

A. Is that just as it come out of the fire?

Q. That is what the witnesses have testified. Is that the kind of pipe that was used to make up the manifold line?

A. Yes, sir, the same sized pipe.

Q. Same type of connections?

A. Yes, sir.

Q. And the same type of valve?

A. Same type of valve.

Q. Did you use that type of pipe for anything else in the engineroom except the gasoline feed line and connections?

A. I had a primer rigged up to the bilge pump and the salt water tank, of that size pipe; but I don't remember whether it was brass or galvanized iron.

Q. Well, I take it that, except for its deformity, this could be a part of the manifold line?

A. It looks like some of it.

Q. Now I take it that this exhibit number 17, you do recognize?

A. Yes, sir; that there was on the port motor.

Q. Now beginning up here at this connection, which is at the upper part of the trap, coming out at an angle here, what did that fasten to?

A. Back to your main feed line.

Q. To the main feed line?

A. Yes, sir.

Q. Would there be a T in the main feed line, and then a nipple to connect with this union outside the trap?

A. No, sir.

Q. What?

A. I swear I don't remember.

Q. Was this underneath the desk?

A. Yes.

Q. So that you wouldn't see it very readily, very often?

A. Well, if it wasn't underneath the desk, it was underneath the end of the bench.

Q. Underneath the end of the bench?

A. Yes, sir.

Q. So you can't recall just how it was connected up?

A. No, sir. It would have to made up with unions to make up the pipe.

Q. Well now, you are speaking of the manifold line and all the way across?

A. Yes, sir.

Q. You say you would have to have a union in each series of pipe connections?

A. Yes, sir.

Q. Between these two tanks?

A. Yes, sir.

Q. But now as I understand it, this contrivance that I hold in my hand was hitched into the manifold line somewhere?

A. Yes, sir.

Q. Well, what I am trying to get at is, what it was hitched into; and I asked you if there was a connection in the manifold line with a nipple connecting with this union on the strainer.

A. I don't remember just how that was.

Q. You don't remember how that was? This short connection on the strainer, is the part that was connected to the manifold line in some way, is that right?

A. If it was connected up right, it would be.

Q. Well, coming out of the opposite side, and fastened lower on the strainer, is another series of connections. Now what did they lead to?

A. This here looks like the main feed line pipe here.

Mr. Underwood:

Indicating the one that ends in a valve.

Mr. Matteson:
That is right.

Mr. Underwood:
The straight piece.

Q. You call this piece of pipe that comes out of the lower part of the strainer,—a short piece, threaded on both ends,—you call that a nipple?
A. Yes, sir.
Q. Then that comes into a union, doesn't it?
A. Yes, sir, a T.

Mr. Botts:
A-T. It is not a union.
Q. T connection. And then at right angles apparently running downward there is another nipple, union, nipple, and a valve?
A. And a valve.
Q. Is that right?
A. Yes, sir.
Q. A reducer and a valve, is that right?
A. A reducer, quarter to three eighths.
Q. Which end is the three eighths? Does it get bigger as it goes down, or smaller?
A. There is a reducer there too, isn't there?
Q. In the opposite end?

Mr. Underwood:
Indicating the open end of the valve?

Q. Indicating the open end of the valve, yes, sir; so there was a reducer on each end of this valve, is that right?
A. From the looks of it, there was. This is the port feed line here.

Q. I will come back to that in just a minute. This part that now terminates with a valve, you say that was the feed line to the port engine?

A. Yes, sir.

Q. Now then, going back to the connection again, we have a line of pipe coming out with another T and some more pipe. Now what did those connections lead to?

A. These here?

Q. Yes.

A. They led on across to the next tank, to another T, and the other drain trap on the starboard motor connection at that feed line,—at the number 2 tank, would be the way you have it.

Q. We started out with this contrivance by saying that the small connection on the port side of the strainer, connected to the manifold line; is that right?

A. Yes, sir.

Q. That is, to the manifold line connecting with all four tanks?

A. Yes, sir, with all four tanks.

Q. Then at the top of this strainer, if all the valves were open, you would have a supply of gasoline available from all four tanks, is that right?

A. Yes, sir.

Q. Now going back to this connection at the far end of the thing, what do you say that connected with?

A. It went to a fuel gauge that didn't register.

Q. Oh yes, I remember; that was the old fuel gauge that didn't register?

A. Yes.

Q. And then the pipe continues beyond that; where did that go?

A. It went over to the next drain, the next filter.

Q. Over to the next filter?

A. To the starboard motor.

Q. And what was the purpose of connecting two filters?

A. I don't know they figured it out, but that's the way they was.

Q. They connect at the upper half or the lower half of the filters?

A. I don't remember that.

Q. You just remember that it did connect with a filter on the other line?

A. It connected with a filter on the other line; there was two filters just alike, they both come inside of the filter. I imagine they figured one filter would catch it from either side.

Q. The bottom of this filter part of this combination Exhibit 17 was a threaded connection apparently?

A. It was the male end of a tube union in there.

Q. And where did that lead?

A. It led to the carburetor of the auxiliary motor.

Q. Then you mean that the little auxiliary motor was fed from the bottom of this filter, is that right?

A. Yes, sir.

Q. So that, as I understand the purpose of this filter, it is that water or impurities will collect in the bottom of the filter, is that right?

A. That is right.

Q. So in this case, instead of collecting in the bottom of the filter, they were immediately fed to the auxiliary, is that right?

A. You got it; that's the way it was, all right.

Q. And this filter was connected up with the other filter?

A. Yes, sir.

Q. So apparently it would take care of both of those, is that right?

A. Yes, sir.

Q. Now you say the other filter has a place at the bottom for some sort of connection too, did it not?

A. It had a plug in it.

Q. It had a plug in it; that is what this strainer contrivance is intended to have?

A. That is what it is supposed to be.

Q. That is what it is supposed to do is that right?

A. Yes, sir.

Q. Referring to the valve part of this assembly, again, there is a reducer on the pipe end of the valve,—pipe of the valve, and I think you said there are the remains of a reducer that has been broken off of the other, is that it?

A. It looks like a piece of it.

Q. Now the only purpose of using reducers at each end of this valve, would be to make use of a valve that wasn't the right size for the pipe line, is that right?

A. Yes, sir.

Q. I think that you said that it was necessary to prime the engines when you started them?

A. Yes, sir.

Q. Why is that?

A. Well, you use so much air, and such a long ways from the carburetor through one of them,—your carburetor was installed right on the back of the motor and the manifold runs the full length, and it took a lot of air to get juice to them; and when you give three or four shots of air you wouldn't have much air left; that is the reason you prime them.

Q. You had air tanks in which you compressed air, and you started the motors by opening the valves so that the air was admitted to the cylinders and started the motor turning over, is that right?

A. Yes, sir; you had a cam shaft to open to the right position.

Q. And you say your air tanks were of such capacity that, to turn them over more than three or four times, you would run out of air; is that it?

A. Well, it would cut your air down pretty fast. You prime them, and use them not over two cylinders, why they would go.

Q. You prime them, they start right away, is that it?

A. Yes, right away; there is the idea.

Q. And that is the way you always started the motors?

A. That was the way I always started them.

Q. And you got the gasoline to prime the motors with, out of this drain valve?

A. Yes, sir.

Q. When you drew it out of the drain valve, what did you draw it into, when you used it for priming purposes?

A. A regular brass squirt can; hold about a quart, each one of them.

Q. You would unscrew the top of the can and hold the opening under the spigot or what do you call it?—under the valve?

A. I generally got it when they was filling the boat up; just stick the can right down in there.

Q. That is when you were drawing gasoline for the boats, in the big can?

A. Yes.

Q. Then you could fill your squirt can by immersing it in the can full of gasoline, is that right?

A. Yes, sir.

Q. So you kept a squirt can of gasoline available for priming, is that right?

A. You generally used just about a squirt can for each motor, to prime them.

Q. Well, in any event, that is what you did do?

A. Yes, sir.

Q. Where did you keep the squirt can when it wasn't in use?

A. I had a brass tray setting right on the desk.

Q. What other purposes did you use this gasoline drain valve for?

A. That is all, just to get gas.

Q. Well, to get gas for the fishing boat, and to get gas to prime the motors?

A. Yes, sir.

Q. Did you have occasion to get gas for any other purpose?

A. No, sir.

Q. On this trip that you took down to the Keys, the vouchers are here I believe, which show the amount of gasoline that you purchased. Do you recall that it was 1540 gallons at the time you started out? This voucher number 2929 of the Boulevard Mortgage Company, shows the payment for 1450 gallons of gasoline, charged on April 4th, and under it is invoice for Bay Supply Company, showing 1540 gallons of gasoline purchased on April 4th. Does that refresh your recollection about that. Is that approximately the amount that you got on April 4th when you started for the Keys?

A. Well, have they got one there for 500?

Q. Yes, we have another one here for 500. Here is one, an invoice dated February 27, for 500 gallons. Do you recall that?

A. Yes, sir, that's the first lot put in.

Q. 500 on February 27 was the first lot, and the 1540 on April 4th was the second lot, is that right?

A. Yes, sir.

Q. Do you recall going to Ft. Lauderdale for the Seminole about the 26th of February, was it—of 1935?

A. No, sir, it was the first of February.

Q. Are you sure about that?

A. I am pretty sure it was the first of February. That's a long time ago. It was in February, but just what date why I don't remember. I thought it was right around the first of the month, either the first of February or the first of March.

Q. I see by the bill of Captain Pilkington for storage on the Seminole for February 1935, that a full month's charge of $50 was made and paid. Does that bring to your mind whether or not it was near the end of February that you left Ft. Lauderdale?

A. Close to the first of March, then.

Q. Were you going to add something to that, Mr. Schlappi?

A. No, sir.

(Discussion between counsel.)

A. It was the first of March.

Q. I show you, Mr. Schlappi, this letter, which is marked as an exhibit,—Respondents' Exhibit F; copy of a letter to Captain Pilkington, authorizing him to turn the Seminole over to Willie Baker, and it is dated February 23, 1935. Does that bring anything to your mind about the date that you left there?

A. No, sir; I believe it is nearer the end of the month than that.

Q. Nearer to the end of the month than that?

A. Yes, sir.

Q. Sometime between February 23 and the end of the month, is that right?

A. Yes, sir.

Q. Now did you buy any gas at Ft. Lauderdale before you left for Ft. Lauderdale?

A. I got 5 gallons of fresh gas to prime her with.

Q. Five gallons?

A. To prime the engines with. The gas that was in the outfit wouldn't start.

Q. There was gas in her then, was there?

A. Yes, sir.

Q. And you got 5 gallons of fresh, to prime her with?

A. Yes, sir.

Q. And after you got started, you had enough gas to get to Miami?

A. Yes, sir.

Q. Do you remember how much gas showed in the tanks at that time? I mean when you got to Ft. Lauderdale and tried to start the engines?

A. When we left Ft. Lauderdale?

Q. Yes.

A. Right close to 300 gallon.

Q. That is when you left Ft. Lauderdale towards the end of February, 1935?

A. Yes, sir.

Q. Now, do you recall about this trip to the Keys? Was it February 4th,—I mean April 4th, that you started out on that trip?

A. It was right around there, close to that.

Q. It was April 4th that we just saw that you bought the 1500 gallons of gas.

A. We left at one o'clock in the night; whether it was the 4th—late at night.

Q. One o'clock that night, or one o'clock at night.

A. One o'clock in the morning.

Q. And was that the 5th of April, or can you tell us what date it was?

A. I can't remember. That is about four years.

Mr. Matteson:

If your Honor please, Mr. Underwood and I were trying to figure out the day that she left, and one of the exhibits, WW contains a bill of the Florida East Coast Hotel Company for storage of the Seminole at the Royal Palm Dock, which shows that she was charged for wharfage for April 1st to 5th, inclusive. So from that it would appear that she must have been there on April 5.

Mr. Underwood:

So it seems to me.

Q. Now, Mr. Schlappi, we have figured it out here, the Seminole must have left Miami the early morning of the 6th, and returned sometime on the 15th or 16th of April, 1935.

A. She left after midnight for Matecumbe.

Q. How long did it take her to get to Matecumbe, can you tell us?

A. Right around ten hours.

Q. And did you go right through to Matecumbe?

A. Yes, sir.

Q. How long did you stay at Matecumbe?

A. Why they picked up a party on the small boat and brought them out. We didn't stop at Matecumbe,—didn't go into dock at Matecumbe.

Q. A party came out on the small boat?

A. Yes, sir.

Q. Then how long did you stay there? Did you stay there any length of time, or go right on?

A. Just run down long enough for them to get aboard.

Q. And where did you proceed from there?

A. Down to Bahia Honda.

Q. And how long did it take you to get there?

A. Four and a half to five hours.

Q. And what did you do when you got there?

A. Come to anchor and laid three or four days there.

Q. And where did you go from there?

A. Went over through old Spanish channel to Harbor Key.

Q. How long did it take you to get there?

A. I am not sure of the time; it took quite some time.

Q. Well, about, not exactly necessarily.

A. We left about nine o'clock, and it was very close to three, as well as I can remember, when we got through there.

Q. About six hours?

A. Yes, sir.

Q. Is that coming towards Miami or going away?

A. That is going away.

Q. And where did you go from there?

A. We fished over there a day or two, and we come back to Bahia Honda.

Q. How long a trip is that?

A. About the same length of trip as the one going.

Q. About six hours?

A. Yes, sir.

Q. And then where did you go?

A. Started back towards Miami then.

Q. How long a trip is it back to Miami from there?

A. From Bahia Honda? About thirteen or fourteen or fifteen hours.

Q. What fish boats do you supply gas to?

A. To two small Prigg boats; a 200 Sterling petrel. We had too small Prigg boats, and then had this Clip with a 200 Petrel.

Q. It was the Clip that had the 200 engine in her?

A. Yes, sir.

Q. What kind of engines did the two Prigg boats have?

A. One of them had a model A Ford marine, converted; and the other had a Chrysler. The Chrysler run about 90 horse-power,—marine type.

Q. Now how much gasoline did you supply the Clip?

A. How much would we supply her?

Q. How much did you supply her, and when?

A. I don't believe we filled her over twice.

Q. And how much did you give her each time?

A. About 100 gallons, maybe a little more or less.

Q. And the Prigg boat with the Ford motor, how much gasoline did you give to her?

A. Put in 5 gallons every day.

Q. Five gallons every day?

A. Yes.

Q. And you were gone about ten days, is that right?

A. Yes, sir.

Q. Whose boat was that?

A. Belonged to Captain Baker.

Q. The Prigg boat with a Chrysler motor in her, how much gas did you give her?

A. About 10 gallons a day.

Q. And that was for about ten days?

A. Some days maybe 5; I believe you would be safe in saying 10 gallons a day.

Q. Ten gallons would cover it, is that right?

A. Yes, sir.

Q. From your information, how much gas did you use for your generators, a day?

A. Generator? It would run around,—that big generator run around six or seven gallons a day.

Q. And if you used the small one, you would be using a substitute for the big one, I take it?

A. I never used it.

Q. How long a trip is it from Miami to Ft. Lauderdale?

A. Not so long; but up the river, pretty near as long going up the river as it to Ft. Lauderdale.

Q. Is it a two hour trip, or a three hour trip?

A. For that boat? Pretty close to five hours.

Q. Is that all the way up to the yard?

A. Yes, sir.

Q. Some part of that I suppose you would be going at slow speed, is that right?

A. Yes, slow speed, and backing up, all kinds of work, getting up that river.

Q. You spoke about putting some gasoline in Captain Baker's boat at Miami. Have you included that in what you told us about giving her 5 gallons a day?

A. Why I put some in her at the dock.

Q. Put some in at the dock; how much?

A. I filled her up; I don't remember exactly.

Q. How many cans full of gas did you put in her?

A. I don't remember.

Q. His Prigg you said was the one with the Ford motor?

A. Yes, sir.

Q. How much do her tanks hold?

A. I didn't even know that.

Q. Did you put more than two cans in her at Miami?

A. Yes, put more than two cans in her.

Q. Three?

A. I don't know whether I put three or four.

Q. Three or four would cover it, is that right?

A. Yes, sir.

Q. And when I speak of cans, I am speaking of cans like this one here.

A. Yes, sir.

Q. They are 5 gallon cans, aren't they? Isn't that a 5 gallon can?

A. Yes, sir.

Q. You say that when you stopped for lunch at Ft. Lauderdale, you kept the engines running?

A. Yes, sir.

Q. Well you say you were low on gas then?

A. Yes, sir; I told the Captain, when he told me to come up for lunch, I said I better cut them down; but he says he could get aboard to us if she run out.

Q. You were taking a chance on running out of gas?

A. Yes, sir.

Q. Between there and the yard, is that right?

A. Yes, sir.

Q. That would have pretty inconvenient, wouldn't it, to run out of gas between there and the yard?

A. We had a small boat there, to get it with.

Q. I meant to ask you about this Exhibit 17; I think you said that the fixture in the bottom of the primer which led to the small auxiliary, was a copper tube pipe?

A. Yes, sir.

Q. And there was another feed line that was copper tubing, too, wasn't there?

A. The big generator.

Q. The big generator had a copper tube feed line, is that right?

A. Yes, sir.

Q. Did you ever use a hose for filling a boat alongside?

A. When the tank was fairly full.

Q. Did you ever hitch it up to the bilge pump?

A. No, sir.

Q. You said that you could do that?

A. I could have connected it up.

Q. You never did that yourself?

A. No, sir.

Q. There was no—was there any permanent connection between the feed line and the motor?

A. No, sir, there was no connection at all made for it.

Q. What sort of a hose did you use?

A. Through a regular garden hose.

Q. And that would screw right on it?

A. The three-quarters.

Q. —this valve that is marked Carne 125, just like you hitch a garden hose on the faucet at your home, is that right?

A. Yes, sir; rubber washer on it.

Q. I want to ask you about this room in the engineroom; the floor of the room was above the height of the main motors, is that right?—the room in the engineroom, too, that was built into the engineroom?

A. It was pretty near as high as this ceiling.

Q. The floor of the room was above the top of the motor, was it?

A. No, sir.

Q. Below the tops of the motors?

A. Below the base of the motors.

Q. It came all the way down, almost to the floor of the engineroom?

A. Yes, sir.

Q. It was almost as tall as the engineroom?

A. I don't understand just how you mean.

Q. How many steps did you have to go up from the engineroom floor, to get into that room?

A. To the engineer's room?

Q. The engineer's room, yes.

A. It was up pretty near even with the bench level,—the floor was.

Q. How much above the floor of the engineroom was that?

A. A good three and a half foot.

Q. And where was the door?

A. That was in the—right up against the skin of the boat, facing the bow of the boat.

Q. Was it in the forward end of the room?

A. Yes, sir.

Q. And at the side of the boat?

A. Yes, sir.

Q. Was there any other opening between the engineer's room and the engineroom, except the door?

A. That is all, and a window from outboard.

Q. And the window from outboard?

A. Yes, sir.

Q. Was that in the engineer's room?

A. One of them was.

Q. One of them was in the engineer's room, and one of them was outside of the engineer's room?

A. Yes, sir.

Q. The one that was outside of the engineer's room, led right into the engineroom itself?

A. Yes, sir.

Q. The other one just came into the engineer's room, is that right?

A. Yes, sir.

Q. And between the engineer's room and the engine room, there was just a door connecting the two; is that right?

A. Yes, sir.

Q. What was the first year that you worked on the Seminole? In 1933, did you say?

A. It was '30.

Q. 1930?

A. I am pretty sure it was.

Q. What month of the year was it?

A. August.

Q. Where was the Seminole at that time?

A. She was stored at Pilkington's.

Q. And how long did you work on her there?

A. We took her out, went down in her, took her down here to Miami and worked on her that night and had some of the staterooms changed over, and went to the Keys the next day.

Q. You say that was in August, 1930?

A. Yes, sir, I am pretty sure it was '30. It was in August, I know.

Q. Did Mr. Simmon have anything to do with the boat at that time?

A. No, sir, I never hear of him. I don't know.

Q. You never heard of Mr. Simmon, is that right? Never had anything to do with him?

A. No, sir.

Q. I want to get this straight. I hold in my hand the file of Pilkington bills for storage, and it appears a full month's storage was charged on the Seminole in August, 1930, and a full month in September, 1930; a full month in October, 1930.

A. It was in August that we was out.

Q. And for twenty days in November, 1930. Are you sure about your dates?

A. Yes, sir. It was in August.

Q. Mr. Underwood and I have been checking as to the times that she was out from Pilkington's yard, and in 1930 it appears that she didn't leave the yard until November 20; is that right?

Mr. Underwood:

That is according to my notes.

Q. And then she was out until April 20, '31?

Mr. Underwood:
That is right.

Q. And then she wasn't out again during '31, but she was out for a period beginning in March '32, and again a period in August '32. Now could it be August '32 you are talking about?

A. I must have lived two years too fast. It was in August, that is the only time I was on her, in August.

Mr. Underwood:
She wasn't out in August '33; she wasn't out in August '34; according to the bills.

Q. The only month that I can find that she was out in August, was in 1932.

Mr. Underwood:
That is according to my understanding too.

A. Well, that is the only time I was on her, was in August, that first time I was on her.

Q. That is the first time you were on her?

A. Yes, sir.

Q. Now according to my notes she wasn't out in '33, but she was out for a period in April '34. In April '34. Were you on her at that time?

A. She was carried to Palm Beach in '34.

Q. What is that?

A. She was carried up to Palm Beach in '34.

Q. Was that in April?

A. She was out until April, wasn't it?

Q. From sometime in March to sometime in April.

A. I didn't carry her up there that same trip; some fellow engineered it over here, and after they got up here why he left the boat and they come and got me.

Q. Here is a voucher that seems to show that you were paid in April, 1934 for a period from April 2nd to April 21; twenty-one days.

A. Yes, sir.

Q. And did you work during that period of twenty-one days, on the Seminole?

A. Yes, sir.

Q. And that was at Palm Beach?

A. That was Palm Beach.

Q. But somebody else brought her up to Palm Beach from Pilkington's yard that time, is that right?

A. Yes, sir.

Q. Well, was a trip made in her at that time?

A. Just brought her back to Ft. Lauderdale from Palm Beach.

Q. She just lay up there for that period and then was taken back, is that right?

A. Yes; outside of a couple of nights out on the Lake.

Q. Now the next time that she was out was in February, 1935, which was the last time she was out, that you have been telling us about; is that right?

A. Yes, sir.

Q. So that was three times that you worked on the Seminole, is that right?

A. Yes, sir.

Q. And when you left the Seminole, why did you lock the hatch?

A. Well, I generally locked it, I understood they give the keys to Mr. Pilkington; I never saw anything like that.

Q. You understood when you locked it that the keys were going to be given to Captain Pilkington, is that right?

A. Yes. Said to lock it up, and I don't know who give him the keys, I never saw it.

Q. Now was there a car that was expected to take you to Palm Beach from Pilkington's after you got through?

A. No, sir.

Q. You had to go by bus?

A. Mrs. Pilkington took Bryant and myself to Ft. Lauderdale and we caught the bus.

Q. What bus did you get?

A. The seven o'clock bus.

Q. One thing that you said that I didn't understand; you said one of the engines got weak on gas, going up to Ft. Lauderdale.

A. It did, on reverse; when we was making the last turn, it skipped two or three times.

Q. It didn't stop?

A. No, it just acted like a listing of the boat or something might have caused it.

Q. Well, I suppose there may have been water in the gasoline, might'nt it?

A. I never did have any water trouble with it, the time I was on it.

Q. I mean, assuming that it wasn't—that you hadn't had any previous experience with it; I mean, all you say was that the motor did some spitting, is that it?

A. Yes; as we was making the last cove there, right at the dock, you might say, and it cut me down slow, why she worked all right.

Q. Well, water in the gas does cause that spitting sometimes?

A. It does, I know.

Mr. Matteson:

That is all I have.

By Mr. Botts:

Captain, when you were running on this trip down to Matecumbe, and another trip to Mahia Honda and so on, did you run your motors wide open, or were you just running at a cruising speed?

A. Ran very good in deep water; a lot of times slowed down in shallow water, on account of you wouldn't hold

it down dragging a heavy boat like that. Generally ran about 3 to 5.

Q. You mean 3 to 5 revolutions?

A. Yes; 450 was maximum.

Q. And what the gasoline consumption of those two motors, per hour, can you tell us, running at the speed of about 3 to 5?

A. Well, I never have checked it. Right around 35 to 37 gallons an hour, for the generator and the two motors. I never did check the two motors alone; I didn't have no way, much.

Q. Referring, Captain, to Libelants' Exhibit 4, which shows the valve and pipe line coming out through a hole in the bulkhead; that pipe line that shows to be broken off, in that photograph, is the pipe line that went from, I believe you said, the number 1 tank, to the manifold; is that correct?

A. Yes, sir; that is the number 4 tank.

Q. Number 4 tank?

A. It is number 1 tank coming from the port side of the boat.

Q. Now this would be the number 4 tank, then?

A. Yes, sir.

Mr. Underwood:

He said number 1 tank coming from the port side.

Q. This is the tank that has been referred to as the number 1 tank, that is what I am getting at.

Mr. Underwood:

That is correct, I believe.

Q. Now if that valve was centered in this hole, then the rivets at the bottom of the tank, which appear through the hole, would have been below the level of the hole, would they not?

A. Yes, sir.

Q. Can you tell us how far it was from the line of the face of that bulkhead, back to the tank? Was it directly up against the tank?

A. It was fairly close, about an inch, right through where it come out at the widest place.

Q. Then a person looking through that opening, with the tank in normal position, really couldn't see any of that riveting, could they?

A. You could see just in front,—around the front part.

Q. Just a very few inches?

A. Yes.

Q. Then there was a metal pan of some kind under all of the tanks, as I understand it?

A. Yes.

Q. Do you know whether it was one pan under each tank, or one pan for all of them?

A. Two pans; two tanks set in one pan.

Q. Two tanks for each pan, and that was a metal pan of some sort?

A. Yes.

Q. What kind of a metal did you say it was?

A. 3/16's—

Q. 3/16's iron pan?

A. Yes.

Q. And how high were the edges of that pan—as it was turned over to make a pan shape, do you know?

A. About four to four and a half inches.

Q. This pan, as I understand it, rested on the support, and then inside the pan, as I understand it, there was some wooden—

A. Cushions for them to sit on.

Q. For the tanks to sit on. Well, then, the only point at which you could examine those tanks was through these little holes in the bulkhead, is that right?

A. Yes.

Q. And you couldn't see any part of the bottom of the tanks, could you?

A. No, sir.

Q. And a very few inches along close by the hole, of the riveted side of the tank; is that correct?

A. Just see around the edges.

Q. Now did I understand you correctly, that when the batteries were being charged, that you couldn't get lights in the staterooms or elsewhere in the boat? Is that correct?

A. I misunderstood you.

Q. That is what I wanted to get straight.

A. You could have, whenever you was charging, you could have your lights any where.

Q. Well, then, the lights would burn when the batteries were being charged?

A. Yes, sir.

Q. And it wasn't necessary for this charge and discharge switch to be turned over to the discharge side in order for them to get lights?

A. No; you had to throw it on the charge side to charge.

Q. Yes, I understand that; but you could get lights throughout the boat whether it was being charged or whether it was thrown over to the discharge side, is that right?

A. Sure.

Q. I thank you. Now you stated, I believe, that you had seen and had occasion to examine the switch arrangement on numerous other boats during the course of your experience; and that these switches were normally knife switches?

A. Yes, sir.

Q. And do you know whether or not these switch boards are normally in the enginerooms or elsewhere in the boat?

A. Most of them is in the engineroom; pretty nice boats, most of them have them.

Q. Now as I understood you, you stated that when this charge and discharge switch,—when it was thrown from the discharge position over towards the charge position, there would normally, or very often at least, be a spark or arc caused?

A. If you say, charging,—your generator was running. If your generator wasn't running, why you would put it over on the charge side, and there wouldn't be no spark.

Q. But if your generator was not running, and the switch was over on the discharge side, and you should open it, then there ordinarily would be a spark?

A. There would be an arc.

Q. I understood you to say that if the connections weren't perfect there might be an arc also when you pulled the switch, but not as light, is that right?

A. Not as heavy.

Q. Not as heavy; There might be an arc caused when you would either close or open the switch, is that right?

A. Yes, sir; you could throw the switch quick, you can't see it, it is so light.

Q. But if you would throw it in slow, it would be more apparent to the eye, is that the idea?

A. Yes, sir.

Q. The same thing would be true in closing this main switch, or opening that, would it not? That there might be an arc caused by—

A. If your switch wasn't on discharge it would be no spark.

Q. Suppose the charge and discharge switch was thrown over to discharge, and then your main switch was opened or closed, then there would be an arc there, would there not?

A. Not if you had the rest of your switches off. There is only one circuit, and that is on your pilot light. It will

make a little arc, but I never noticed much arc. Putting the switch in,—always taking it away, is what does it.

Q. There is a greater arc. However, if the switches were a little out of line, so that one contact reaches a little sooner, there would more likely be an arc than otherwise, would there not?

A. Yes.

Q. Now, Mr. Schlappi, I understood you to say that your normal method of stopping these motors was to turn off these various gasoline valves from the tanks, or manifold, is that right?

A. The feed valve.

Q. The feed valve?

A. On the feed line.

Q. As I understand it, referring to Libelants' Exhibit 17, that the valve here below the—

A. Trap.

Q. —and with the handle broken off, was one of the cut-off valves for your feed lines?

A. Yes, sir.

Q. And you would normally cut those valves off and leave the spark, or ignition on, and let the engine run until the gasoline was exhausted?

A. Yes, sir.

Q. The purpose of that being to do what?

A. On account of water,—the exhaust being under water so deep, and a kickback as you shut your switches, and you have a little carbon and a little heat, a lot of times that would kick back maybe three or four times; it would just pull the water right through your exhaust valve into your cylinder, if she does.

Q. You don't have any particular recollection at this time of how you actually shut them off at this time? You are merely testifying that that was your custom, and from that you meant that you did it the same way on this occasion, is that it?

A. That was my custom all the time.

Q. And you wouldn't say at this time that you have any recollection, one way or the other; you just think you did it, because you always did, is that right?

A. I did it.

Q. All right. Now in referring to this flow from the draw-off,—I believe you call it the draw-off pipe, that you saw when you were pumping out the Seminole, you said that what you saw flowing out was a mixture; is that right?

A. Yes, sir.

Q. Well now, it was a mxiture of what?

A. Water.

Q. And gasoline?

A. Water and old oil and stuff. I don't know whether there was any gas in it. It smelled like old, burned oil; or could have been some gas.

Q. I see.

A. Oil or gas will flow to the top of the surface of water.

Q. Now you have told us about four motors in the engineroom;—two main motors, the main generator motor and the auxiliary generator motor?

A. Yes, sir.

Q. Was there any other motors aboard the Seminole anywhere?

Mr. Underwood:

You mean electric?

Q. Electric, no; gasoline motors?

A. There was a winch motor.

Q. That was up forward?

A. Yes.

Q. Where did that motor get its gasoline supply?

A. From the tank in the bow of the boat.

Q. How large a tank was it, do you know?

A. Between 5 and 7 gallons.

Q. Just a small tank?

A. Yes, sir.

Q. How was that tank normally filled?

A. Through a three-quarter inch plug.

Q. What I am talking about is: did you normally fill these cans and carry them up there and pour it in there like you fill the fishing boats?

A. Yes, sir.

Q. I believe you said there was a kerosene tank aboard. Where was that kerosene tank?

A. I don't believe they asked me about that.

Q. I thought they asked you about that?

A. He didn't ask me about that but there was a kerosene tank aboard.

Q. Where was that located?

A. Up over the starboard motor, the main motor.

Q. How big a tank was that?

A. 55-gallon.

Q. Do you know whether that was full when you left Miami or not?

A. No, it wasn't full; that was used for cooking.

Q. How much kerosene did it have in there, do you know, when they left?

A. I don't remember.

Q. Did the kerosene from that tank flow by gravity to the galley for use in cooking, or was it drawn off and carried up?

A. You didn't have to carry it. They had a pressure tank back there for that.

Q. You filled up a can and carried it back to the galley as you needed it?

A. Yes, sir.

Q. Now you said that you examined the bilges, I believe, on your way up to Pilkington, or was that after you reached there?

A. I examined the bilges and was cleaning them out going up.

Q. Was there much water in the bilges?

A. No; just where the water pump would throw grease and stuff on them, and hit down there and make greasy spots.

Q. How about water; how much water?

A. There was no water to speak of. You could sit down in the bilges—

Mr. Underwood:

And not get wet?

A. Yes.

Q. Now referring to Libelants' Exhibit 17, this trap and the connections that fasten to it, do I understand that this trap was located above the engineroom floor and underneath this shelf that you mentioned?

A. Yes.

Q. How far was this trap above the engineroom floor?

A. It would be close to 18 inches.

Q. Then the broken off valve attached to it was also above the floor?

A. Yes, sir.

Q. The gasoline from that point, was it connected to the carburetors above or below the floor?

A. Beneath the floor.

Q. It ran down to—

A. Straight through the floor and then back the carburetor.

Q. What distance was it from the trap to the carburetors; how many feet of pipe was carried down underneath the floor that way?

A. Between 10 and 12 feet.

Q. Now that would include the piping for both motors or for just one?

A. Just one.

Q. Then for both motors there would be double that?

A. Yes.

Q. So there was something like 20 feet of the gasoline lines that were underneath the floor boards?

A. Yes.

Q. Now how large did you say this squirt can was?

A. Pretty close to a quart.

Q. You said it would take almost a can full to prime each of the engines?

A. Yes.

Q. When you were getting ready to start you would use one squirt can and then you would fill that can and use it on another?

A. No, I had two of them.

Q. You had two?

A. Yes.

Q. Now about this garden house that you have described as being used to take gasoline out of the tanks into the various fishing boats, you say that was screwed on to the bottom of this draw-off valve?

A. Yes, sir.

Q. You carried this hose out through the window, did you?

A. Yes.

Q. How high or what distance above or below the level of the window sill was the lower part of this draw-off valve or the connection?

A. I would say that draw-off valve was a good two and a half feet below the window sill; more than that maybe.

Q. At any rate, it was far enough below so that when this hose was hooked on there the hose would naturally go down in a curve and up?

A. Yes.

Q. So that from the lower part of the hose to where it went through the window sill was probably as much as three feet?

A. Yes. You couldn't use the hose when it got "half gone".

Q. Now then do you remember how many times you used this garden hose to fill up the boats when you were down on this trip?

A. No, I don't.

Q. When you would finish using the garden hose you would then disconnect the hose until you were ready to use it the next time, I take it?

A. They used it for washing the decks down, too.

Q. They used it for water then?

A. Yes.

Q. How would you drain the gasoline out of that hose when you had been running gasoline overboard?

A. Put it on a water spigot and ran it out.

Q. When you unscrewed it wouldn't there be some gas that drained back into the engineroom?

A. Just from the lower part——you see it ran right back into the can, and you lifted the hose up and run it overboard.

Q. You would either drain it back into the can or run it overboard, so there would be only a small quantity of gasoline that would drain into the engineroom, is that right?

A. Yes.

Mr. Botts:

I think that is all.

Re-Direct Examination.

By Mr. Underwood:

Q. What would you do with that gasoline that ran back—

A. Run it into the can.

Q. What did you do with it then?

A. Taken it up and put in the boat.

Q. Did it go into the bilges?

A. No, sir.

Mr. Underwood:
That is all.

Re-Cross Examination.

By Mr. Matteson:

Q. In this picture which has been marked Exhibit 4-B, do you see the drain line that these valves were attached to?

A. That's the drain pipe all right.

Q. You are satisfied now that this point I am pointing to is the drain pipe?

A. Yes, sir.

Q. I have drawn an arrow pointing to the pipe and at the end I have written "drain pipe"; is that right?

A. Yes.

Q. Do you also notice (when we were speaking of the section of the manifold line 0 that that seems to be in place there?

A. Yes.

Q. Do you recognize that?

A. Yes.

Q. That is it right there, isn't it?

A. Yes.

Q. Is that where the arrow is pointing to?

A. Yes.

Q. I will mark that "section of manifold line".

Mr. Underwood:
All right.

Q. All right, on this other photograph, Exhibit 4-A, do you see the drain line running across there?

A. Yes. This was taken a little closer.

Q. Taken closer to the line?

A. Yes. That looks like the feedline pipe here.

Q. Suppose we mark it on this picture, too.

A. That is it.

Q. This white one here—I will draw an arrow in this margin here—that is the drain line, is it?

A. Yes, sir.

Q. And this other one, which is not quite clear, that is a piece of the manifold line, is it?

A. Yes.

Q. I notice this bill of "Dade Supply" dated April 5, 1935, shows, in addition to the 1540 gallons of gasoline supplied to the Seminole, 83 gallons of gasoline charged to the "Seminole and owners". Do you know what boat that 83 gallons of gasoline was for?

A. It was all charged to the Seminole Boat Company.

Q. It says "charge to Seminole and owners".

A. I don't know, unless that filled the Clip up here at the dock before they left. I didn't have anything to do with filling of the Clip when she left the dock. I never got any little batches of gas line that.

Q. That wasn't for the Seminole?

A. No.

Mr. Underwood:

The voucher simply says "small boats".

Q. Just another thing: you worked on the Iolanthe at times?

A. Yes.

Q. Who employed you when you worked on the Iolanthe; who made the arrangements with you?

A. Mr. Riley?

Mr. Matteson:

That is all.

Re-Cross Examination.

By Mr. Botts:

Q. How did you start the motors for the generator; by this same "pressure or compressor arrangement"?

A. Started it with the battery juice.

Q. Did you have a starting motor?

A. Why, on the generator the—the generator had juice through it.

Q. It all acted as a starter?

A. Yes.

Q. In other words, when it was reversing it would act as a starter?

A. Yes, sir.

Q. You said these batteries were 100-cell batteries?

A. Yes.

Q. Was there more than one of them?

A. Yes; there was 100 cells.

Q. Yes but I thought you meant that each battery had 100 cells?

A. No; the batteries connected up is from one cell to the other.

Q. It is a whole series?

A. Yes.

Q. You don't know how many plates in each cell?

A. No, I don't.

Mr. Botts:

That is all.

The Court:

Do you have a question?

Mr. Underwood:

I have about 15 or 20 minutes.

The Court:

I suppose we had better carry it over to tomorrow. We will adjourn until 9:30 tomorrow morning.

(Adjournment taken to 9:30 A. M., May 16, 1939.)

United States District Court Southern District of Florida. Miami Division.

Charles Coryell, et al, Libelants,
against
George J. Pilkington and John S. Phipps, Respondents.

In Admiralty No. 122-M-Adm.

Deposition taken on behalf of the respondent, John S. Phipps, at the office of Messrs. Burlingham, Veeder, Clark & Hupper, 27 William Street, New York City, April 19, 1939.

Appearances:

Messrs. Loftin, Stokes & Calkins, Ray C. Alley, Esq., Messrs. Burlingham, Veeder, Clark & Hupper (Mr. Underwood) for the respondent, John S. Phipps.

Messrs. Batchelor & Dyer, Messrs. Bigham, Englar, Jones & Houston, (Mr. Matteson) for the libelants.

It is stipulated that the testimony may be taken by a stenographer, signing, filing and certification being waived, stenographer's fees to be taxable.

2292 ANTHONY SCHINIGOI, being duly sworn and examined as a witness for the respondent, John S. Phipps, testified as follows:

By Mr. Underwood:

Q. Mr. Schinigoi, where do you live?

A. 113 Constitution Street, Bristol, Rhode Island.

Q. And you came down here from Bristol today to testify in this Seminole matter?

A. Yes.

Q. What is your business?

A. Master mariner in the summertime—mariner in general.

Q. How long have you been going to sea in boats—small boats?

A. In small boats, since 1918.

Q. What has been your regular work in the summertime for the past several years?

A. Master mariner, in Rhode Island.

Q. What did you do—what kind of boats?

A. 45-foot Dawn.

Q. In the wintertime, what has your work been for the past several years?

A. Steward.

Q. And that is in the south?

A. In the south, yes.

Q. Have you ever worked on the Seminole?

A. Yes—1935.

Q. That was the year in which she burned?

A. Yes, sir.

Q. Had you ever worked on her before that year?

A. No, sir.

Q. How did you come to get employed on the Seminole?

A. Through Captain Baker on the Mollie O.

Q. Were you steward on the Mollie O?

A. Yes, sir.

Q. How did you come to go over to the Seminole?

A. Well, Mr. Phipps hired Captain Baker to take charge of the Seminole, and in order to do that he had to lay up the Mollie O, so he took all the crew of his boat on the Seminole.

Q. You say that Mr. Phipps hired Captain Baker. Do you know of your own knowledge who made the arrangements with Captain Baker?

A. Why no.

Q. Where did you join the Seminole?

A. At Miami.

Q. At the Royal Palm Dock?

A. Royal Palm Dock in Miami.

Q. Who all went over to the Seminole from the Mollie O?

A. Captain Baker, Clyde Baker, a deckhand by the name of Sig, and myself.

Q. About how long did you stay on the Seminole that time?

A. I would say about between ten days and two weeks —I think it is nearest to ten days than two weeks.

Q. Did you go on a cruise?

A. Yes, went down the Key, changed places all the time.

Q. What was your job on the Seminole?

A. Steward—cook and steward.

Q. Do you know about how many people there were in the yachting party?

A. Well, to give the exact number it is pretty hard for me, because I wasn't mostly with the party, but I should say it was an average of seven—at different times, between seven and eight people.

Q. Do you remember the names of some of the people who were there?

A. Well, Mr. Phipps.

Q. Which one do you refer to?

A. That is the worst part of it—just call him Phipps down there.

Q. There was at least one Mr. Phipps?

A. There were two Mr. Phipps.

Q. Do you remember the names of any of the others?

A. I believe there was—

Q. Mrs. Guest?

A. Mrs. Guest.

Q. About how many members of the crew were there—I mean just on the Seminole?

A. Not counting the guides?

Q. Not counting the guides.

A. About six.

Q. Were there any other boats that went along with the Seminole?

A. Yes, there was three or four guide boats.

Q. Did you have anything to do with getting the Seminole ready for that cruise?

A. Yes.

Q. Tell us what you did?

A. Well, we cleaned up all the staterooms, made up the beds, and put out the draperies and stored her with food and supplies.

Q. During that time, did you have occasion to go down into the bilges of the boat at all?

A. Yes, I had to go down once to get some of the blankets that were stored away on the forward part of the boat.

Q. You mean the blankets were stored down in the bilges?

A. Down in the bilges.

Q. What did you find the condition of the bilges to be from your observation at that time?

A. Well, you couldn't ask for no better, just as clean and dry as could be.

Q. Did you smell any odor of any kind down there on that occasion?

A. Not of any kind.

Q. Did you have any work to do in the engineroom of the Seminole at any time?

A. No.

Q. Were you ever in the engineroom?

A. Once.

Q. When was that?

A. After the party left, we were taking the boat from the Key to Miami, I went down for about half an hour in the engineroom.

Q. What was the purpose of that visit?

A. Curiosity.

Q. On that cruise, did you know R. C. Abel?

A. Yes.

Q. Was he on that cruise?

A. Yes.

Q. Do you know what his job was?

A. He was running one of the fish boats.

Q. Where did the party leave the boat?

A. I believe it was lower Matacumbe.

Q. Did any of the crew leave the boat down there too?

A. Well, if you call the butler and the second man from the house the crew—them two left.

Q. When you told me there were about six in the crew, did you include those?

A. No, I didn't include anybody else but the actual crew.

Q. After the party left at lower Matacumbe, where did the Seminole go?

A. The Royal Palm Dock in Miami.

Q. What happened to the crew there—did any part of the crew leave?

A. Well, yes.

Q. Who didn't leave—who stayed on after Miami?

A. The engineer, Captain Baker, one of the sailors and myself.

Q. That makes four?

A. Four.

Q. On the way up from lower Matacumbe to Miami, about how long a trip was that?

A. I would say about twelve hours—ten to twelve hours.

Q. Did you know at that time where the boat was going?

A. Well, we knew we were going to Miami.

Q. Did you know at that time that you were going on further than Miami?

A. No, sir.

Q. What did you do about the staterooms of the boat, if anything, during that time?

A. Well, cleaned them up and laying them up.

Q. Just what did that involve—what did you do?

A. Well, stripped the beds from the soiled linen and folded up the blankets and put them in drawers, covered up the beds again with the bedspreads, and cleaned up the bathrooms, swept the floors.

Q. How much of that work did you get done in the staterooms by the time you got to Miami?

A. The staterooms was all finished.

Q. Do you remember how long you lay over in Miami?

A. It was overnight.

Q. Where did you go from there?

A. Went to Fort Lauderdale—Pilkington Boatyard in Fort Lauderdalt.

Q. Were those four men that you have named aboard on that part of the trip?

A. Yes.

Q. That is the captain, the engineer, one sailor and yourself?

A. Yes, sir.

Q. About what time of the day did you arrive at Pilkington Boatyard?

A. It must have been around 2 or 2:30—between 2 and 2:30.

Q. In the afternoon?

A. In the afternoon.

Q. I don't suppose you remember what day it was?

A. No, that is quite hard to remember.

Q. Where did you leave the boat—at Pilkington's?

A. A little dock they had outside of the shed.

Q. When you got alongside, I would like you to tell us what you did in order to leave the boat, before you left her?

A. Well, I went to see that all my work is done, see that it has the proper ventilation, see that the windows are open enough for ventilation, close the venetian shutters so that the sun and rain wouldn't come in.

Q. Did you go into the engineroom at any time on the day you left the boat at the yacht basin?

A. Not exactly—just put my head through the window in the hall to see—well, just to see that everything is all right.

Q. You mean you looked in but you didn't physically go in?

A. No, I just looked in.

Q. You said something about the windows and the ventilators in the staterooms. The only staterooms are on the lower deck—there were no staterooms on the upper deck, were there?

A. Except the captain's room, I think you call that a stateroom.

Q. Just the captain's room?

A. Yes.

Q. Let's talk about the staterooms that were on the lower deck. Tell us just what you did with the windows in the staterooms on the lower deck.

A. Well, after I had them all cleaned up, I pulled the windows two-thirds up, which left an opening about 6 to 8 inches, and I pulled these venetians shutters.

Q. The windows, you say you pulled up—you mean they were the kind of window that dropped down into the bulkhead?

A. Yes.

Q. Into the wall?

A. Yes.

Q. How did you leave those windows?

A. Two-thirds up—one-third open.

Q. You have spoken of a venetian shutter. Describe for us just what you mean by that.

A. It is sort of a slat work at a 45-degree angle, overlapping each other, and permanently made fast to a square frame.

Q. You mean the thing slides up and down as a unit?

A. Yes.

Q. Will the slats change their angle?

A. No.

Q. They are fast?

A. They are fast.

Q. How did you leave those?

A. Way up so that the rain wouldn't come in or the sun, and spoil the furnishings.

Q. Do you remember whether there were any windows in the alleyway that ran alongside of the engineroom?

A. Yes, two.

Q. Did you do anything with those windows?

A. The same thing.

Q. How did you leave those?

A. Two-thirds up, with this shutter in front of them.

Q. How about the windows in the crew's quarters aft of the enginercom?

A. They all was the same way—two-thirds up and these shutters in front.

Q. Did you do all that yourself?

A. All myself.

Q. Who was the last man off the boat, if you remember?

A. Myself.

Q. Tell us what you did the last few minutes before you left the boat.

A. I went through the boat to see everything was like it should be, I took my bag, put my few clothes in it, I locked the door, I walked in the upper deck and handed the key over to the captain and I went ashore.

Q. On that last look around, were you up forward on the lower deck where the passengers' staterooms were?

A. Forward and aft.

Q. On that occasion, did you look at those windows?

A. Every one.

Q. How were they?

A. The window I know I left at two-thirds up, and of course with the shutter on, you could only see the shutter.

Q. Did you look in the engineroom on that occasion?

A. Well, I was just passing by and I looked in. I hooked a window—well, I felt that the window was hooked, between the passageway and the engineroom.

Q. How did you leave that window?

A. Hooked open.

Q. Did you notice whether the window on the other side—the port side of the engineroom—was open or closed or how?

A. There is one thing that I really—I couldn't answer for sure. Maybe at that time I noticed they was open, but being away from my department I didn't pay really any particular attention.

Q. You mean that now you can't tell us for sure whether it was open or shut or how it was?

A. I believe if I see that window closed I would have passed a remark or maybe opened it myself.

Q. When you looked in the engineroom on that last look around, did you smell anything?

A. No, sir.

Q. Was there any odor of gasoline?

A. None whatsoever.

Q. Did you hear anything dripping?

A. No, sir.

Q. Did you see anything dripping?

A. See nothing out of the usual.

Q. Between the last look around that you made and the time you turned the keys over to Captain Baker, was there anybody else in that part of the boat?

A. No, sir, everybody was ashore.

Q. And when you handed the keys to Captain Baker, what did you and he do after that?

A. As far as I remember, we went in the car—the car was waiting for us.

Q. Did either of you go back on the Seminole again?

A. No, sir.

Q. What had become of the engineer and the sailor?

A. They left ahead of us because they were bound to Palm Beach, and their car came before ours.

Q. You mean they had already gone when you left the boat?

A. Well, not very long ahead, I would say maybe ten or fifteen minutes ahead.

Q. But by the time you locked the door and left the Seminole, they had gone?

A. They had gone, yes.

Q. And the door you locked, did I understand you to say that was the after door?

A. That was the after door.

Q. On the lower deck?

A. On the lower deck.

Q. Tell us about these keys that you gave Captain Baker—about how many were there?

A. There were several keys, I could say between four and six—they were tied up on a string with a little paper tag on it, or a stick of wood which I presume had a name on it.

Q. Were they all tied together on one string?

A. They were all tied together on one string.

Q. Did you see what Captain Baker did with those keys?

A. No, I did not notice.

Q. Where did you get your pay for that trip?

A. Captain Baker.

Q. Did you have any dealings with John S. Phipps at all?

A. No.

Q. Or any of the Phippses?

A. No.

Q. Or Mrs. Guest?

A. No.

Cross Examination.

By Mr. Matteson:

Q. Were you paid by Captain Baker by cash or by check, do you remember?

A. By cash.

Q. Were you paid for this particular trip, or were you just paid the wages you got as steward of the Mollie O?

A. No, just for this particular trip.

Q. When did he pay you, if you remember?

A. After we came back from Miami, from Fort Lauderdale.

Q. How long after, do you remember?

A. The following morning.

Q. How long were you on the Seminole altogether?

A. I should say between ten days and two weeks—maybe it was twelve days, something like that—between ten days and two weeks.

Q. Were you paid at the same rate on the Seminole that you were on the Mollie O?

A. Same.

Q. So Captain Baker just paid you ten or fourteen days salary?

A. Yes.

Q. Based on your monthly rate?

A. Yes, based on my monthly rate.

Q. Had you been paid for your time on the Mollie O before that?

A. Yes.

Q. Before you went on the trip on the Seminole?

A. Well, we got paid as a rule at the end of every charter.

Q. Was the Mollie O under charter at the time you were transferred to the Seminole?

A. Yes.

Q. What happened to that charter?

A: I believe it was an opening between charters, and that is the time that Captain Baker went on the Seminole—took the Seminole out.

Q. You say there were two Mr. Phipps that were on this trip?

A. Yes.

Q. How do you recognize the difference between them—is one an older man and one a younger man, or how is it?

A. Mr. Phipps—the one that I believe was the owner of the Seminole—I know him a little more because he chartered the Mollie O the year before, and the other Mr. Phipps seemed a little different, he was quite deaf—and that is the difference between the two.

Q. I think you said it was Mr. Phipps who arranged with Captain Baker to have the crew transferred over onto the Seminole?

A. No, I didn't say that.

Q. Well, you said that Mr. Phipps had arranged with Captain Baker, and then you said that you didn't know that of your own knowledge.

A. I said that I believed that Mr. Phipps hired Captain Baker—not the crew.

Q. Who was it told you that—was that Captain Baker?

A. Yes, talking with me—him and I.

Q. Where was this place where the blankets were stored in the Seminole?

A. It was between the port and starboard staterooms forward—

Q. Can you show on this chart (indicating)?

A. About here is a hatch that you lift up, or was really a hatch that lifts up and a ladder to go down.

Q. That is in this companionway in the forward part of the ship, between the staterooms on the port side and the staterooms on the starboard side, and about in the position where the word "Passage" appears on this blueprint (Exhibit A for identification), is that right?

A. Yes.

Q. You say that there was a hatch that lifted up in the floor of that passageway?

A. Yes, a section of floor came right up.

Q. How big was that?

A. I would say about 3 by 6 feet.

Q. What was down there after you lifted up the section of the hatch?

A. The bilge—a ladder to go down and a bilge.

Q. What do you mean by a bilge?

A. The bottom of the boat.

Q. Were there some boards or some parts partitioned off?

A. Well, no, there was open space—concrete—and you could see the water tanks underneath.

Q. The place where those blankets were—was that on top of the water tanks?

A. No, right on the bottom of the boat.

Q. Where was this concrete that you speak of?

A. Between timbers.

Q. It was concreted in between the timbers?

A. Yes.

Q. Did the concrete cover the timbers?

A. Quite well.

Q. Could you see the top of the timbers through the concrete?

A. Yes, the iron girders.

Q. So in this section under this hatch that lifted up, the bottom was filled in with concrete between the girders?

A. Yes.

Q. And it was on this concrete the blankets were laid?

A. Well, wrapped up in paper.

Q. Wrapped up in a bundle?

A. Yes.

Q. How big was the bundle?

A. Enough to hold six or eight blankets.

Q. How big a bundle would that make?

A. Oh, about 3 cubic feet.

Q. 3 cubic feet would be a foot square and 3 feet long.

A. Then that would be wrong—I am not much good in English mathematics—I would call it a yard in each direction.

Q. You mean a yard long and a yard wide?

A. And a yard high.

Q. A package that size would hold more than six blankets, wouldn't it?

A. I hardly think so.

Q. How many blankets were there in the package?

A. About six or eight blankets—good blankets—good heavy woolen blankets.

Q. When you lifted up the hatchway, were there floor beams that went across the opening?

A. There was something to walk on—the center of the boat as far as the tank—I couldn't say whether it

was wooden boards or part of the keelson—I couldn't say that.

Q. You are speaking now of the space down under the floor?

A. Yes.

Q. You say you could walk in there?

A. Yes—oh yes.

Q. You couldn't stand up in there?

A. Not very well, but by stooping down you could walk.

Q. How high would you say it was from the top of the steel girders at the bottom of the vessel up to the floor?

A. I would say close to 4 feet.

Q. When this hatchway—whatever it was that you lifted up—this section of the floor—when that was in place it rested on the floor beams, I presume.

A. Yes.

Q. And when you lifted it up, the floor beams were still there.

A. Yes, sir, there were floor beams in there.

Q. I suppose there would have to be to hold the section of the floor in place.

A. What I mean, there were two beams dividing the hole in three sections—the opening.

Q. This hole was divided in three parts by the two floor beams that were in the opening?

A. In the opening, that is right.

Q. So that the length of the hole would be three spaces between floor beams?

A. Two or three spaces, I just couldn't—I know there was some obstruction in there because I couldn't get the bundle out, I had to force it through, now whether it was one or two I couldn't quite—I know I had to force the bundle to get it out of there.

Q. In this space down here, there were tanks on each side of it, were there?

A. I believe I only saw the water tanks amidships.

Q. See if I get what you mean: This passageway seems to be just about amidships between the sides of the vessel, is that right?

A. Yes.

Q. Now, you open up the section of this passageway and look down—where do you see the tanks?

A. Aft.

Q. And did the tanks come across the amidship section of the vessel?

A. Yes.

Q. So that this space would be blocked of at the after end by a tank, is that right?

A. Yes.

Q. On each side of the space toward the side of the ship, were there tanks there?

A. I couldn't say because I didn't walk back of that.

Q. Did you go down in the space?

A. I went down to get the blankets.

Q. You never yourself went down in the space?

A. To get the blankets, yes.

Q. You needed a lot more than six or eight blankets for the boat, didn't you?

A. Yes, but a lot came from the house. That was originally the blankets that was part of the equipment of the boat.

Q. You say some blankets were brought from the house?

A. Yes.

Q. What house was that?

A. From Palm Beach. The butler brought them—which house he took them from I don't know—the butler brought them on board.

Q. Weren't some of the blankets stored in the staterooms?

A. Yes, in the drawers. If I remember right, the blankets I took out of the bilges we used for the crew;

the ones in the drawers were used for the staterooms; and then the extra blankets came from the house or some house, were used also in the guests' staterooms.

Q. What was the name of the butler?

A. I can't remember, we used to call him by his first name.

Q. What was that first name, do you remember?

A. No, sir, I couldn't remember. Maybe a couple of months after I could remember.

Q. You can't remember it now?

A. No, sir, I never saw him since.

Q. How did you know there were blankets in this place?

A. I was told.

Q. Who told you?

A. The captain.

Q. What was the name of the sailor that went up to Fort Lauderdale with you—was that Bryant or was it Sig?

A. Bryant.

Q. You spoke of being a master mariner. Do you hold a master's license of any kind?

A. Operator's license.

Q. Motorboat operator's license.

A. Yes.

Q. You don't hold any license from the Steamboat Inspection Service?

A. No.

Q. When you say you had experience as a mariner, you mean in boats of the type of this 45-foot Dawn cruiser you speak of?

A. I started in 1907, ocean liners.

Q. What sort of work did you do on ocean liners?

A. A little bit of everything, mariner, fireman and coal passer, steward, cook, messboy.

Q. What do you mean by mariner?

A. Anybody that goes to sea.

Q. You mean a sailor?

A. Well no, anybody that goes to sea—the captain is a mariner and the engineer is a mariner.

Q. And the coal passer?

A. The coal passer is a mariner—that covers the whole branch.

Q. When you said you worked on ocean-going vessels as a mariner, what did you mean by that?

A. Well, that would cover all the departments.

Q. When you said mariner, you just meant those other capacities that you named specifically, is that right—coal passer, fireman, steward?

A. Instead of covering the whole individually, I just called it mariner.

Q. Did you ever work as a sailor?

A. Yes.

Q. Never as an officer?

A. No.

Q. You said Abel was on one of these fishing boats?

A. Yes.

Q. Was that the Clip?

A. I believe it was, although it is pretty hard for me to remember the name, but there were three or four, every one had a different name, but I believe it was the Clip that was the biggest.

Q. When you stopped at Miami on the way to Fort Lauderdale, did you take on any gas there, do you know?

A. No.

Q. You say you don't know when you got to Miami that you were going to Fort Lauderdale right away?

A. No, we didn't know then.

Q. When did you find that out?

A. The same afternoon.

Q. How did you find that out?

A. Through the captain's orders.

Q. Where is the galley on the Seminole?

A. A little aft of amidships.

Q. That is the room on the starboard side in the after section of the ship on the lower deck?

A. Yes.

Q. And is marked "Galley" on this blueprint (Exhibit A for identification), is that right?

A. Yes.

Q. What kind of a stove did you have?

A. It was an iron stove burning kerosene.

Q. Using kerosene for fuel?

A. Yes.

Q. Did you cook the meals for the crew and for the passengers as well?

A. Yes.

Q. Where were the passengers' meals served?

A. Up in the diningroom.

Q. That is on the after part of the deck?

A. After part of the deck.

Q. The room that is marked "Saloon" on this blueprint?

A. "Saloon", that is right—"Dining Saloon".

Q. How were the dishes transferred from the galley up to the saloon?

A. There is a dumbwaiter here in the crew's pantry, carry up stores to the dining room pantry.

Q. That is, this dumbwaiter is in the pantry which is right opposite the galley on the lower deck?

A. Yes.

Q. You were telling us about the way you left the windows, and you said you left them about a third open?

A. Yes.

Q. How tall are those windows?

A. I believe they are about 24 or 28—maybe 30 inches.

Q. You haven't any way of estimating except by your rough guess?

A. Rough guess, yes.

Q. Whatever their height was, they were about a third open?

A. About a third open, they were open, I would say, 6 or 8 inches—mostly 8 inches, I would say.

Q. If they were 24 inches high, 8 inches would be a third?

A. Yes.

Q. If they were 30 inches high, 10 inches would be a third, is that right?

A. Well, it is quite hard, when you close a window, to say whether it was 8 or 10 inches. I don't think any of the windows would be equally open anyhow, maybe more or less.

Q. Your best estimate is they were open about a third?

A. About a third open, that is what I do on every boat when I lay it up.

Q. The door that you locked, I think you said, was this one at the after end of the house on the lower deck?

A. Yes, that is the last door I locked.

Q. Did you lock any other doors?

A. The doors in the deckhouse—three of them.

Mr. Underwood:

Indicating the social hall as it appears on the upper deck of Respondents' Exhibit A for identification.

Q. Did the same key fit all those doors?

A. No, those has Yale locks.

Q. That is the doors in the social hall?

A. In the social hall and the captain's room.

Q. Have Yale locks?

A. Yes, Yale locks. The door here has a regular house key.

Q. Old-fashioned house key?

A. Yes.

Mr. Underwood:

Indicating the after door on the lower deck.

Q. Did the same Yale key fit all three doors in the social room and the captain's cabin?

A. I couldn't say, because them Yale locks you only snap the lock and it is closed.

Q. You didn't have to use a key for that at all?

A. No, sir.

Q. So the only key you had any use for was the key to the after door on the main deck?

A. The after door on the main deck—on the lower deck.

Q. Did you have a key to the doors in the social hall, do you know?

A. Well, there was a bunch of keys when I locked that door, I guess there were four or five or six keys.

Q. You don't know whether one of them was the key for those doors or not?

A. I presume they was.

Q. But you don't know?

A. No, I don't know.

Q. You didn't try it?

A. No.

Q. Where did you get the keys?

A. There were some hooks on the inside of this lower deck door where the key was hanging.

Q. A board with a lot of hooks on it?

A. A board with a lot of hooks on it?

Q. A separate hook for each key?

A. No, they all was in one bunch, and the other hooks were used for different things, maybe a towel or whisk-broom or something like that.

Q. What time did you leave Fort Lauderdale that night, do you know?

A. I believe between 4:30 and 5.

Q. Who drove you to Miami that night?

A. I don't know, the Biscayne office sent a car for us.

Q. Was there a driver with the car?

A. Yes.

Q. You don't know who that was?

A. I don't know who that was.

Q. Have you worked for Mr. Phipps or any of his companies since this time?

A. No, sir. You mean since that time?

Q. Since that time.

A. No, sir.

Q. Whom are you working for now?

A. At present?

Q. Yes.

A. Nobody. I am starting tomorrow for Mr. Hilton—Vincent K. Hilton.

Q. Is he in Bristol?

A. No, he is in Clearwater Beach, Florida.

Q. Working up here?

A. Starting to fit out his yacht.

Q. What is the name of his yacht?

A. Teddy III.

Q. Where is she?

A. At Bristol, Rhode Island.

Q. When was it that anyone got in touch with you first to ask you about what you remembered about laying up the Seminole—how long ago was that?

A. I think it was a couple of months. I read in the paper about an explosion—Captain Baker wrote me a letter here that on my way south I stop in the office and see Mr. Reynolds. That is the first time I been interviewed.

Q. Did you make a statement at that time?

A. Well, it was practically the same questions I been asked now.

Q. Were you asked about the keys to the boat at that time?

A. Yes, I am quite sure.

Q. Were you asked about the windows of the engineroom at that time?

A. Yes.

Q. And was a memorandum made of what you said at that time?

A. Yes.

Q. You are quite sure you were asked about the keys and the engineroom at that time?

A. I am quite sure.

Q. You didn't have any responsibility for the engineroom, did you?

A. None at all.

Q. Anything that you observed with respect to the engineroom was just curiosity?

A. Just curiosity, yes.

Q. The engineer left before you did?

A. Yes.

Q. And it was his job to see that the engineroom was all right?

A. That is right.

Q. How did you happen to notice this window in the alleyway when you left the ship?

A. Because we always try to keep that window open to give ventilation in the engineroom, and at the time we were running she used to swing and bang, and I happened to reach my hand to see that she don't blow back, shut off.

Q. Where was this hook that you spoke of?

A. Back of the partition in the engineroom.

Q. That was a hook on the inside of the window?

A. Yes.

Q. How did this window open and close—did it go up and down or swing on hinges?

A. On hinges.

Q. Where were the hinges?

A. On the forward part of the frame.

Q. They were at the side of the window then?

A. At the side, yes.

Q. None on top?

A. No.

Q. And you say the window was open and was hooked to something?

A. There is a regular iron hook to hold it.

Q. Then as the window opened it could swing inwards and in a forward direction, is that right?

A. That is right.

Q. And when it was fastened in the open position, in what position would it be—I mean what direction would the window be pointed?

A. Forward.

Q. Be pointed forward?

A. Yes.

Q. Then as I get it from what you say, this window in its ordinary position has the hinges on the forward side, and from there the window goes in an aft direction?

A. The window opens to the right.

Q. When it opens it goes all the way around to 180 degrees?

A. Yes.

Q. And fastens to the side?

A. Fastens to the side.

Q. So this hook that you speak of would be the width of the window away from the opening that the window ordinarily fitted in, wouldn't it?

A. Please repeat.

Q. I say, when this window opened and swung all the way around so it was against the side, then this hook would be on the forward end of the window?

A. Not necessarily.

Q. I am asking you.

A. No, it was amidships, you can reach it from the inside, from the companionway you can reach in and hook it.

Q. How far forward was it of the window opening?

A. About a foot.

Q. How wide was that window?

A. Around 3 feet.

Q. About 3 feet wide?

A. About 3 feet wide.

Q. How was the hook—on the top or on the bottom?

A. On the bottom.

Q. As you stood in the pasageway, how high was this window above the deck—how high would it come on you?

A. Well, it would come about this (indicating).

Q. About the height of your arm when you stand with your arms folded?

A. Yes.

Q. About 4 feet?

A. Roughly 4 feet, yes.

Q. Did you know when Schlapei left, the engineer?

A. I didn't see him leaving—we say good-bye on the boat, when he left the boat.

Q. Where was he the last time you saw him?

A. Maybe fifteen minutes before I left the boat.

Q. Where was he at that time?

A. Going through the after deck from his—taking his clothes out of the crew's quarters.

Q. Have you any definite recollection of how many keys there were in that bunch that you handed to the captain?

A. I couldn't say for sure just how many—there were several keys.

Q. And the only key that you know what it was the key to was the key to the after door, is that right?

A. Yes.

Q. They were fastened together with a string?
A. With a string.

Re-Direct Examination.

By Mr. Underwood:

Q. Is there any connection or relation between Mr. Phipps and Mr. Hilton?

A. No, sir.

Q. I am not clear about your answers to Mr. Matteson's question about whether you took any gasoline at Miami on your way north to Pilkington's. Did you say you did not take any gasoline or that you don't know whether you took any gasoline or not?

A. Well, of course I was there all the time and I didn't see any gasoline coming on board.

Q. So that you mean to say—

A. They could have come without my knowledge.

Q. But so far as you know, none was taken?

A. None was taken.

Tuesday, May 16, 1939, 8:30 o'clock A. M.

(Hearing resumed pursuant to adjournment of the previous day.)

2324 MR. ROLAND A. SCHLAPPI, resumed the witness stand and further testified, upon:

Re-Direct Examination.

By Mr. Underwood:

Q. Rollie, you told us yesterday about a leak in the filling line which was repaired. I would like to know just where that leak was. It was in a union, I understand.

A. Yes, ground seat union.

Q. Now there are several places that leaks might be in the valve; it might be up in the ground seat, or it might be in the threads. I would like to know just which one of those several places was leaking.

A. It was in the seat itself.

Q. Now approximately what was the distance from the manifold line down to where the feed lines passed through the floor of the engineroom?

A. It was between eighteen inches and two feet.

Q. As I understand it, in that space there was a trap and a valve.

A. Yes, sir.

Q. How did the feed lines fit as they passed through the floor board?

A. They went down through a hole.

Q. How did they fit in the hole?

A. Pretty snug.

Q. And from that point there was an L where the leads met aft of the motors, is that right?

A. Yes, sir.

Q. How were those feed lines arranged, from that L back to the place where they turned up again to go to the carburetor? Did they lay on anything or up against something, or how?

A. Well, they laid on the members,—wooden members.

Q. The beams?

A. Yes, sir.

Q. How were they secured there?

A. Why, I didn't notice that.

Q. Do you have any recollection as to that?

A. No, sir.

Q. Yesterday, your attention was called to this voucher 8032, which is part of Exhibit 3-U. I would like you to tell me if you can, which of those six items covers

your wages for the time you were on the Seminole on the cruise and took her up to Pilkington's to lay her up.

A. I think that thirty-one days come in there; twenty-two days repair work on her.

Q. What was your rate of pay when you were repairing the boat, as you were in February and March at the Royal Palm Dock?

A. $8.00 a day—

Q. And subsistence?

A. Yes, sir.

Q. What was your rate of pay as an engineer when you were operating the boat on a cruise and up to Ft. Lauderdale?

A. $5.00.

Q. I am not quite clear whether your testimony yesterday brought out how you left the two stop valves in the feed lines that were below the carburetors when you left the boat at Pilkington's. How were those valves left?

A. They was closed.

Q. And how far were they closed?

A. Tight as you could shut them.

Q. Something was said yesterday about it being possible to turn the electric lights while the batteries were being charged.

A. Yes, sir.

Q. Will you tell me where that electricity came from for the lighting circuits when the charging and discharging switch was closed on the charging side?

A. Well, it went right through the line, through the batteries, the feed lines too.

Q. Went to both?

A. Yes, sir.

Q. Now if your charging and discharging switch was closed on the charging side, could you get any current on the field switches with the generator idle?

A. No, sir.

Q. That generator would have to be running?

A. Yes, sir.

Q. Now you have told us something about an arc in the operation of the knife switches. I would like you to tell us a little more about that. Just what sort of thing was it, that it looked like, how big was it, what did it do?

A. Well, I say that you get a fairly good sized arc when you throwed the switch, pulled it.

Q. When you opened it?

A. Opened it; and when you closed it, very little.

Q. What did that very little arc look like? How big was it?

A. Why you could hardly notice it in the daytime.

Q. Can you compare it in size with some object?

A. Why, I don't know just how to go about it. Just like a flash of a pinhead or something; no flash to it, either.

Q. Well, how long, in time, would that last?

A. Just the time it touched, is all.

Q. When that occurred, what became of this little thing that you saw?

A. It just happened right on the switch.

Q. Did it go anywhere else?

A. No; no break to it or nothing, just an arc.

Q. Was there any spark that fell, that you ever saw?

A. No, sir.

Q. What was the condition of the knives and the points on that switchboard when you laid her up at Lauderdale?

A. They was all in good shape.

Q. Was there any corrosion on the points or the knives?

A. No, sir.

Q. You told us yesterday about the gasoline tank for the windlass and motor. Did you ever observe any leak there?

A. No, sir.

Q. What kind of a tank was that?

A. It was an ordinary galvanized tank, riveted tank.

Q. You mean round, or circular?

A. Well, round cylinder.

Q. Same shape as the main tanks?

A. Yes, sir.

Q. When did you last see that?

A. Why, I noticed it when we filled the tanks.

Q. Do you remember when that was?

A. I don't remember whether I filled it on the trip or not. It was only used a little bit.

Q. How close did you come to that tank when you were in the forward bilges, getting ready to leave here, to Pilkington's?

A. I wasn't in there.

Q. I didn't hear you.

A. I wasn't in close to it.

Q. Is that in a separate compartment?

A. Yes, sir.

Q. What sort of a separation is there between that and the compartment where the water tanks are?

A. Well, there is a regular steel bulkhead right—it is about seven feet long, seven feet back of the bow, cut off, and it is sitting in this compartment.

Q. Do you know whether that is a water tight bulkhead?

A. No, I don't.

Q. Do you remember how far down it went?

A. It went to the bilge of the boat, all right.

Q. Did it stop at the frames or did it go down to the skin of the ship,—or do you remember?

A. I never noticed.

Q. Now this kerosene tank in the engineroom, what was the arrangement for getting kerosene out of that tank?

A. There was two draw valves the same as that, only a little larger I would say; I think it was three-quarter.

Q. How many valves did you have to open to get kerosene out?

A. Two.

Q. Did you observe any leak there?

A. No, sir.

Q. Did you smell any kerosene in the engineroom?

A. No, sir.

Q. Now you told us yesterday about two squirt cans that you used for priming the motors. How did you leave the cans?

A. Well, empty, outside of cleaning them out.

Q. When did you last use them?

A. Priming here at the dock the morning we left to go to Ft. Lauderdale.

Q. Did you refill them after that?

A. No, sir, never shut the motors.

Q. Where were those two squirt cans left?

A. They were sitting in a brass tray on the top of the desk.

Q. Were they left there?

A. Yes, sir.

Q. You have been on a good many gasoline driven boats, haven't you?

A. Yes, sir.

Q. In your experience, is there any such thing as a special type of gasoline valve?

A. Well, I haven't noticed any special, on the boats I have been on. A good seat valve is all I ever noticed.

Q. In your experience, is there any particular angle that is better than any other for the contact between the plug and the seat?

A. Why, I have always liked a 45 degree angle with a pretty good face to it.

Q. What is your opinion as to the utility or the value of a needle type plug seat and seat valve?

A. Well, it wedges, and you will eventually cut a ring on your valve itself.

Q. What happens when you do that?

A. Well, they leak, it keeps cutting in all the time.

Q. Have you had that experience on a valve,—a needle valve?

A. With a needle valve on carburetors, I have had it.

Mr. Underwood:

That is all.

Re-Cross Examination.

By Mr. Matteson:

Q. Mr. Schlappi, this tank in the forward compartment was used to operate the anchor windlass, was it?

A. Yes, sir.

Q. And you used that fuel supply every time you raised your anchors, is that right?

A. Yes, sir.

Q. I understood you to say that you did anchor several times on this trip.

A. Yes.

Q. In April '35. So it was used on that trip, wasn't it?

A. Yes.

Q. You say you don't recall whether you had occasion to fill it on that trip or not?

A. It only used very little gas, only used a few minutes to hist anchor.

Q. But you don't recall whether you actually filled it on that trip or not?

A. Well, I didn't fill it on that trip. I filled it—I don't recall whether I filled it on the trip or here, but usually we get things ready before we leave.

Q. You think you did fill it either before you left here—

A. Before.

Q. —or on the trip. Before you went on the trip, that would be at Miami just prior to April 5, 1935?

A. Yes.

Q. With regard to these squirt cans, I take it you used them at Miami on the morning of the day you started for Ft. Lauderdale?

A. Yes, sir.

Q. Did you use all of the gasoline that was in them at that time?

A. Used practically all of it; until it squirts air.

Q. Then you put them on the tray?

A. Yes, sir.

Q. And is that the last thing that you did with them?

A. Yes, sir.

Q. There is one object in the engineroom that hasn't been identified, Mr. Schlappi, and I would like to know what it is. It shows in this picture that I show you here. I call your attention to this object on the after bulkhead of the engineroom, apparently aft of the port engine. You see what I am referring to?

A. Yes.

Q. Can you tell us what that is? Here is the magnifier if you want it.

A. That is the rheostat, for lowering and raising the voltage.

Q. Well, was that on the switchboard then, or to one side of it?

A. No, sir, that was to one side, to the port side of it; or the right hand side looking at it.

Q. Then yesterday in making up this diagram of the switchboard, Libelants' Exhibit 110, you put a circle on the switchboard, you put a question mark after it at the time?

A. Yes.

Q. Indicating, rheostat?

A. Yes.

Q. Now do I understand that the rheostat was not on the switchboard, but was at one side of it?

A. Yes, there was one on that, that was used for sensitive adjustments.

Q. The one on the switchboard was used for sensitive adjustments, is that it?

A. Yes, sir.

Q. And then you had a larger one at one side of the switchboard, is that it?

A. Yes, it fit off, that was separate from the switchboard.

Q. Then we will call this one the big rheostat, is that right?

A. Yes.

Q. I will just put an arrow on this picture pointing to it, and at the top I will write, big rheostat.

Mr. Matteson:

I offer that as Libelants' Exhibit 113. This is a photograph that was taken in late '38 or early '39.

Mr. Underwood:

I have no objection to it, so far as structural matters are concerned that wouldn't be changed by the lapse of time.

(The said photograph was admitted in evidence and marked Libelants' Exhibit 113.)

Mr. Matteson:

That is all.

Mr. Botts:

No questions.

Re-Direct Examination.

By Mr. Underwood:

Q. Just one thing I am not clear about, Rollie. Where was this windlass engine with reference to the deck? Was it above or below the deck?

A. It was above the deck.

Q. And where was the gasoline tank?

A. It was below the deck, in the hatch that you went into this compartment, right in there.

Q. How did you feed it?

A. It was fed by an auto pulse

(Thereupon the witness was excused and released subject to call.)

2335 MR. JOHN S. PHIPPS, as a witness on behalf of Respondents, was sworn and testified as follows:

Direct Examination.

By Mr. Underwood:

Q. What is your name?

A. John Shaffer Phipps, J. S. Phipps I am known by.

Q. Where do you live?

A. I live in Palm Beach, Florida.

Q. What is your business, Mr. Phipps?

A. Well, I have retired from active business; I have no more to add to that.

Q. When did you first acquire any interest in the Seminole?

A. In 1915.

Q. From whom?

A. From my brother, H. C. Phipps.

Q. And how much of an interest did you acquire at that time?

A. I bought a half interest.

Q. Now from that time on did you ever buy any more than a half interest in the Seminole?

A. No.

Q. Now there came a time when the Seminole Boat Company, a corporation, was organized. What did you do with your half interest in the Seminole at that time?

A. I exchanged—when the Seminole Boat Company was organized?

Q. When it was organized?

A. That is right. I exchanged my half interest in the Seminole for a half of the common stock—or half of the stock of the Seminole Boat Company.

Q. Have you ever owned any more than half of the common stock of the Seminole Boat Company?

A. No.

Q. Now prior to the formation of the corporation, how were the expenses of the maintenance and upkeep,—the overhead expenses of the Seminole, divided between you and your brother?

A. He paid half and I paid half; the maintenance and upkeep?

Q. That is right.

A. He paid half and I paid half.

Q. How were the expenses of the operation of the boat, when you took her out on a trip, borne?

A. If I took her out a trip for myself, then I paid all the expenses. If he took her out on a trip why he paid. If we went together, I suppose they were divided, I don't remember that.

Q. Now after the formation of the corporation, how were the expenses of maintenance and upkeep paid for and arranged?

A. They were paid by the Seminole Boat Company.

Q. And how were the expenses of operations borne?

A. The expenses of the operation were the same way, they were borne by the charter party. If I were using the boat I would pay for it; if my brother were using it he would pay for it.

Q. Now, Mr. Phipps, have you had any education or training as an engineer?

A. None at all.

Q. Or as an electrician?

A. No.

Q. What do you know about gasoline motors?

A. I don't know anything. Well, I have had an automobile.

Q. Do you know what is under the hood of your automobile?

A. I don't, no.

Q. Have you ever operated the motor of a motor boat?

A. Operated it. I have held the tiller, but I never started it.

Q. Have you ever removed—

A. I don't think I have held the tiller. I have been in a motor boat.

Q. Have you ever removed or installed a spark plug?

A. Of course I have held the tiller of an outboard,—no, I never changed a spark plug.

Q. Have you ever taken a motor down and put it together again?

A. No.

Q. Have you ever had any part in installing a gasoline feed line?

A. No.

Q. Or gasoline tank?

A. Installing or stalling?

Q. Installing.

A. No.

Q. Do you know anything about gasoline tanks or feed lines?

A. No.

Q. Prior to the formation of the corporation, where did you get your information as to what work should be done on the Seminole?

A. From the Master of the boat.

Q. And following the formation of the corporation, were you consulted as to any work that should be done on the Seminole?

A. I don't remember any, no.

Q. Now I would like to ask you about the origin of this corporation; how did that come about?

A. Well, Hawkins, who represented the family interest in Miami, Roy Hawkins, said that Baker thought he could make money if we charted the Seminole and if he had charge of it. He had a boat of his own, but the Seminole was a larger and better boat, and he thought he could make some money for us if we incorporated the Seminole and used it for charter parties.

Q. And with whom did you confer about that?

A. I conferred with my brother.

Q. Was any decision reached?

A. I conferred with my brother and he thought it was a good idea, and we formed the corporation.

Q. What was your purpose in forming the corporation?

A. My purpose was to try to get some money. Baker thought he could charter the boat for about six months of the year. Prior to that time we used it very little, I don't know how much, without refreshing my memory; but the boat was idle a great part of the time; and Baker thought he could use it a great part of the time and could get charter parties for the boat.

Q. Did you have any understanding at that time as to the use of the Seminole by the stockholders?

A. Well, that was what we understood; Baker said he would charter the boat, and we more or less agreed that while he had the boat chartered, of course we wouldn't attempt to use it. If there were no charter, and no charter was contemplated, then we could use it.

Q. And by "we" whom do you mean?

A. I mean my brother or myself.

Q. Now following the formation of the corporation did you have anything to do with making decisions about work that was to be done on the Seminole of any kind?

A. I was never asked for any decisions.

Q. Now coming down to the year, 1935, do you recall considering the possible sale of the Seminole?

A. Yes.

Q. How did that come about and what was done?

A. Well, Roy thought it would be a good idea to sell the Seminole; he had an offer for it, an offer of $5,000.00. He said,—I asked how much he could get for it; he said "I can get $5,000.00"; and that is all he could get. So I talked to my brother, we met together, and he said he thought it was a good idea, that he would sell his share. I wanted to talk to my wife before I decided, so I went home and discussed it,—and with my sister Mrs. Frederick Guest. Then Mrs. Guest said "If you will keep your share,—your share of the Seminole, your half of the Seminole, I will buy Hal's half.

Q. Hal is your brother?

A. Hal is my brother; H. C. Phipps. And I said "Well, if you care to go on, I will keep my share and you take Hal's or buy Hal's"; and we so notified Roy Hawkins and he refused the sale.

Q. Now do you recall the purchase of the Prigg boat early in 1935?

A. Yes.

Q. How did that come about?

A. I don't know whether we had—what do you call it?

Q. Tender?

A. I don't know whether we had a tender; if we had, it wasn't any good. Anyhow, Roy said he knew of a Prigg boat that would make a good tender for the Seminole; and he showed it to me. It looked like a nice boat, the price was reasonable, and I said "Well, Roy, if you buy the boat, you will either buy it for the Seminole, if Mrs. Guest wants it; if not, I will take it for myself." That's how the boat was bought. I then told my sister about it and she asked if it was necessary for the Seminole. I said it would be very good. She says, "Well, then, she would like to have it bought for the Seminole—the Prigg boat.

Q. Did you have any conversation with Mr. Hawkins about that?

A. Oh yes.

Q. Give him any instructions?

A. Oh yes. Of course I notified Roy then that it belonged to the Seminole and not to me personally.

Q. What did you tell him as to who would authorize its purchase?

A. Well, I suppose it was charged to the Seminole Boat Company.

Q. As to who authorized the purchase.

A. Oh, I told him that Mrs. Guest and I had decided to have the Prigg boat for the Seminole.

Q. Do you recall being on a cruise on the Seminole in April 1935?

A. Yes,—in April?

Q. Yes.

A. Yes.

Q. What was the original arrangement for that cruise, and how did it come about?

A. Well, I think originally I was going out with Starke and with my brother.

Q. Who all was going on that cruise?

A. I think, Roy Hawkins, and Lehmann, my brother Hal, my brother Howard, and myself. I discussed that with the family, they were very sorry, they were going on a fishing trip. So I says "We will see if we get a charter on the Seminole, and go off on the Seminole". And I told Mrs. Guest about it, I said, "The Seminole is not chartered, I would like you to go with me, but I want it to be my party."

Q. Who was on the Seminole?

A. I told you who were on Starke's boat.

Q. What did you do then about the operating expenses on that cruise?

A. I paid them all.

Q. I show you, Mr. Phipps, a memorandum; do you recognize that?

A. Well, those are my initials, my o. k. on it.

Q. O. K. J. S. P. opposite the figure 1384.47, are your initials?

A. Those are my initials.

Q. You wrote the o. k.?

A. Yes.

Q. Do you happen to recognize the handwriting that begins with the word, divided?

A. Well, I would say that is my handwriting.

Q. What does it say?

A. This charter of Yacht Norman for seven days, Captain Starke, divided three weeks; H. C. P., Howard Phipps and J. S. P., $1220.

Q. The ink part of that—

A. I put that in.

Q. You wrote that?

A. Yes.

Q. Down here in pencil there appears, Mr. H. C. P. says three ways.

A. That is Ralph Patterson.

Q. R. A. Patterson, you recognize that handwriting and those initials?

A. Yes, that is one of the secretaries in the office.

Q. How soon after the cruise in April 1935 was this presented to you for your o. k. and o. k.'d by you?

A. I don't know, but I should think very shortly. Isn't it dated?

Q. Well, the instrument does not appear to bear any date, except it bears—

A. It says April 30.

Q. Do you have any recollection as to just when you o. k.'d that?

A. No.

Mr. Underwood:

I offer this in evidence.

(Without objection said paper was admitted in evidence and marked Respondents' Exhibit 4-K.)

Q. How much of that $1384.47 did you pay Mr. Phipps?

A. Oh, I paid it all.

Q. And how much of the $1220. did you pay?

A. I paid a third.

(Discussion had between counsel.)

Q. Are these expenses, Mr. Phipps, the total, the 1300 odd dollar figure, the expenses of the Seminole on that trip?

A. They are.

Q. When that trip was in prospect, what if anything, Mr. Phipps, did you have to do with the engagement of Captain Baker?

A. I had nothing to do with it, except Roy Hawkins, who was acting for the boat company, engaged the crew

and asked me if I liked Captain Baker; and I had him before, I said "Yes, I like him very much."

Q. Did you have anything to do with fixing the rate of pay at that time?

A. No, sir, nothing.

Q. Did you have anything to do with the selection of the engineer?

A. No.

Q. Or any member of the crew?

A. Nobody, not even the cook.

Q. Did you issue ay instructions to anybody during that cruise about the maintenance or upkeep of the boat?

A. No, sir.

Q. At the end of the cruise did you give any instructions as to what was to be done with the Seminole when the party left?

A. No. We all picked up and left. You mean, me, when you say the party?

Q. Yes, you and your guests. Now there has been some testimony in this case, Mr. Phipps, about payments that have been made to John Thomas, who was on the Seminole when the fire began. When did you first learn of those, and what have you had to do with them?

A. Well, I knew, but it must have been sometime later, I don't know how long later, that John Thomas' hospital bills had been paid, by somebody that was given some money; the Seminole Boat Company had taken care of that end of it.

Q. Were you consulted about that before the payment began?

A. No, I have never been consulted. They told me yesterday they have been continued.

Q. What is your best recollection as to when you were first consulted with reference to those payments. how long after the fire?

A. Oh, I don't know, at least a month I suppose, but I don't know. I wasn't consulted, but I must have been told later; it must have been a month or more, longer.

Q. There has also been some testimony in this case about payments to the widow of Captain Abel. Do you remember whether you were consulted about that before that payment was made?

A. Yes, I was.

Q. Did you know John Thomas, the man who was with Abel?

A. No, I never had seen him, at least I don't know to my recollection that I have ever seen him. I wouldn't know him if he came in the room.

Q. Did you have anything to do with employing him for any work?

A. Not that I remember.

Q. You knew Abel, did you not?

A. Very well.

Q. In whose employ was Abel during the time preceding the fire?

A. Abel was in my employ from time to time, taking care of the Yacht Iolanthe and the fishing boat the Clip; but from time to time he would be used by other members of the family, and by the other corporations; and I gave Roy permission to use him, and he did use him; and when he was so used he was paid by whoever was using him.

Q. Where were you when this fire occurred on the 24th of June, 1935?

A. I was in New York.

Q. Did you at that time have any plans for coming to Florida at any time in the near future?

A. No.

Q. Were you planning a fishing trip at that time?

A. Oh, I was planning to go to Grand Cascapedia in Canada. Then I planned to go fishing, as I usually go, salmon fishing, and I went on the 25th.

Q. You left New York on the 25th?

A. Yes.

Q. For Canada?

A. For Canada, yes.

Q. Now in salmon fishing in Canada, do you use glass bottom buckets or any of the kind of fishing gear that you use in Florida waters?

A. No.

Q. Do you recall, since the formation of the corporation, having presented to you for approval, and bills in respect to the Seminole for maintenance or upkeep or anything of that sort?

A. No. What was that question please?

(The question was read.)

A. No. For approval, is what you said, isn't it?

Q. Yes.

A. No.

Q. Now what was the practice as to the payment of bills incurred for the Iolanthe and the Clip?

A. The Iolanthe was my own boat, and all bills were o. k.'d or no expense was incurred before I approved it. That is generally speaking. And all bills were ok.'d before they were paid, for the Iolanthe or the Clip.

Q. How about the Clip?

A. The same way, they were my fishing boats.

Q. Now was Mr. Riley ever your secretary?

A. No.

Q. Did you ever tell anybody that he was?

A. No.

Q. Did you ever tell anybody that he was your representative?

A. No.

Q. Or your agent?

A. No.

Q. Now some question has been raised here as to why the stockholders of the Seminole Boat Company continued to make payments on behalf of the Seminole, although the stock was non-assessible. I would like you to tell us your reason for that.

A. Well, if we didn't make the payments I suppose the boat would have been sold; and anyway the payments were for something we had used, I presume, on our trips. The bills were always paid,—will you repeat the question please.

Q. Well, from the time of the formation of the corporation, expenses were incurred for the upkeep and maintenance of the Seminole?

A. Well, I didn't catch that.

Q. From time to time, and the records show that the stockholders made good deficits incurred by the corporation. I would like you to tell us what your purpose was in continuing to make good those deficits from year to year.

A. Well, we formed the corporation to charter the boat, and we thought we would make a profit out of it; and also we thought if that continued we might use it from time to time.

Q. Mr. Phipps, I show you a letter dated March 20, 1934, which has been marked Libelants' Exhibit 46.

A. Who are the Libelants?

Q. The other side. Did you ever see that letter before?

A. (Witness examining letter.) Never.

Q. Did you at that time give any instructions to Mr. Hawkins to write such letter?

A. No.

Q. Or anything in connection with such letter?

A. No. I think he made a mistake there, I don't know.

Q. Now do you know how the Seminole Boat Company's bills were paid, from the time of the formation of the corporation down to the time of the fire?

A. My brother paid half and I paid half of the expenses.

Q. I mean, Mr. Phipps, the details of where the money came from in the first instance, and how it was paid.

A. Oh it was paid by the Seminole Boat Company.

Q. And do you know of your own knowledge how the checks were drawn and issued, and by whom?

A. No, I don't.

Q. Have you ever been familiar with that procedure?

A. No.

Q. Mr. Phipps, there is in evidence here a certificate of enrollment and yacht license of the Seminole dated in 1923, which does not appear to bear your name except that it says in the body of the document "John S. Phipps, citizen of the United States, sole owner of the vessel called the Seminole". Did you ever see such a document before?

A. No.

Q. Did you have anything to do with the enrollment and license of the Seminole at that time?

A. No.

Q. I show you similar document dated in November, 1924; which does not appear to bear your name except in the body of the document, where it says substantially the same thing. Did you have anything to do with that?

A. No, sir, I never saw either before. I had nothing to do with them.

Q. Is it correct that you were the sole owner of the Seminole at those times?

A. No.

Q. When you first acquired an interest in the Seminole, did you remember what the power was that propelled her?

A. Steam.

Q. What did you have to do with the elimination of the steam plant and the installation of the gasoline plant?

A. Well, my brother and I thought it would be more convenient to have gas instead of steam. All we had to do was tell Mr. Robinson in the office,—this is before any incorporation, a long time ago,—what we did, we told Mr. Robinson to see what the steam—what a gas engine would be, suitable for the Seminole, and to remove the steam plant and put what he decided to go, in.

Q. Did you have anything to do with the layout of the gasoline tanks and feed lines?

A. I couldn't, I don't know anything about that—I didn't.

Q. Did you visit the Seminole during the work of changing from steam to gas?

A. No. I don't remember where it was done.

Q. Did you observe any part of that operation?

A. No.

Q. Something has been said about the use of hour pennant on the Seminole. Will you tell me whether or not you ever instructed anybody to fly your flag on the Seminole?

A. I never did.

Q. Do you recall ever seeing it flown?

A. I don't remember that it was.

Q. When you went on a cruise accompanied by fishing boats,—cruise with the Seminole, do you know where the fishing boats got their supply of gasoline?

A. From the Seminole.

Q. Do you know how they got it?

A. No.

Q. Do you know that there was any method by which gasoline could be drawn off from the tanks in the engine room?

A. Oh no, I thought it was pumped from the deck. I really didn't look into it. Are you sure it wasn't pumped from the deck?

Q. I am afraid I can't answer the question, Mr. Phipps, I am not allowed to. Mr. Phipps, I show you Libelants' Exhibit 24, document headed at the top, E. A. Wright, and then some other words; did you ever see that document before?

A. No.

Q. Or any document resembling it?

A. No, I don't remember it.

Q. Do you know anything about—

A. I haven't seen it.

Q. Do you know anything about the rules of the Bureau for the Prevention of explosion and fire on motor boats?

A. No.

Q. Did you ever hear of those rules?

A. No.

Q. Did you ever hear of the rules of the National Fire Protection Association?

A. No.

Q. Did you know there was such a thing?

A. No.

Q. Did you ever hear anything about the rules—

A. The insurance company?

Q. Did you ever hear anything about the rules of Lloyd's in reference to yachts?

A. No.

Q. Did you know there was such a thing?

A. Yes; I don't know about the rules, but I knew there was Lloyd's.

Q. What does Lloyd's mean to you?

A. Lloyd's Insurance Company.

Q. Do you recall ever being at the yacht basin at Ft. Lauderdale, operated by Captain Pilkington?

A. What was that question, please?

Q. Do you recall ever being at the yacht basin at Ft. Lauderdale, operated by Captain Pilkington?

A. Yes.

Q. How many times, do you recall being there?

A. Well, I was there two or three years before Pilkington was there, I think, first, when Mr. Corey was there.

Q. I am speaking about your possible visits to that place in connection with the Seminole.

A. I was there.

Q. And how many times do you recall being there?

A. Twice.

Q. Can you fix the year of either of those visits?

A. No. Once with Riley.

Q. And on the other occasion did you go with anyone?

A. With Mrs. Phipps.

Q. Now, let's take the occasion of the visit with Mrs. Phipps. Did you have any discussion with Captain Pilkington at that time?

A. No.

Q. Do you remember what boat you visited?

A. I should think it was the Iolanthe, but I am not sure. I don't remember at all. It must have been on the Iolanthe, and on the Seminole, but I don't recall.

Q. Now take the visit with Riley, did you have any conversation with Captain Pilkington?

A. No.

Q. Did you discuss with him anything about the storage rates for the Seminole?

A. No.

Q. Or the Iolanthe?

A. No.

Q. Or the Clip?

A. No.

Q. Did you introduce Riley to Pilkington as—

A. No.

Q. Did you tell Pilkington that Riley was your secretary?

A. No.

Q. Did you tell Pilkington that Riley represented you?

A. No.

Q. Did you tell Pilkington that you were the owner of the Seminole?

A. No.

Q. Did you tell Pilkington to take orders from nobody but Riley?

A. No.

Q. Did you tell Pilkington that Riley was your agent?

A. No.

Q. Did you tell Pilkington that Riley would be down to visit the Seminole at any particular interval of time?

A. No.

Q. Or that he would be down to visit the Seminole at all?

A. No.

Q. Do you recall a trip north that the Seminole made in the summer of 1929?

A. Yes.

Q. What was the occasion of that trip?

A. Well, I thought it might be useful—my father was a very old man, and I thought that if I sent the boat up there in the hot summer that he would enjoy trips up and down the Hudson, so I sent it up there for that purpose. I sent it up or it was taken to Port Washington; I think that is the place.

Q. What was the condition of your father's health at that time?

A. He wasn't very well; I think he was 89 years old. What date was that?

Q. That was in 1929.

A. Can I ask Mr. Layman?

Q. No; we want just your recollection.

A. I know he was a very old man and not very strong, and I thought it would be very good to take trips on the Hudson, so I sent the boat up, hoping that he could use it.

Q. Did you consult with anybody else before you did that?

A. I consulted with Mrs. Guest. I think Mr. H. C. Phipps was abroad.

Q. To whom did the Seminole belong in 1929?

A. In 1929? When was the Seminole Boat Company formed?

Q. Do you remember when the Seminole Boat Company was formed?

A. It was formed about that time, about 1928 or 1929. I think they had a record of that before.

Q. From the time of the formation of the Seminole Boat Company to the time you transferred your interest in it in exchange for stock, did you ever again become the owner of the Seminole?

A. No.

Q. Do you remember an engineer named Brown who worked on the Seminole?

A. Yes.

Q. Did you ever have any discussion with him as to engineering work in the engineroom of the Seminole?

A. No.

Q. Do you remember his ever asking your approval for making any changes in the engineroom?

A. No.

Q. On whom did you rely as far as your interest in the boat went at that time for information as to what should be done?

A. What year was that?

Q. That was in 1927, or the early part of 1928, before the formation of the corporation.

A. Captain Nelson, I presume, or whoever was Captain of the boat would tell me what was needed on the boat,

Q. Now in 1929 following the formation of the Seminole Boat Company did you ever ask Captain Bryant to take charge of the Seminole?

A. No.

Q. Do you remember having any conversations with Captain Bryant about any needs for the Seminole?

A. No.

Q. Did you ever give him any instructions about anything to be done in the engineroom?

A. Was he captain then?

Q. I will ask you to assume that Captain Bryant was Captain of her at this time in 1929.

A. No, I never gave him any instructions about the engineroom at any time.

Mr. Underwood:

That is all.

Cross Examination.

By Mr. Matteson:

Q. Mr. Phipps, you have been shown this certificate of enrollment of the Seminole in the year 1923, when it was enrolled under an affidavit that you were the sole owner of the vessel at that time. Now, you say you don't know anything about that.

A. Well, I wasn't the sole owner; I never saw the enrollment—I never saw that paper before this minute.

Q. Did you have anything to do with this arrangement of enrolling?

A. No; I never heard of it until just now.

Q. You knew the boat had to be enrolled, didn't you?

A. You mean in the Yacht Club?

Q. No.

A. I really don't know anything about that.

Q. That is a formality with the United States Government?

A. I think the Captain took care of that; I don't know whether it had a number; I never saw that paper before, and I never gave Captain Nelson authority to do it. I suppose that if he had come to me and told me, I would have not put myself down as sole owner, because it wasn't correct.

Q. I understand that the matter of this kind was left to Captain Nelson, is that right?

A. Entirely, I suppose; I never saw it before.

Q. You left it to him to comply with government formalities necessary?

A. Yes, I presume—

Q. This is the document that gave the boat its official number, is it not?

A. I don't know.

Mr. Underwood:

We object to that; it speaks for itself, and the statutes and regulations speak for themselves, and Mr. Phipps has already testified.

Mr. Matteson:

I won't press that question, if your Honor please.

The Court:

All right.

The Witness:

You want to press it?

(By Mr. Matteson):

Q. I don't think it makes any difference.

A. All right.

Q. How do you know that the boat had to have an official number; you knew that, didn't you?

A. No.

Q. You didn't know about that?
A. No, I didn't.
Q. You didn't know that?
A. No, I didn't.
Q. Apparently this document was arranged by Captain Nelson. Now I want to ask you if you have any explanation to give us as to how Captain Nelson got the impression that you were the sole owner of the Seminole?

Mr. Underwood:
I object to that as calling for the operation of the mind of Captain Nelson.

The Court:
I think the question is all right.

A. Read the question.

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. I don't think he had that impression.
Q. You just volunteered the statement, Mr. Phipps, that you didn't think that Captain Nelson had that impression. Now, to correct that impression, I call your attention to the fact that Captain Nelson made a sworn statement at that time to that effect. So it could not be very well that Captain Nelson had that impression at that time, could it?

Mr. Underwood:
I object to that; it is speculative and argumentative, and calls for the operation of another person.

The Court:
I think that objection is well taken, Mr. Matteson.

(By Mr. Matteson):

Q. Was Captain Nelson the Master of the boat at that time?

A. Yes.

Q. Did you have conversations with Captain Nelson with respect to the requirements of the Seminole?

A. I don't remember.

Q. You never had any conversation with him at all?

A. Not about this enrollment.

Q. I am not talking about the enrollment.

A. Yes, I talked to him, of course; he was my captain.

Q. Isn't it a fact that you are the one that he consulted with at that time with respect to anything that was required for the Seminole?

A. No.

Q. Did your brother have anything to do with Captain Nelson as the master of the Seminole, as far as you know?

A. Just as much as I did.

Q. Now, Mr. Phipps, I call your attention to this second certificate which was filed a year later, in 1924, and also by Captain Nelson and in which there is again a sworn statement that you were the sole owner of the Seminole at that time. Can you give us any explanation of how Captain Nelson had that impression at that time?

A. I don't know; personally, I don't think he had that impression.

Q. Do you recall signing this document which is headed "Answers to Interrogatories", at the end of which is an affidavit that you signed?

A. Yes; that is my signature. May I read the thing; I don't know what it is all about.

Q. Surely. I was going to call your attention to some parts of it.

A. (Reads paper.) I know nothing about the engine-room. You better not put this down.

Mr. Underwood:

Everything that you say, Mr. Phipps, is going to be put down, so please don't speak anything except in answer to questions.

A. All right.

Q. Is that correct?

A. That is correct.

Q. You have finished reading that document?

A. Yes.

Q. And all of the statements in that document are correct, are they?

A. According to my best knowledge and belief. I swore to it, so I am sure they are.

Q. I assume you read it more carefully at the time you swore to it.

A. I presume I did.

Q. Of course, there are some answers that are answers to questions that do not appear in the document itself.

A. Yes.

Q. But at the time you of course compared the answers with the questions, I assume?

A. I don't remember.

Q. Anyway, you were quite certain that everything in it was quite correct when you signed it?

A. Yes.

Q. You still say so?

A. To the best of my knowledge and belief.

Q. I call your attention to "Answer 1-I, in which it is stated that the Seminole was registered at only one club until 1921; it was registered in the name of Henry C. Phipps; from 1922 to 1932 it was registered in the name of John S. Phipps; since 1932 it has not been registered at any club". That is a correct statement, is it not?

A. I was told that it was registered—I would like to speak to my attorney; I think it was registered. I

am on the witness stand, and I understand it was registered with the New York Yacht Club, but I don't know what year that was. I don't know what clubs these were that I referred to in this thing.

Q. The answer starts out with the statement that the Seminole was registered at only one club.

A. I can't tell; I said that whole statement is true and I believe it is true.

Q. And that was the New York Yacht Club?

A. I wouldn't say it was; I believe it was, because my brother and myself were members of it.

Q. Both you and your brother were members of the New York Yacht Club?

A. Yes.

Q. And still are?

A. No, we both resigned.

Q. When was that?

A. I don't know. I guess you can get the record on that.

Q. Since 1932?

A. I wouldn't guess.

Q. This statement says that it was registered in your name.

A. It is easy to verify it. Get the New York Yacht Club register and it will be easy to find out.

Q. And the Seminole Boat Company was incorporated in 1928, was it not?

A. Either in 1928 or 1929, somewhere in there; someone will have to give me the figures, because it is hard from me to remember the years; I think it was 1928 or 1929.

Q. If we are correct in that, Mr. Phipps, the Yacht Seminole remained registered with the New York Yacht Club as your personal yacht until 1932?

A. I don't say that; I don't know whether it was registered with the New York Yacht Club at that time or not.

Q. Registered with some Yacht Club?

A. Well, it says so in that statement. I don't know what the club was in connection with that.

Q. Getting back to the conversion of the Seminole from steam to gasoline; was Captain Nelson the captain of the boat at that time?

A. Yes.

Q. Who arranged for the work to be done?

A. Captain Nelson.

Q. You left that entirely to him?

A. Yes.

Q. Do you know whether he did most of the work himself or whether he employed a shipyard to do it?

A. I don't know.

Q. Wasn't a good deal of the work done right in Palm Beach?

A. I don't know; I didn't ask where it was done; I don't know where it was done.

Q. You have no recollection at all about that?

A. I have no recollection except that I know it was changed.

Q. Did you give Nelson any instructions as to how the work should be done?

A. No.

Q. Did you tell him anything about how much it should cost?

A. No.

Q. I suppose you paid the bills, did you?

A. I presume so; I don't know; I must have, however.

Q. At least your share of them?

A. Yes; that is, my brother paid half and I paid half.

Q. That was somewhere back of 1924?

A. Yes.

Q. When you paid these bills, Mr. Phipps, I assume that you saw them and approved them before you paid them?

A. No.

Q. What is that?

A. No, I didn't see them.

Q. You mean to say that you paid the bills without seeing them?

A. They were okayed in the office and then I would pay them.

Q. Okayed by whom?

A. By whoever was my secretary; by Mr. Robbins.

Q. Was Mr. Robbins your secretary at that time?

A. He was there at that time, yes.

Q. Was he in Palm Beach?

A. No.

Q. Where was he?

A. At that time I don't know.

Q. I mean when Mr. Robbins acted as your secretary.

A. In New York.

Q. He was in New York?

A. Yes.

Q. I mean when Mr. Robbins acted as your secretary.

A. In New York?

Q. He was in New York?

A. Yes.

Q. Has he always been in New York?

A. Well, I don't know.

Q. I mean since he has been working for you, Mr. Phipps, has he always been in New York?

A. Well, I am wondering about that; I can't answer yes or no; he might have been down here one winter at Palm Beach, but I have no definite idea about it; I just couldn't tell you.

Q. Is Mr. Robbins your secretary now?

A. No.

Q. When did he cease to be your secretary?

A. When he took over the real estate department in New York.

Q. What do you call your real estate department?

A. Henry Phipps estates.

Q. Is he in charge of that organization?

A. He is second in charge.

Q. Does he have something to do with the Phipps Realty Company?

A. No. Now, that would be hard to say. The Phipps Realty Company, I believe—I think the Phipps Realty Company owns Henry Phipps Estates. I am not sure about that, unless I looked at my books.

Q. Does Mr. Robbins represent your family interests in New York?

A. To some extent.

Q. Mr. Hawkins represents your family interests in Miami, does he not?

A. In Miami, yes.

Q. And before him Mr. Scott?

A. Yes.

Q. And when Mr. Scott was here was he the superior officer of Mr. Hawkins?

A. Yes.

Q. So that he would take his instructions from Mr. Scott; wouldn't he?

A. How is that?

Q. He would take his instructions from Mr. Scott; Mr. Hawkins would take his instructions from Mr. Scott, would he?

A. Yes.

Q. Now, getting back to the organization of this corporation, you say—

A. Which corporation?

Q. The Seminole Boat Company. You say that that was organized because you wanted to charter the Seminole, is that right?

A. Yes, because I wanted to go in the business of chartering the Seminole.

Q. You and your brother were of the same mind about that?

A. We discussed it and agreed.

Q. And you owned equal shares of the Seminole at that time?

A. That is correct.

Q. So you caused the Seminole Boat Company to be organized, did you not?

A. I didn't; we did it together.

Q. The two of you together?

A. Yes, the two of us; we owned it together and we decided it would be a good idea.

Q. And you took equal shares of the stock of the Seminole Boat Company?

A. Yes, sir.

Q. So that if the boat was chartered and made a profit you would receive equal shares of the profits, is that right?

A. Yes.

Q. Is that right?

A. Yes.

Q. Now if you and your brother had wanted to do so you could have chartered the Seminole without organizing a corporation, couldn't you?

A. If I and my brother wanted to charter the Seminole, yes we could.

Q. So far as the profits were concerned the result would have been exactly the same, wouldn't it?

A. I don't think so.

Q. Well, if you had chartered the boat jointly between you, you would have shared the profits equally, wouldn't you?

A. We would have had the detail of the business, and my brother and I didn't want to have the chartering of the boat; it was a continuous thing; the boat was always for charter.

Q. Had you had the details of the management of the Seminole before that?

A. No.

Q. And your brother hadn't either, had he?

A. No.

Q. Everything with respect to the Seminole had been taken care of by your family representatives?

A. No; by the captain.

Q. And by your Mr. Robbins to some extent?

A. Will you read that. I don't quite understand it.

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. Well, I think, until the Seminole Corporation was formed Mr. H. C. Phipps and I gave orders about the Seminole.

Q. And you wanted to be relieved of that detail, was it?

A. It was a business. Mr. Hawkins suggested that we put the Seminole in a corporation and charter it and continue to charter it.

Q. Now the point I am making, Mr. Phipps, is that you could have done exactly the same thing without organizing a corporation, couldn't you?

A. We wouldn't.

Q. You wouldn't?

A. No.

Q. But you could have?

A. I suppose legally we could have.

Q. And the result would have been exactly the same?

A. No.

Q. The final result would have been the same?

A. No, it would not.

Q. Perhaps I do not make myself clear: if you chartered the boat as individuals you would share the profits less the expenses?

A. Yes.

Q. And being joint owners of the stock of the corporation, each owning 50% of the stock of the corporation, you would share the profits that the corporation made in the same way, wouldn't you?

A. Yes, but we wouldn't make as much profit. Is that what you are trying to get at?

Q. So that the principal difference that was made by the organization of the corporation was that the names of yourself and your brother did not appear as charterers of the vessel, is that right?

A. Say that again.

Mr. Matteson:

Will you read the question?

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. No; that is not right.

Q. Mr. Scott, the president of the corporation, was your family representative in Miami at that time?

A. That is correct.

Q. And as such you could call on him to take care of your personal business matters, couldn't you?

A. Yes, and for all members of the family.

Q. And that was true of Mr. Hawkins also?

A. Yes.

Q. You could call on him for your personal business when you required it?

A. Yes.

Q. And that was also true of Mr. Alley in Palm Beach?

A. Yes.

Q. So that if you had wanted to go into the charter business personally you could have called on these three men to take care of the detail for you, couldn't you?

A. No, we could not.

Q. You have stated, Mr. Phipps, that you were never called upon to make decisions with respect to the repair and maintenance expenses of the Seminole. Now Mr. Hawkins testified here, as I recall it, that when he was looking out for the Seminole he had a mental limit of $500.00 as to what he would expend without consulting with you, and that on one or more occasions he did consult with you when the contemplated expense exceeded that amount. Do you recall that?

Mr. Underwood:

If your Honor please, I object to the question as not a fair representation of Mr. Hawkins' testimony.

Mr. Matteson:

If you will show us or point out in what respect it is incorrect—

Mr. Underwood:

Mr. Hawkins' testimony was that it came to a point above which he didn't want to go on his own responsibility, that he consulted both stockholders.

Mr. Matteson:

Perhaps I inadvertently left that out.

Mr. Underwood:

You left it out.

Mr. Matteson:

If that is the only objection, we will correct that. Add the words "and your brother"' in each instance. Now will you read that question as amended, Mr. Reporter?

(Thereupon the question, as amended was read by the Reporter as follows: "You have stated, Mr. Phipps, that

you were never called upon to make decisions with respect to the repair and maintenance expenses of the Seminole. Now Mr. Hawkins testified here, as I recall it, when he was looking out for the Seminole he had a mental limit of $500.00 as to what he would expend without consulting with you and your brother, and that on one or more occasions he did consult with you and your brother when the contemplated expense exceeded that amount.")

Q. Do you recall that?

A. That makes a lot of difference. I don't know anything about any such limit. If there had been major changes in the boat he would have consulted me and would have consulted my brother too.

Q. Do you recall that he did on more than one occasion so consult you?

A. On one or more occasions there were some major repairs that he did consult me on.

Q. Mr. Riley testified here that in similar manner he had a mental limit of about $300.00, and that when any expense was contemplated of more than that amount he would and did consult with you and your brother on one or more occasions and obtained your approval. Do you recall that?

A. No.

Q. You don't recall Mr. Riley ever asking you for your approval of an expenditure of $300.00 or more on the Seminole?

A. No.

Q. You don't say that he didn't do that, do you?

A. Well, I don't remember his ever doing it. If he said he did it, I believe him, but I don't remember him ever doing it.

Q. Well, Mr. Phipps, it is true, is it not, that for several years before the fire Mr. Riley did have charge of the Seminole.

A. No.

Q. Well, there is—

A. He may have represented the Seminole Boat Company, but he never had charge of the Seminole through me; I never delegated the management of the Seminole to him.

Q. I was trying to make the question general, Mr. Phipps; whether you gave him instructions or not, you know that he was in charge of the Seminole?

A. I wouldn't say that he was; I don't know of him being in charge of the Seminole.

Q. And you were consulted by Mr. Hawkins when he got an offer to sell the boat for $5,000.00?

A. Yes.

Q. He came to you and asked you your approval of that sale, is that right?

A. No. He said that he had an offer of $5,000.00 and thought it would be a good thing to sell the boat. Is that what you mean?

Q. Yes.

A. All right.

Q. Did he ask you for your approval of the sale?

A. And I said, "I didn't know".

Q. His speaking to you was for the purpose of obtaining your approval or disapproval, was it not?

A. He wanted to know if I was willing to sell the Seminole for $5,000.00 I think you must say "we", because I couldn't sell the Seminole.

Q. I think Mr. Hawkins said that he spoke to each of you.

A. Very likely he did; I am sure that he must have.

Q. But he did speak to you as far as your interest was concerned?

A. Yes.

Q. Now after this corporation was formed, as I understand it, you did have the right to use the boat when

you wanted it, assuming that she wasn't chartered to someone else?

A. Or a charter was being negotiated.

Q. Well, I take it that if a charter was being negotiated—

A. I would have taken the money.

Q. What?

A. I would have chartered it.

Q. At least, you would have approved it; you would have preferred to do that.

A. If a charter was negotiated I would rather charter it than to take it myself.

Q. But outside of that you did have the right to use the Seminole when you wanted to?

A. Yes.

Q. And when you wanted to do that you called Mr. Hawkins or Mr. Riley and told them that you wanted to use it?

A. Yes.

Q. This trip that you made in April, 1935, the trip to the Keys, the last trip, how did you arrange for the use of the Seminole on that trip?

A. I asked Hawkins—well, I don't know, because—

Q. You spoke to Mr. Hawkins, is that right?

A. I am only guessing about it; I don't know how it was arranged; certainly it was arranged if nobody else had the boat.

Q. Isn't it a fact that you communicated with Mr. Hawkins at that time and told him that you would like to use the boat?

A. I communicated with somebody who had charge of the Seminole.

Q. You don't recall who it was?

A. I don't know; I presume it was Hawkins.

Q. Is there any doubt in your mind that it wasn't?

A. Well, just as much doubt as it was not; it could have been Hawkins.

Q. Now on these occasions when you did make use of the Seminole you paid the operating expenses?

A. Yes.

Q. And that is all you paid, isn't it?

A. The operating expenses of the charter party of the trip, yes.

Q. Of the charter?

A. Of the charter.

Q. You paid nothing for the use of the boat?

A. I paid nothing for the use of the boat, no, except it really came to paying for the use of the boat, because I paid the men on the boat; I paid the men that were on the boat; I paid their wages and it was that much advantage to the company, that much gain to the company.

Q. Well, as a matter of fact, Mr. Phipps, except when the boat was in use she had been laid up practically continuously at Fort Lauderdale, had she not?

A. I don't know. Is that so?

Q. You don't know that?

A. No, I don't.

Q. You don't know that she had been laid up at Fort Lauderdale practically continuously from 1931?

A. I knew she had been laid up at Fort Lauderdale, but I don't know that it was continuously; I don't recall how many charters she had during that time.

Q. Do you know that she had no charters after 1931?

A. No.

Q. Do you know that she only left Fort Lauderdale four times after 1931?

A. No.

Q. You didn't know that?

A. No.

Q. You made a trip on her to the Keys in August, 1932, didn't you?

A. Is that the last trip? I get mixed up in these dates, I am sorry to say.

Q. No. There was a time in August, 1932 when a trip was made to the Keys.

A. If you will tell me who was with us, I will tell you whether I went. Couldn't you assist me in that?

Q. I will try to assist you. Mr. Riley produced here yesterday a list of groceries which he bought for the trip in 1932 and, as I recall his testimony, he said that you wanted to make a trip and he got the boat at Fort Lauderdale and stocked her up with groceries, and those were the groceries in August, 1932. Does that recall anything to your mind?

A. Well, if he said it, it is so.

Q. You have no recollection of that?

A. I couldn't pick them out; if it was a trip, tell me what we did at the time and I will be able to tell you probably.

Q. In connection with the use of the Seminole you keep bringing in the word "charter". There was no document signed, was there?

A. I think, for the sake of the company and my partner or my family that it was an advantage for either one of us to use the Seminole, because it relieved the other of any expense during the time it was laid up, or whatever it was, and it was the same as a charter. I do not draw any distinction between a charter and this, except I don't think there was any charter form drawn up.

Q. When you use the word "charter" it is because in your mind the arrangement was the equivalent of a charter?

A. Not only that, but that was the business of the Seminole Boat Company to charter the boat.

Q. It was the business of the Seminole Boat Company to charter the boat to make money, wasn't it?

A. Yes.

Q. And they couldn't make money by letting you use the boat for nothing?

A. Yes; they could save money.

Q. In any event, there was no document or charter or anything in writing about the use of the boat?

A. I don't remember any document being signed. It may have been in the records; have you asked for it.

Q. If there was one, Mr. Phipps, I guess we would have seen it long before now.

A. All right.

Q. With reference to this last trip, in April, 1935, I understand Mr. Hawkins consulted with you as to whether Captain Baker should be employed as captain for that trip, is that right?

A. He asked me if Baker would be satisfactory as captain of the boat. Hawkins was collecting the crew, and he asked me if Baker would be satisfactory, and I had had Baker before, and I said it would be entirely satisfactory.

Q. There is another statement in these answers to interrogatories that I want to verify from you, Mr. Phipps, and that is found in Answer 7-B, which is this sentence right here (pointing).

A. May I read the whole thing?

Q. Yes; sure.

A. That is correct.

Q. That is a correct statement?

A. Yes.

Mr. Matteson:

Now, I will read into the record just this part of it.

Mr. Underwood:

Read it all.

Mr. Matteson:

No; I am going to read part of it. "R. C.—

Mr. Underwood:

If your Honor please, this is a single whole answer to one question. I don't think the record should be put in piecemeal, I think we should have the whole of it, if we have any part of it.

Mr. Matteson:

It is a part of the record anyway.

The Witness:

It is only ten lines.

Mr. Matteson:

There are four sentences in the paragraph, and I am asking the witness about one complete sentence.

The Court:

Just let the question be completed, and then make your objection.

(By Mr. Matteson):

Q. I am reading you the following sentence found in this answer: "R. C. Abel was in Respondents' employ at a monthly wage, working generally in connection with Respondent's fishing boats, except upon occasions when his services were employed by another who paid his wages for such period". Is that a correct statement?

A. That is a correct statement.

Mr. Underwood:

I object to that on the ground that it does not include the entire answer to the question propounded in the interrogatories.

The Court:

Let me see it.

Mr. Matteson:

If your Honor please, Mr. Underwood is trying to force me to—

Mr. Underwood:

I am trying to force you to be fair.

Mr. Matteson:

I resent that statement. This is a cross examination of the witness, and if he wants to testify about the other matters he can do so in answer to your questions.

The Court:

Where are the questions in connection with the interrogatories?

Mr. Underwood:

Shall I read them to you?

The Court:

Are they in the record?

Mr. Underwood:

They are all attached to the libel. I can find them for you.

Mr. Matteson:

I have a set here, if your Honor please, in which the questions and answers are opposite each other.

Mr. Underwood:

They are 7-A and 7-B.

The Court:

Now, Mr. Phipps, Mr. Matteson (you can just be seated) quoted from your answer under this heading 7-B.

Do you understand that he quoted the question. Now, Mr. Reporter, will you read the question to him. You look at this and the Reporter will read the question to you.

(Thereupon the Reporter read the preceding question as follows: "I am reading you this complete sentence found in this answer: 'R. C. Abel was in Respondent's employ at a monthly wage, working generally in connection with Respondent's fishing boats, except upon occasions when his services were employed by another, who paid his wages for such period' ".)

The Court:

Now, don't answer that. The question of Mr. Matteson thus far was the quoting of this which you see here is a part of your answer. Now he is going to proceed and ask the question. Now listen to the rest of the question.

Mr. Matteson:

Read it.

(Thereupon the preceding question was read by the reporter as above recorded.)

The Court:

Now he asked you was that a correct statement. Now, Mr. Phipps, I call your attention to this fact that your attorney has made an objection that in the quotation from this answer to 7-B the entire matter was not quoted. Wait a minute; I am explaining it to you. Now, I am calling your attention to what was the question. Just read right here, beginning at 7-A. B, C, D, E and it goes over on the other page to F. Now then, Mr. Phipps, you will be allowed to answer that question, but in so doing

you may, if you wish, read the entire answers that you gave, beginning with 7-B, and going on down.

The Witness:

Is this something I have signed; is this my testimony; what is this paper; is this something that I said was true?

The Court:

Isn't that your signature right there?

The Witness:

Yes, that is my signature.

The Court:

I will explain this to you: These were interrogatories which were propounded to you when the suit was instituted and the interrogatories were these, beginning right there (pointing).

The Witness:

And these are my answers?

The Court:

Those are your answers over your signature.

The Witness:

Yes, that is correct. May I just read my answer?

The Court:

You will have to answer his question, and in so doing you may read both the question and answer; you may read what the entire question was and what your answer was.

Mr. Matteson:

If your Honor please, I call attention to the fact that my question did not in any way relate to June 24, 1935.

and I would like to make it clear that my questions specifically exclude that date.

The Court:

The witness can take that into consideration, too.

Mr. Underwood:

Something else has transpired that I think you should have in mind perhaps before you rule on the question, and that is that when that interrogatory was first propounded Mr. Phipps made answer to it in these words: To 7-A he answered "Yes". To 7-B he answered: "R. C. Abel was not in Respondent's employ in any capacity on June 24, 1935."

Following the filing and serving of these answers exceptions were taken to them, and as you will remember, your Honor, they were argued here, and the exceptions to that answer was sustained, and Mr. Phipps was ordered to make a full and complete answer, which he later did, and which is now in the form presently before you. The Libelants asked for that answer and it was given, and they never took exception to it; they never moved to strike any part of it out as surplusage or as not being responsive, therefore, I urge that if any part of this is to be put to the witness, it ought to be put to him as a whole.

The Court:

The witness can answer the direct question. He can incorporate any other part of the answer that he wishes to.

Mr. Underwood:

I have no objection to Libelants putting to the witness the same question again as included in the interroga-

tories, but if they call his attention to any part of one answer, I think it only fair that he be asked about the entire answer, because it is all a part of the answer which has been considered proper and responsive up to this moment.

The Court:

Don't you think that by calling Mr. Phipps' attention to that entire answer, that the point is covered?

Mr. Underwood:

I think the question should embody the entire answer, and I don't think it should be broken up piecemeal.

Mr. Matteson:

It seems, if your Honor please, that we are getting involved here and are wasting time, so I am going to withdraw this question and get at it in a different way.

The Court:

All right.

(By Mr. Matteson):

Q. Mr. Phipps, I want to ask you if it is the fact that in the year 1935 Mr. R. C. Abel was generally employed by you on a monthly wage, working generally in connection with your fishing boats, except upon occasions when his services were employed by another, who paid his wages for such period; is that the fact?

A. Isn't that the same question you just asked me?

Q. I am not referring to any document now at all. I am asking you whether that is a fact as I have stated it. If you want to refer to any document, you can do so, but I am not asking you to do it.

A. Read the question again. I am very sorry, but I want to be sure. Will the stenographer read the question again?

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. I don't know; I am really confused about it.

Q. Would you like to have the question read to you again?

A. No; go ahead; I don't know. Give me another question.

Q. Well, Mr. Phipps, if you are confused about this one, we will read it to you as many times as you would like and give you all the opportunities you wish to consider it.

A. I don't know how long Abel was employed by me at that time. I do not know that when Abel was in my employ he was also employed by others, and Riley had authority to use him for others, that is, for my relatives or brothers or some of their parties, or for some of the corporations, and he did so use him, and when he did so use him they paid him, and while he was using him he was no longer my servant; he was their servant, and his time was paid by those who used him. Is that what you want?

Q. That is exactly what I want. Then, if I understand it correctly, except at such times when Mr. Riley appointed him to do something else, that Riley had authority—

A. That is not correct; Riley had permission from me to use him that way.

Q. And except when he was so used he was employed by you?

A. Well, I wouldn't say whether that is true or not, because I don't know the period of how long a period he was employed; he may have been employed only a short time. When he was on the Iolanthe he was employed by me, and also when he was on the Clip. If he went on the Clip on a fishing trip with Townsend Martin, Townsend Martin would pay for the time that Abel worked for him.

Q. Well he did work for you continuously through 1934 and 1935, except at such times as Riley required him for someone else?

A. Or when somebody else required him. I don't think it was always Riley; in fact, I am quite sure it wasn't.

Q. If anyone else than Riley wanted him, I suppose they would have asked you?

A. No, it was a family affair, and they would take him.

Q. With your permission?

A. They would take him and they would pay him; Riley would send them a bill for it.

Q. I show you this document here, Mr. Phipps: do you recognize that handwriting on this note here?

A. That is my handwriting. Who is that addressed to

Q. Well, it is written on a bill of Captain Pilkington's.

Mr. Underwood:

Dated August 31, 1932, referring to fishing boats and the Iolanthe, without any mention of the Seminole on the paper; is that correct?

Mr. Matteson:

That is correct.

(By Mr. Matteson):

Q. My inference, Mr. Phipps, is that it was directed to Mr. Riley, but that may not be correct, so I am asking you.

A. This is my handwriting, and I believe this is my okay "J. S. Phipps", and this is a bill from Pilkington, and I presume I thought it was pretty high.

Q. Who was that note addressed to?

A. It is addressed I presume to Riley, because that is his initials on there.

Q. You intended that note to reach Mr. Riley?

A. I didn't want him to pay the bill before seeing if he could get a reduction. It was a bill for the fishing boat and the Iolanthe, and it has nothing to do with the Seminole.

Q. That bill has nothing to do with the Seminole?

A. No.

Q. Well, in your note you asked him to see if he could get a reduction on the Iolanthe and the Seminole, didn't you?

A. Well, they had overcharged me on the Iolanthe, and I thought he was overcharging the company on the Seminole. I thought it was a pretty stiff price he was making.

Q. Did you ever tell Captain Pilkington that you thought his price was pretty stiff?

A. No.

Q. I understand that you remember two occasions when you visited Pilkington's yard?

A. Yes.

Q. Was one of those prior to this trip in August, 1932; do you recall?

A. I don't recall the dates at all; I don't know that there was a trip in 1932. Will you show me that there was a trip in 1932?

Q. I think that appears from the records.

A. All right.

Q. You were there with Mr. Riley on one occasion?

A. Yes.

Q. Did you have any words at all with Pilkington on that occasion?

A. Shook hands with him.

Q. You know the gentleman, don't you?

A. No, I don't. He said, "How do you do"; I really don't know; I am quite sure that I shook hands with him, and then Riley went off and talked to him.

Q. In the course of that conversation was there a conversation when the three of you were present?

A. No.

Q. There were no words passed while the three of you were together, is that your recollection?

A. You mean about the weather or anything?

Q. About anything.

A. I don't remember about any conversation.

Q. And you say there was no conversation in your presence with respect to rates of storage?

A. That is correct. You mean a conversation between Pilkington and Riley?

Q. Yes.

A. That is correct.

Q. And there was no conversation between Pilkington and Riley with reference to rates in which you took part?

A. No.

Q. Or in which you contributed anything at all?

A. No; that is correct.

Q. Or in which you said anything bearing on rates?

A. Not that I remember.

Q. And that relates to the other boats that you had there as well as the Seminole, does it?

A. I don't remember discussing anything with Pilkington.

Q. You don't remember saying anything to Pilkington about rates on the Iolanthe?

A. No.

Q. Or on the Clip?

A. No.

Q. Or on all three boats lumped together?

A. No.

Q. Do you recall going into the engineroom of the Seminole at the Royal Palm Dock when she was lying here in March or April, 1935?

A. No.

Q. You say you didn't go into her engineroom there?

A. I don't recall going into her engine room.

Q. Do you recall any occasion on which you ever went into her engineroom?

A. I recall twice.

Q. When were they, do you recall?

A. I went in with my brother to look at the new engines when they were installed.

Q. That would be back in the early 20's?

A. That was sometime ago. The second time I don't think I went down in the engineroom; I looked in the engineroom to see if they could put a fisherman in there to sleep. I had quite a large crew of fish boats with me on the trip, and I wanted to find out if we could put another man in the engineroom and I think one man slept in the engineroom, but I am not sure about the man sleeping in the engineroom.

Q. Those are the only two times you remember being in the engineroom of the Seminole?

A. Yes. I don't think I was in that time. I may have been, but I don't know how I got there.

Q. Were you at the Coconut Grove Boatworks when the Seminole was there in March, 1935?

A. Yes.

Q. Do you recall visiting there?

A. Yes.

Q. Did you go on board her that time?

A. Is that the time when the rail was broken. There was an accident around there, wasn't there?

Q. I am talking about the time just prior to this last trip to the Keys in 1935.

A. I don't know whether it was that time or not, but I have been to that yard to see the Seminole.

Q. What was the occasion of your going there then?

A. I think there was an accident to the boat, and I was waiting to go off on a charter. I was sitting there on

the deck waiting for the boat, and they said they had an accident; that the boat was down here at the place that you mentioned.

Q. Coconut Grove Boat Yard?

A. Isn't that near the aviation field?

Q. Yes.

A. Yes, they said it was down there, and I said, "goodness, I hope you get this fixed quick, because we are sitting out here waiting for a trip".

Q. And that's the only time you visited the Seminole at the Coconut Grove Boatworks?

A. That is the only time I recall.

Q. You were not there in 1935, as near as you recall?

A. I don't recall it, no. Was that in 1935, the time I mentioned?

Q. No; I think not.

A. Oh, I don't know.

Mr. Matteson:

I think that is all at this time, if your Honor please.

By Mr. Botts:

Q. I believe that you stated that you were at the Pilkington Boatyard on only two occasions?

A. Those are the only two that I recall.

Q. It is possible that you might have been down there casually on other occasions that you do not recall, is that it?

A. It is possible.

Q. Yes. Now do you recall who introduced you to Captain Pilkington, or how you became acquainted with him?

A. I don't remember.

Q. You don't know then whether you were acquainted with him before you made these trips or whether you met him on those trips?

A. My impression was I didn't know him before I made the trip.

Q. Then you don"t know who introduced you, or how that came about?

A. No.

Q. Now before the Seminole Boat Company was organized, when you and your brother, Mr. H. C. Phipps were the owners, as I understand it, the ordinary expenses for upkeep, storage, repairs, anything of that sort, you and your brother each contributed 50 per cent of that expense?

A. Yes.

Q. And that if either of you took the boat out on a trip, the other not being a member of the party, that the person who made and was responsible for the trips, paid the entire expense of that trip. Now am I correct in my understanding that those expenses included the time of crews or employees on the boat, as well as the expenses for food and so forth?

A. I think that would depend.

Q. All right, sir.

A. It would depend, whether the crew was gotten for that special trip, or whether there was a crew already on board.

Q. I see. In other words, if it should happen that you were maintaining regularly, members of the crew, then those regular salaries would probably have been treated in the same category as repairs, or storage?

A. Well, I really don't know the distinction. I don't know that there is much distinction.

Q. If you gathered a crew for that particular trip, then all the expenses of that crew were treated as a part of the expenses of that trip and paid for by whichever one of you actually used the boat?

A. Correct.

Q. Now when these various bills—and I am speaking now still of the time prior to the incorporation of the corporation,—when these bills, such as storage and ordinary repair and upkeep,—when those were presented, my understanding is that either your secretary or the representative of your family corporation down here, would disburse these regular and ordinary expenses; is that correct?

Mr. Underwood:
May we have the time fixed, your Honor?

Mr. Botts:
I fixed the time; prior to the incorporation of the Seminole Boat Company. Now read the question.

A. I think I have it in my head; I am trying to think what the answer is there. You better read the question again.

(The question was read.)

I will say, yes. Well, wait a minute:

Q. All right, sir, go ahead and make any explanation you want to, sir; I am not trying to cut you off.

A. I don't say they would be paid before our o. k. was on them, because I have forgotten just the course; sometimes we ok'd bills and sometimes we didn't. Now if it was something,—I am talking, before the corporation; if it was something that was ordered by them for me, and they knew I had ordered it, or had to have it, he would pay the bill and then send it to me. But usually I o. k.'d my bills and Mr. H. C. did, too.

Q. Now suppose the boat was put in storage, we will give for example, and you knew the boat was in storage

and had authorized or approved that situation, then when the bill would come in they probably wouldn't come to you and say "Mr. Phipps, do you want us to pay this bill for storage?" They would ordinarily go ahead and pay that sort of thing, wouldn't they?

A. I wouldn't say that. They often sent them to New York.

Q. And in New York—

A. I would like to see them, or Mr. H. C. Phipp would see them.

Q. Or your secretary?

A. He wouldn't o. k. them.

(Thereupon hearing was recessed until 1:45 o'clock p. m. of the same day.)

Tuesday, May 16, 1939, 1:55 o'clock P. M.

Afternoon Session.

2397 (Hearing resumed pursuant to the noon recess; the witness MR. JOHN S. PHIPPS, resumed the stand upon cross examination continued:)

By Mr. Botts:

Q. Do I understand you then, Mr. Phipps, that prior to this incorporation you personally superintended the entire details with reference to the Seminole in the payments of its bills?

A. I didn't—what did you say, supervised the details? I didn't supervise the entire detail; but my brother and I never paid the bills unless we approved them. That's before the Seminole Corporation was formed.

Q. Yes. Then as I understand it, prior to the formation of the Seminole Boat Corporation, no bill for the Seminole was ever paid unless it had the personal approval of either you or your brother; am I right?

A. No, no; because—you might just as well say that about the Iolanthe and the Clip. They were our personal property, and we did o. k., the same as we would o. k. the bills for the Clip and the Iolanthe, and the bills wouldn't be paid unless we o. k.'d them, but I wouldn't say they never had been paid, but I don't think it is probable, because I don't think people have the right to pay them.

Q. Well, I will put it this way: Except perhaps for some isolated and unusual occurrence, no bill was ever paid for the boat Seminole prior to the corporation being formed, unless it had the personal approval of you or your brother, is that correct?

A. No. I would say that in the ordinary course of business, the bills were o. k.'d by my brother and myself.

Q. All right; and were not paid until you had o. k.'d them, is that right?

A. I wouldn't say that. They very likely did pay some few bills, because they had ordered the goods and wanted to keep my credit good, I suppose.

Q. I tried to take care of that situation by injecting the thought that, except in some unusual or isolated circumstance, you or your brother approved and paid the bills; is that right?

A. Well, I don't think so because we were very often away from home; perhaps we gave authority, but I am only guessing, I don't know,—to pay certain bills. But before the Seminole Boat Corporation was formed, those boats were our personal property, and just the same, as I would usually o. k. the feed for my horse, because he had to be fed. But in the ordinary course, all bills that were chargeable to my brother and myself for our boats, were o. k.'d by us; just as I understood—

Q. That was the ordinary thing?

A. I should think so, yes.

Q. And in the large majority of cases, that was the routine that was followed?

A. I wouldn't know; I don't know.

Q. You don't know?

A. No, I don't know. I only know that that was my custom and my wish.

Q. And you don't know whether it was followed or not?

A. Not entirely, no.

Q. Now I believe you have stated that you don't recall the exact date when the Seminole Boat Corporation was formed; but assuming it was late in the year, 1928,—which I understand to be a fact?

A. Yes.

Q. Isn't it true that Mr. Hawkins had been looking after the boat Seminole for some months prior to that time?

A. Before the Seminole Corporation was formed?

Q. Yes, for we will say six months to a year, in that vicinity.

A. Well, I wouldn't say so. It would depend very much on where the Seminole was at the time.

Q. Well—

A. And if the Seminole were in Palm Beach, I suppose Mr. Riley would keep in touch with the Seminole and bring the biils to me, to look after. I don't know where the Seminole was, at just the date you refer to. I don't want to pin anything on Hawkins particularly.

Q. Well, we are not trying to pin anything on Mr. Hawkins, we are just trying to find out. Mr. Phipps, I think counsel won't object to my saying that it is in evidence that beginning, I believe it was in April of 1928, the Seminole was—or approximately that time, the Seminole was in storage at Pilkington's.

Mr. Matteson:

July.

Q. I was thinking it was early, earlier than that; and that Mr. Simmon or Simon, I don't remember which way they pronounce it, actually looked after the details through authority from Mr. Hawkins—was it Mr. Scott?

A. I don't know.

Q. Mr. Scott or Mr. Hawkins, I am not sure which. Now they didn't submit the bills at that time to you for your approval, did they?

A. Oh, yes. You are talking before the Seminole was incorporated?

Q. Yes.

A. Oh, yes, sir; I think the bills were then sent to Palm Beach, when we were there, for our approval.

Q. And the bills for July and August storage, for instance, for the year 1928, prior to the incorporation, you think those were sent to you?

A. Haven't you got them?

Q. I believe that they are in evidence.

A. I don't want to say yes or no, because I don't know.

Q. All right then, you don't know. That is the point I am getting at, Mr. Phipps.

Q. I should think that they had my o. k. on them; that's what I think, or Mr. H. C. Phipps' o. k.

Mr. Underwood:

We have the bills for July and August, here.

Q. All right, sir; there seems to be a bill for July; does that have your o. k. on it, or that of your brother?

A. No. That's mine, the other is my brother.

Mr. Underwood:

The witness refers to—

Q. The bill from Pilkington dated July 31, 1928.

Mr. Underwood:

Witness points to the two lines under the words "Distribution".

Q. J. S. Phipps, 29.1, H. C. Phipps, 29.16.—Now then neither you nor your brother o. k.'d that bill, did you?

A. I don't see it on there.

Q. And I refer you to the bill for August 31, 1928 for the Pilkington storage, and ask you if either you or your brother o. k.'d that bill.

A. No, the distribution is the same though.

Q. The distribution is there, I understand that.

A. 42.15 and H. C. Phipps 42.15. But I don't see it on here. Have you any that have the o. k.?

Q. I couldn't answer you Mr. Phipps; they are here and I don't remember much more about that than you do. But I think there are a relatively few, but how many or how few I wouldn't want to say. Now then, after the corporation was formed, as I understand it, whenever there was a deficit in the ordinary and usual expenses of storage, repairs, upkeep and so forth, that was just as these storage bills I have just shown you, divided equally between you and your brother; is that true?

A. Whenever there was a deficit, yes.

Q. Now then the routine was approximately this, was it not: That the bills would be paid either by the Boulevard Mortgage Company or the Palm Beach Company and then the disbursing Company would be reimbursed by you and your brother; is that correct?

A. Well, did the Seminole have its own bank account?

Q. You mean the Seminole Boat Corporation?

A. Yes.

Q. I don't mind answering your question; it is in evidence that up until sometime—I have forgotten the exact date, perhaps in 1931, I believe, it did have a bank ac-

count, at which time the bank account was closed; and that while it had a bank account, if there was a deficit, that deficit was made up by a check from the Boulevard Mortgage Company or the Palm Beach Company, as the case might be, to the Seminole Boat Company, and thus disbursed. But after that bank account was closed, the disbursements were made either by the Boulevard Mortgage Company or the Palm Beach Company. Now are you not familiar with that deal?

A. I don't remember how the disbursements were made. Let's see, what was I going to say? I don't know how the disbursements were made, but annually or in some long periods, when they were built up, then we would reimburse the account. Is that what you wanted to know?

Q. That is what I am trying to get at, that in the first instance it would be paid by someone other than yourself, but ultimately you and your brother reimbursed the disbursing company for these deficits.

A. If there was a deficit.

Q. Yes, sir, when there was a deficit.

A. And not necessarily promptly.

Q. I understand that. So that the situation was this: That before the corporation was reimbursed, you and your brother directly absorbed any deficit, is that right?

A. Why, I don't know what you mean by, directly absorbed.

Q. Well, you, each of you paid your half of it, didn't you?

A. Perhaps once a year.

Q. Well, I mean eventually. I will put it this way. That prior to the incorporation, you and your brother periodically absorbed such deficit as there might be; is that right?

A. I think that is correct.

Q. And subsequent to the incorporation, you and your brother periodically absorbed such deficits as there might be; isn't that true?

A. I think that is true.

Q. And the only distinction in the method would be, that, prior to the incorporation, the bill was paid either by the Boulevard Mortgage Company or the Palm Beach Company, or perhaps some other of your family corporations, and reimbursement made to this disbursing corporation; and after the incorporation, it passed through the hand of one more of your corporations, to which the Seminole Boat Company, and that's the only difference, isn't it?

A. No, that is not correct.

Q. Will you point out wherein our assumption is not correct?

A. Before the corporation was formed, the Seminole Boat Corporation was formed, as I said, my brother and I paid the bills, and I should think more promptly, because—anyway before we always,—I won't say always; we usually, or we should have put our initials, o. k. on the bills. Now whether that was always done by us, I don't know, but that was our intention, and that is what we usually do with our bills at home. After the incorporation was formed, I felt I had nothing to do with it until the end of the year, or the end of a certain period, and then my brother and I, or my sister and I, would pay the deficit 50-50.

Q. But in respect to its ultimately being paid by the individuals, first you and your brother, and later you and your sister, the only difference in method of payment, other than perhaps o. k.'ing the bills was—

A. But that was a big difference.

Q. All right, we understand that difference, and I am getting at another point now: That in the first instance the bills would be paid, we will say, by Boulevard Mort-

gage Company,—part of it; and part of it by the Palm Beach Company; and periodically you and your brother would reimburse that company. That is the way it was done, wasn't it?

A. Well, it was paid by somebody, and we would reimburse them.

Q. And after the incorporation, it was also paid by somebody, and you reimbursed them, wasn't it?

A. Well, that depends. We wouldn't reimburse them if we didn't know—the difference is that before the corporation was formed I was much more careful; I looked into it just the same as I would about the Iolanthe or my boat or anything that I had to pay,—or my butchers' bills, I go through the items. After the corporation was formed I left it entirely to them directors of the corporation, what they should order, what they should pay. I don't think they ever asked me. You said they had a limit of $500.00. I don't remember their asking me for approval. Now you want to know the difference and I am trying to tell you.

Q. Go ahead.

A. So that there is a difference. Perhaps periodically or some months, if there was a deficit, and my brother and I were the owners of the stock of the corporation, or my sister and I were the owners of the stock, we would pay, in proportion to our ownership, which was 50-50, each owning a half interest.

Q. And in one instance—then the only difference would be a deficit would occur, with your approval and you would pay it and in the other instance a deficit would occur without your approval and you would pay it? Is that the difference?

A. That is not the way I looked at it. In one case I would look over the items; in the second case, if there was a deficit, I wouldn't look to see where the deficit arose, I didn't have anything to do with it. I had entire

reliance anyway—the directors, or the management of the Seminole Boat Company made all those payments and if they told me that the Seminole was in the red and they needed some cash, my brother and I would pay it, because we were the stockholders; and what would happen if we didn't pay it? The boat would be put up for sale, wouldn't it. Just imagine what would happen.

Q. That would be whether you or the corporation were the owner, isn't that true?

A. Yes, and that is why at certain times,—but when we were the owners we looked into the figures; and when we weren't owners except stockholders, we left it to the directors of the company. And they say that they had a limit of $500.00, or some limit, I don't know, because I haven't looked at those items at all, I don't recall the items that they paid, except the storage items which you showed me this morning; I know of those.

Q. But in either instance, you and your brother absorbed the deficit, didn't you?

A. Now we weren't responsible, but we did pay it. Isn't there a difference there?

Q. Well, you did pay it, anyway?

A. Well, I think so; I think our credit is all right. But I don't know, that is supposition.

Q. Now then as I understand it, after the Boat Corporation was organized, save for the detail of paying this deficit, you had nothing to do with it; is that right?

A. I think that's right.

Q. And you were not consulted, as I understand it, at all, about what it might do or might not do, am I right?

A. Well, you mean about a charter?

Q. Let's take the question broadly as it was asked.

(The question was read.)

A. That is correct.

Q. Then when you testified this morning with reference to this Prigg boat, that you notified Mr. Hawkins that you and your sister,—to use your exact words, had decided to have the Prigg boat for Seminole, that was an exception to the rule, was it?

A. To what rule? To buy the Prigg boat? But I didn't make the rule, that they didn't buy anything; there was a limit. But Hawkins told me that the Seminole needed—or told Mrs. Guest—no, told me, said "The Seminole needs a tender, and there is Prigg boat for sale which I think would be very suitable." I saw the Prigg Boat—you don't want to hear it?

Q. Yes, I want to hear it; I am listening with great interest.

A. I saw the Prigg boat, and I told Hawkins that if the Seminole Company didn't want it I would take it. And I asked my sister if the Seminole Company wanted it and she said yes, and then I told Hawkins that it belonged to the Seminole Boat Company.

Q. Then in that instance, you and your sister, being then the stockholders, definitely decided what the Seminole Boat Company would do, didn't you?

A. Well, I think in that case; I call that rather major; I forget what it cost, but in that case he was free to ask us. If we had to have a tender for the Seminole, we would have to buy it for the Seminole in order to charter; I mean, if the Seminole was short of equipment, the man would go ahead and buy the equipment necessary to make a charter; I saw the boat, but I think it was a superficial thing to ask me if I wanted it.

Q. Did the corporation make any report to you as one of its stockholders of what it had done?

A. You mean, the minutes?

Q. No; make any report of its business transactions.

A. Not necessarily.

Q. Well, I mean, did it ever?

A. As a report?

Q. Written or verbal.

A. I don't know of any.

Q. As I understand it the principal and only business of the Seminole Boat Company was to charter the boat Seminole for profit?

A. That's right.

Q. Now then along in these years, 1931 and '32 and '33 and '34, you and your brother paid quite substantial deficits of the Seminole Boat Company, did you not? Running into a good many thousand dollars?

A. No, I don't know; but I tell you if I did, there was a good reason for it. Do you remember 1930 and '31 and '32 and '33? You couldn't charter a boat; they would give it to you.

Q. Now then—well, did you pay substantial deficits?

A. I was very disappointed and so was Baker; so was Mr. H. C. Phipps; I believe we were all disappointed.

Q. I assume that is true, but the question I asked you was this, and these explanations we have already had, if you will pardon me for saying so, if you will just listen to the question I ask and try to confine your answer to that; and then I don't mind your making any explanation you want. Now the question is that during these years, during each year, maybe once or more during the year, substantial deficits for the Seminole Boat Company were paid by you?

A. I don't know.

Q. Were you ever made aware that never after April 1st, 1930 was a single penny paid into the Seminole Boat Company for charter or otherwise, except from contributions from you and the other stockholders?

A. Why, I didn't know.

Q. You didn't know that?

A. No. It sounds foolish, but I didn't know; I didn't watch those accounts. They were taken care of by people I trusted.

Q. That is exactly what I am trying to get at.

A. How do you mean, you are trying to get at? They were taken care of. I am a stockholder in that company; I have good officers, good directors, and if they couldn't make the boat pay, if they spend out moneys for me—

Q. You and your brother, while you were the stockholders, indicated the persons who you desired to act as officers and directors of that company, didn't you?

A. Yes.

Q. And as a matter of fact, these persons that you nominated whether formally or informally, were the managers and assistant managers of your offices and properties here, isn't that true?

A. Of all the family offices.

Q. Well, I am referring to your family generally.

A. You mean, my brothers and sisters?

Q. Right.

A. They were the officers of the properties.

Q. And as such were merely your nominees; that is true, isn't it?

A. No, I don't think so. Well now, let me think about that: We as stockholders, selected those directors and officers; in that way they were our nominees.

Q. And you knew of course that these directors, serving at your suggestion, would, in respect to the Seminole, do exactly what you and your brothers desired them to do, didn't you?

A. Well, I hoped they would, but I didn't know what was in their minds.

Q. Well, you knew that they would, didn't you?

A. How do I know? Do you know what the directors or officers of any company will do? I trusted them.

Q. I can answer that question, if you want me to.

A. No, that is all right.

Q. As a matter of fact, if these men whom you and your brother selected to officer and direct this corporation, owned exclusively by the two of you,—if you and your

brother directed them to do anything and they didn't do it, you would have gotten somebody else in their place, wouldn't you?

A. No, not necessarily. They would do the right thing, and if there was something I didn't like, they would still do the right thing; they were independent, is what I wanted to convey to you.

Q. Now then do you—

Mr. Underwood:

May he finish?

A. They were independent, they were officers of the company and responsible to the company; they spent money for the company, and we were the stockholders. Now if they did something that we didn't approve, we wouldn't necessarily fire them; because they would likely have a good reason for doing it.

Q. Now that was not the question I asked.

A. Well, I am sorry.

Q. I asked if you and your brother, while you were the stockholders, directed these officers to do something, with reference to the Seminole and they didn't do it, you would have gotten someone else in their place, wouldn't you?

Mr. Underwood:

If your Honor please, I object to that as argumentative, speculative, already covered.

The Court:

Well, in a way I am inclined to agree with you; but it is cross examination. I don't want to unduly go over it and over it, but I think it would be wrong to sustain the objection so I overrule it.

(The last question was read.)

A. Unless they had a very good reason for not doing it.

Q. And you would have decided whether they had a good reason or not, wouldn't you?

A. My brother and I together would decide whether it was a good reason. Well, I can't imagine their not doing it without a good reason.

Q. I can't either. Now as a matter of fact, Mr. Phipps, didn't they, with considerable frequency, discuss the Seminole with you?

A. No. I didn't know,—you told me the Seminole had been idle four years; I didn't know it was four years.

Q. Wasn't there ever one occasion when they wanted to have a general overhaul of the motors, that they consulted you and your brother about that—or one or either of you?

A. No, I never heard of such occasion.

Q. You never heard of such a thing?

A. No; and in that case they would have gone ahead; and if I told them not to, still they might do it anyhow. Well, let's not go into argument.

Q. Now then, if I am wrong in my dates, please correct me, but my recollection is that this morning you stated that you became aware of the fact that they were paying John Thomas' hospital bills approximately a month, as I recall it, after the accident. Am I right?

A. Well, I might have said—I said a month or some considerable time. It wasn't immediately after the accident, but I became aware that they were paying them.

Q. And you approved those payments, did you?

A. Yes.

Q. Do you know whether these payments were called to the attention of your brother?

A. Oh yes.

Q. And he approved of them?

A. Oh yes.

Mr. Underwood:

Do you mean his brother or sister, Mr. Botts?

Mr. Botts:

I beg your pardon.

Q. I mean your sister.

A. The other stockholders.

Q. Now were you advised before you approved these payments, of the circumstance or circumstances under which Mr. Thomas met his injury?

A. I read something about it, or perhaps I was told; I have forgotten. I knew he was injured, I don't know how he was injured, I don't know where he was injured, but likely it was told me.

Q. Well, you were aware at the time when you approved these payments, that Mr. Thomas was injured?

A. Yes.

Q. In the explosion said to have happened on board the boat Seminole, were you not?

A. Well, I don't know whether he was injured in the Seminole or whether he was injured when he was outside the Seminole, among a whole lot of boats blowing up. I know he was injured at the time.

Q. Did you know for what purpose he was present at the scene of the fire?

A. I was told afterwards.

Q. You were told that he went down there to have a look at the Seminole for some purpose, were you?

A. No; I knew nothing about his going, perhaps that is why I didn't know anything about it for some time afterwards. But before I left Palm Beach I wanted a rope net put on the back of the Iolanthe; and I don't know whether I told Riley or whether I told Abel or who I told, but anyhow, I wanted a rope net on the back of the Iolanthe, and the one that was on the back of the Seminole was the kind I wanted.

Q. Exactly.

A. I didn't know this man Thomas was going down to see the Seminole, or I didn't ask him to do the work; in fact I had never known nor seen Thomas, to the best of my knowledge, but I heard afterwards that he had gone down and was injured.

Q. Well, you knew that Thomas was the man that Mr. Riley or someone for you, had arranged to put this rope with screen or whatever it was, on the Iolanthe?

A. I was told so.

Q. Yes. All right. You had been so informed, prior to the time,—or was that subsequent to the time that you authorized these payments?

A. Oh, it was at the time I authorized the payments.

Q. Then you knew when you authorized the payments that Thomas was the man with whom arrangements had been made to make these installations on the Iolanthe, is that right?

A. Thomas is the man; I think he was at Palm Beach—a Palm Beach man.

Q. Well, anyway, Thomas was the man who was trying to see what kind of a net it was, for the purpose of installing something similar on the Iolanthe?

A. Yes, sir.

Q. And you were informed that that was the reason for his presence in the vicinity of the Seminole, and resulting in his injury; is that right?

A. Since—I say, it was silly for him to go down at all. He did go down; whether he went down for a joy ride or to look at the Seminole, I don't know, but he did go down, and he was injured.

Q. All right. Now then you have stated that you approved the payment of, I believe it was $5,000.00, to the widow of Captain Abel?

A. Yes.

Q. And as I understand it, the continuing payments that have been made from time to time to Mr. Thomas, have been with the approval of yourself and your co-stockholder; am I right?

A. No.

Q. You haven't approved those payments?

A. I didn't know they were going on.

Q. You didn't know it.

A. No.

Q. Well, have you repudiated those payments?

A. No. I only heard about them last night; I was told that they were making payments to him; I didn't know it.

Q. And you approved then the payment of the hospital bills?

A. Yes.

Q. He didn't—that—

A. That was later on, when they told me the story, as I said before, I approved some payments for Thomas, several days after the accident; and I was told that they were hospital bills and medicine.

Q. You are aware now of the approximate amount of those bills, are you?

A. No.

Q. Well, anyway, you have approved the hospital bills and doctors' bills and those kindred bills?

A. You mean to say that I approved them before they were paid? I don't think I did.

Q. No.

A. After they were paid, oh, yes.

Q. Now then, have you approved these payments to Thomas in addition to his hospital and doctors' bills?

A. Have I approved these bills—

Q. These additional payments of $125. a month for a while, and $75. a month for a while? Have you approved those payments?

A. No, but I do approve them, but—

Q. You approve them now?

A. Yes, I approve them.

Q. And you expect in due course to reimburse the disbursing agent for your pro-rata share, is that right?

A. Unless the disbursing agents get it from some other source. They won't now, of course.

Q. No, I don't think they will, either. So the point I was getting at, you want to give us to understand that you approve and confirm those payments, and not repudiate them? That is what I am getting at.

A. Well, I really haven't seen those payments; now that I have been asked about that, I would like to look at them.

Q. Well, as I understand it, you said a moment ago you had approved them.

A. I approved of the hospital bills. Now wait; I haven't seen these bills except some long time after the injury, I approved those. But the accident, not any amount, I said "take care of him, take care of his hospital bill and things like that." I didn't know about these other bills; I haven't approved them nor disapproved them; I haven't repudiated them. They tell me he is getting something every week.

Q. I understand it is every month. I understood you to say just a moment ago that you do approve those payments.

A. Well, now that you have been talking to me, I would like to look at them; there might be something screwy about them, something unusual. Why are you asking me if I approve them?

Q. I just want to know.

A. I would like to look at them before I answer.

Q. Assuming that they have been payments to John Thomas since the date of the fire, over and above his doctors' and hospital bills and so forth, of $125. a month for a time, and $75. a month for the balance of the time,

up until at least March of this year; have you got a copy of that list that Mr. Underwood furnished here?—now here is the ledger of the Seminole Boat Company, showing—I call your attention to this, for 1937 and 1938. John Thomas, $75. each and every month.

A. Now I would like to know really what is the matter with Thomas; I would like to see him, before I say I approve it. Wouldn't you want to?

Q. I think that is not unreasonable. Well now then do you want us to understand Mr. Phipps, that these payments to John Thomas, over and above his hospital and doctor bills, and similar bills, which I will ask you for the moment to take my word, are shown to aggregate above $3500.—disbursed by the Palm Beach Company and charged to the Seminole Boat Company, I would like for you to tell me whether I am to understand that these payments were made without any authority, in any manner, way, shape or form, from you, or without your approval.

A. Now I want to make sure that I have the right answer to this. If you mean the original bill, that I did approve; but if you mean bills since then, I didn't know about them. And if it was for the Seminole Boat Company, it is up to the officers of the Seminole Boat Company.

Mr. Botts:

Would you mind reading him the question? I don't believe the witness understood it.

(The last question was read.)

A. Without my knowledge,—if you add that, I will say, yes.

Q. Assuming that Mr. Riley and Mr. Alley, for the Palm Beach Company, have disbursed approximately

$3500. in payment to John Thomas over and above medical and hospital attendance, do I understand you to say that those are without your approval?

A. They are.

Q. When you ascertained, which I understand was only a day or two ago, that these payments had been made, did you criticize Mr. Riley and Mr. Alley for making those payments?

A. I only ascertained that this moment; I didn't know; I heard that they had paid something, but the amounts, I had no idea what the amounts were until you read them out to me.

Q. Well, when you found out they had been making any of these payments, did you criticize them?

A. No.

Q. As a matter of fact now, didn't you tacitly approve those payments?

A. No; I didn't know anything about the payments.

Q. When you learned about them, didn't you—

A. Well, I have only learned the amount this last moment, when you showed me the books. Before that I heard they were paying John Thomas something, but I don't know whether it was $5. a week or what it was.

Q. How long ago was it that you heard they were paying John Thomas something?

A. Last night.

Q. And they didn't even tell you then, the amount?

A. No.

Q. Well, did you approve that,—those payments?

A. Why, I didn't say yes or not.

Q. All right. Did they tell you, Mr. Phipps, that they had made payments totaling more than $7,200. to or for the benefit of John Thomas, on account of hospital bills, doctors' bills, and these additional payments, and have not taken one scratch of a pen from John Thomas by way of release or otherwise? Did they tell you that?

A. No.
Q. Do you approve or disapprove that?
A. Well, I don't know; I don't know the facts.

Mr. Botts:
Have you got that release for me yet?

Mr. Alley:
I have a reformed copy of it. I don't have the original.

Mr. Botts:
You are satisfied that it is an accurate copy, are you?

Mr. Alley:
Yes.

Mr. Botts:
May I see it?

(Informal recess for two minutes was taken, following which the preceding testimony was read.)

Q. If Mr. Alley has testified that he did make those payments, and has taken no receipt, release, or anything of that kind, do you approve that or disapprove it?

Mr. Underwood:
I think if your Honor please, I object to that. I think he has covered that. It is argumentative. His state of mind today is unimportant on the issues in this case.

The Court:
I am inclined to agree with that. I think you have covered that; I mean, that particular question. I think this question of approval or disapproval is a repetition. • • •

Q. I understand that when you went down on this fishing trip down at—

A. Which fishing trip, please?

Q. The last one, in April of '35; that you knew that the various fishing boats were being supplied with gasoline from the tanks of the Seminole.

A. That is correct.

Q. As I understand it, you said you thought it was pumped?

A. Well, really I don't know how it was supplied; but that was my thought, if you would have asked me.

Q. Well, you knew then that in some method they were drawing gas from the tanks of the Seminole and delivering it to these various boats?

A. Well now, I don't know whether it was drawn from the tanks of the Seminole, or whether it was drawn from a drum on the deck of the Seminole. I really don't know.

Q. You didn't see any drum on the deck of the Seminole, did you?

A. Well, I didn't look for one, I never thought of it. But I think it probably could be, in fact it might well have been, because we have taken drums,—extra gas, that way; that is my recollection; sometime ago. So I wouldn't know how that was. I did know the Seminole supplied the fishing boats with gas; how they supplied it I don't know. It might just as well have been from a drum on the deck, or pumped out from below by a pump and put in, or perhaps direct from the pump into the boats; I don't know.

Q. You saw the fishing boat come alongside and get gas, did you?

A. No, I didn't. I don't recall of seeing it. Of course they did, but I don't recall seeing it.

Q. You knew they did, but you don't at this time recall the actual circumstances; is that the idea?

A. I never recalled the circumstances, because I know the boats got gas from the Seminole, but I believe they were using gas when I was asleep, I don't know, or perhaps at night. I don't remember there being gassed, but you asked me if they got gas from the Seminole. That is the only place they could get it from.

Q. Now my understanding is that in the first instance the bills for the Seminole were o. k.'d by your private secretary, Mr. Robbins?

A. What time are you speaking of, please?

Q. Early before the corporation.

A. Before the incorporation? They were paid by him?

Q. I think you said that they were approved by him, but I want to get that straight.

A. Robbins has been with me for perhaps twenty years; he has approved a lot of bills for me. But you will have to place the time. I wouldn't know who would approve them.

Q. Well, there was a time when Robbins approved these bills; that is what I am getting at?

A. Yes, that is correct.

Q. Now then what I want to ask—

A. What bills do you mean, please?

Q. Bills for the Seminole. You tell me.

A. I don't know what you are referring to.

Q. I want you to tell me what bills from the Seminole he did approve.

A. I don't know.

Q. Any bill that he did approve, was paid, is that the idea?

A. Yes.

Q. All right. Now then, after a time, down at Palm Beach, while your various boats were there, Mr. Riley stepped into the situation in that respect largely the same as Mr. Robbins had previously occupied, did he not?

A. No.

Q. He didn't?

A. No. Mr. Riley had entirely a different position in Palm Beach than Mr. Robbins in New York. Mr. Riley used to buy and sell real estate for me, he manages my real estate in Palm Beach now; and he was doing the same service for me as Paul Scott or any of the people in our organization, as we said before; Roy Hawkins, and others.

Q. Well, didn't Mr. Riley look after a great deal of the detail of approving accounts for you in connection with your boats and your properties as well?

A. What time are you speaking of, please?

Q. Well, we will say in the last five years.

A. That is after the Seminole Boat Company was formed?

Q. Yes.

A. Well, I don't believe the Seminole was up there in the last five years, was it?

Q. Now I am away, just a little bit, from the Seminole.

A. He does do that, in regard to the Clip, shall we say,—or am I not to mention boats? But the Clip he pays,—I am not sure, but anyway he would look after the Clip and talk to me about the Clip.

Q. And the same with reference to the Iolanthe?

A. I haven't got the Iolanthe.

Q. I mean, while you owned the Iolanthe?

A. Well, that is so many years ago since it was at Palm Beach; I don't think it was; I think the Iolanthe was really managed by the Captain of the Iolanthe. I don't think Riley ever had anything to do with it.

Q. Now Mr. Phipps, you spend a substantial proportion of each year at Palm Beach, do you not?

A. I do, yes.

Q. Are the officers of the Palm Beach Company, in Palm Beach or West Palm Beach?

Mr. Underwood:
Office or the officers? I didn't hear.

Q. The offices.

Mr. Underwood:
The structure?

Q. The structure in which their headquarters' offices are.

A. Well, I don't believe there is a Palm Beach Company now; I think it is called Phipps Properties.

Q. I think they say it is the Bessemer Properties.

Mr. Underwood:
It is clear in the record; it is the offices in Palm Beach.

Q. The offices that your companies occupy in Palm Beach County, are located in the city of Palm Beach, are they not?

A. Yes.

Q. Do you give as much attention to the detail of the operation of those companies down there as you do to the payment of your bill for your butcher, as you have indicated a while ago?

A. No, I don't.

Q. You give more attention to the payment of your butcher, than you do the operation of your business?

A. I do, yes, sir. I have practically retired from business, Mr. Botts; I try to relieve myself as much as possible.

Q. And you have a private office however, in the headquarters building at Palm Beach, haven't you?

A. It is not a private office, but I usually used it; my brother has used it if he is there, or my sister would use it. But there is one room that I generally sit in. It is not my office.

Q. There is no office assigned to you?

A. No office assigned to me, no.

Q. There is no office assigned to your brother?

A. No.

Q. Aren't there two private offices there that are reserved primarily for the use of you and your brother?

A. No. Well, I say, we are there so seldom, in the office it would be a waste.

Q. And you—

A. I want to modify that; I go there every week, two or three times a week, but I don't spend long periods in the office. Is that what you want?

A. That is what I was trying to ascertain. Mr. Phipps, I have just been handed what we will assume is a correct copy of the release executed by Mrs. Abel, on the payment of the $5,000. and we will treat that as if it was the original, because I am sure that it is accurate.

A. May I read it?

Q. Yes, certainly.

A. Do you want me to read it all?

Q. Just as much as you like of it.

A. That is all right with me; that is all right as far as I am concerned.

Q. Do you know whether you have reimbursed the Palm Beach Company for this payment or not?

A. I never saw that before.

Q. You stated, I believe, that you approved the payment to Mrs. Abel before it was made.

A. Yes, but I never saw that release.

Q. Did you reimburse the Palm Beach Company for any portion of that, or the Bessemer Properties, whichever corporation made the disbursement, for any portion of that $5,000.00 outlay?

A. I don't know.

Q. If it was done it was a routine matter there in your accounting department, is that right?

A. Well, I approved of the gift; perhaps you will find that I have okayed it and they paid it, but I never saw the bill for it; I approved the gift to Mrs. Abel, yes.

Q. The point I am trying to get at is: do you know whether or not one of these periodical periods of reimbursement came around and you reimbursed the disbursing authority for this expenditure, do you know?

A. I don't know.

Q. You may or you may not have?

A. I won't say; I don't know.

Q. Then if you have not done it, Mr. Phipps, you will do it in the future, of course, I take it?

A. I think so. I haven't seen any checks to—

Q. Now, Mr. Phipps, with reference to these payments to John Thomas, referring now to that portion of them which you say you approved, that is, the hospital and doctors' bills. You have not yet reimbursed the disbursing authority for those either, I take it?

A. Do you know? I don't know.

Q. I don't.

A. I don't.

Q. Now you spoke of the amount paid to Mrs. Abel as a gift. Would you mind telling us into what category you place the payments to John Thomas?

A. Well, I haven't placed John Thomas at all, except I didn't feel that I was under any legal liability to pay it, but I felt sorry for the man, just the same as another. For Mrs. Abel I was very sorry for her and it was a gift, and I didn't know I had received that release.

Q. What about the payments to John Thomas; did you treat them as a gift?

A. Well, I never had thought of it; I would say that the hospital part was a gift certainly; it was the reasonable and kindly thing to do. Now, I didn't do that because I thought I was going to be sued or was under any legal liability to pay that. It never was brought to my attention and I never thought I was liable.

Q. As far as you know no legal demand was ever made by John Thomas?

A. Never; not to my knowledge.

Q. John Thomas had never worked for you, had he?

A. No, I had never seen him.

Q. You didn't know him?

A. No.

Q. Can you give us any reason then why you would authorize the making of these payments, running into this considerable amount, to a man towards whom you now disclaim any responsibility?

A. Well, I thought he had awful bad luck. He really wasn't on my business when he was hurt. You know more about "agency" than I do. He wasn't on there to carry out any orders. I don't know what Thomas is; is he a carpenter or sail maker or something in Palm Beach? I just don't know. In other words, he went down there and was hurt. There were two people hurt; one was John Thomas and one was Abel, and I felt a moral obligation to help them. That is as much as I can tell you.

Q. You felt a moral obligation because the fire originated on your boat?

A. I did not. I don't believe it, and that is another point or question. I have heard so many theories about the origin of that fire and I don't think it is clear at all that it came from my boat.

Q. Without any feeling of responsibility you made these payments to John Thomas?

A. That is correct.

Q. You said, however, that you felt a moral responsibility.

A. I felt a charitable responsibility. How would you say it? I felt sorry for Mrs. Abel.

Q. I would rather not answer that question.

A. She was a school teacher; she lost her husband; her husband was a nice fellow; he was a friend of mine and I had been fishing with him.

Q. That is with reference to Mr. Abel?

A. All right.

Q. Now I am talking about John Thomas. Did you owe any legal responsibility to him; did you feel any legal responsibility to him?

A. Absolutely none.

Q. You felt no legal responsibility but you made these payments, as I understand it, as a sort of moral responsibility?

A. Not moral; I really made these as a charitable responsibility. The man was down there in the hospital and he was badly hurt. I didn't know that that amounted to so much, but I approved of the hospital bills and the medicines; I didn't know what they did amount to, but it wasn't very much, was it?

Q. About $3500.00.

A. Hospital bills?

Q. Hospital and doctors' bills.

A. I didn't appreciate that at all. I never saw Mr. Thomas, but I will sometime; I would like to talk to him about it.

Mr. Botts:

That is all.

(By Mr. Matteson):

Q. I want to ask you just a few questions: did you personally pay any of this $5,000.00 that was given to Mrs. Abel?

A. Not that I know of; that might have been paid, but I didn't know about it.

Q. You personally didn't have anything to do with that?

A. No, but I approved that payment because I was asked.

Q. Did you approve the charging of it to the Seminole Boat Company?

A. I don't think that I did—Oh—I think that is where it belongs.

Q. In this release that was made I notice—

A. If the boat belonged to the Seminole Boat Company I don't think I would have to pay the whole thing; I think my sister and the other stockholder would have to pay a share of it anyway.

Q. I see. You personally, as well as your sister, are named as parties released in this release, isn't that the fact?

A. I never saw it before.

Q. You see your names there, don't you?

A. I read it just now and I think it is all right, but I think that is the first time I have seen it.

Q. It does release you personally, among others?

A. I don't know.

Mr. Underwood:

I object to that unless the document goes in; it speaks for itself. If Mr. Matteson wants to question about that document, the document should first go in.

Mr. Matteson:

All right; I will put it in.

Mr. Underwood:

Can we agree on the persons who are named as being released?

Mr. Matteson:

I think we can, but perhaps the shortest thing is just to mark this as an exhibit.

The Court:
Let it be admitted.

(Thereupon the release above referred to was marked Libelants' Exhibit 114.)

(By Mr. Matteson):
One more question, Mr. Phipps, please: you spoke of the management of the Iolanthe being with the captain.
A. Yes.
Q. Who was the Captain?

Mr. Underwood:
At what time?

A. I had a number of captains.
Q. What captains were you referring to when you answered?
A. Any captain.
Q. Who have those captains been?
A. I would not like to say without refreshing my memory. I really don't know whether Abel was a captain or whether Bryant was a captain. I think I had a number of captains at different times.

Mr. Matteson:
That is all.

Mr. Botts:
That is all.

Re-Direct Examination.

By Mr. Underwood:
Q. Mr. Phipps, there is just one subject about which I want to ask you a question or two, and that is the

registering of the Seminole with the New York Yacht Club in your name. When did you first find out that the Seminole was registered in the New York Yacht Club in your name?

A. Last night.

Q. Did you have anything to do with its being registered in your name at any time?

A. I don't remember.

Mr. Underwood:

That is all.

Re-Cross Examination.

By Mr. Botts:

Q. Wait a minute. In these interrogatories to which you swore, Mr. Phipps, did you say that you didn't know that was the fact?

A. Show me, please. Did I say I was a member of the New York Yacht Club?

Mr. Underwood:

This interrogatory doesn't say "New York Yacht Club".

Mr. Botts:

Doesn't it?

Mr. Underwood:

It does not.

Mr. Matteson:

Here it is.

The Witness:

"The Seminole was registered at only one club until 1921; it was registered in the name of Henry C. Phipps;

from 1922 to 1932 it was registered in the name of John S. Phipps; since 1932 it has not been registered at any club".

By Mr. Botts):

Q. What club were you referring to there?

A. I must have been referring to the New York Yacht Club, because that is the only club—oh, I have been members of other yacht clubs. I was a member in the—I have been a member of several yacht clubs.

Q. When you signed these answers to interrogatories you knew what yacht club you were talking about, didn't you?

A. I don't know what I had in mind; I don't know how I happened to do that. I don't know why I said it was registered there. If you want me to be frank, I didn't know it was registered in the New York Club.

Q. Do I understand, Mr. Phipps, that these answers were prepared by someone else and submitted to you and that you casually read them over and signed them; is that the way it came about?

A. No.

Q. You either knew or you didn't know, Mr. Phipps; now, Mr. Phipps, did you know when you signed those what yacht club you were referring to?

Mr. Underwood:

If your Honor please, I think this cross examination is unintentionally somewhat unfair, because of the Court's ruling when these interrogatories came up; the Court ruled that Mr. Phipps was required to give certain information which wasn't at the time within his knowledge. I think perhaps your Honor will recall that we took exceptions to a number of these interrogatories (I don't remember now which ones). Our exceptions were overruled and Mr. Phipps was required to make answer, and persons on his behalf investigated the facts and—

Mr. Botts:

Do you mean to suggest that Mr. Phipps didn't know what yacht clubs he belonged to?

Mr. Underwood:

I think this line of cross examination is unfair.

The Witness:

I belonged to several yacht clubs; perhaps I can refresh my memory. I don't belong to any yacht clubs now that I know of.

Mr. Botts:

I do not see anything unfair about asking a man to tell the source of his information that he has sworn to.

The Court:

I think that he can answer the question. Read the question.

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. If I was referring to—I must have been referring to the New York Yacht Club because that is the only club that I should think—it is the fact that I was referring to the New York Yacht Club; I had forgotten that that was in there, and the last time I saw this I was surprised to find the "New York Yacht Club" in there; it just escaped my memory. When I read that I knew the Seminole was registered in a yacht club at one time, because the Seminole flew the New York Yacht Club flag.

Q. Then you have been aboard the Seminole when she has flown the New York Yacht Club flag?

A. Yes.

Q. And you knew at that time that you were a member of the New York Yacht Club?

A. I don't know what time that was; I haven't been a member for a good many years, and Mr. H. C. Phipps has not been a member for a good many years.

Q. Well, I guess you were mistaken when you said that you didn't know until last night.

A. I will admit that it surprised me; it just escaped my memory. I was not trying to deceive you in any way, but when I was told that it was registered in the New York Yacht Club I was surprised in my own mind.

Q. As to matters of that kind, happening sometime ago, your memory is not entirely trustworthy sometimes, is that right?

A. I would not like to say that, but I am afraid that it might be sometimes with all of us. I sometimes make mistakes, I am sure.

Q. And—

A. Just go ahead and ask me.

Mr. Botts:

I think that is all, Mr. Phipps.

Mr. Matteson:

Nothing further.

Mr. Underwood:

That is all.

(Witness excused.)

2438 WILLIAM P. BAKER was called as a witness in behalf of the Respondent Phipps, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Underwood:

Q. What is your full name?

A. William P. Baker.

Q. Where do you live?

A. 428 S. W. 23rd Road, Miami.

Q. What is your business?

A. Boatman.

Q. How long have you been following the sea?

A. Thirty-five or thirty-eight years.

Q. You say your business now is boatman?

A. Yes.

Q. What kind of boatman are you now?

A. I am in the charter boat business.

Q. How long have you been in that business with your present boat?

A. Since 1930, about nine years.

Q. What type of boat is your present boat?

A. It is a house-boat.

Q. What are her dimensions?

A. 65 by 20, I think.

Q. Is that your year-around employment now or are you employed otherwise at sometime in the year?

A. I go on another boat in the north in the summer.

Q. By whom are you employed in the summer?

A. By Judge Brower in New York.

Q. How long have you been employed by him?

A. Ten years.

Q. When did you first have anything to do with the Seminole as a part of her crew in any way?

A. In 1928, I guess, or 1927.

Q. I take it that the year is a little indefinite in your mind?

A. 1927 or 1928 is when I first went on the Seminole.

Q. What was your employment on her at the beginning?

A. Captain.

Q. Were you employed on her at times subsequent to that?

A. Yes.

Q. Were you employed on her for any continuous length of time?

A. One year at one time, and two years at another time.

The Court:

You will have to speak louder.

The Witness:

About two years one time.

Q. And following that, how often?

A. Just over short periods.

Q. From time to time?

A. From time to time, yes.

Q. You were captain of her on her final trip in the spring of 1935?

A. Yes, sir.

Q. Are you familiar with the layout in a general way of the gasoline tanks in the Seminole?

A. Yes, in a fair way, I guess.

Q. Did you ever serve as engineer on her?

A. No, sir.

Q. Can you tell me what there is beneath the tanks of the Seminole?

A. Well, there was a drain pan under there, an iron drain pan that had a wooden base under it for those tanks to set in.

Q. How many such pans were there?

A. Two; two tanks to each set of pans; four tanks in all.

Q. Do you know whether or not there was any way for any liquid that might collect in these pans to get out?

A. Yes, they had drains.

Q. How did they drain?

A. The one on the starboard side I know had a three-eighths inch galvanized pipe running out of there and running overboard.

Q. How do you know that?

A. We traced it one time. The one that came out of the port side, I never saw that one; I never had occasion to go in there.

Q. How did the two pipes that you speak of compare in size?

A. Both the same, I think; both three-eighths inch galvanized pipes.

Q. You traced the starboard one but never the port one?

A. Never the port one.

Q. Were you in the engineroom of the Seminole on that final spring trip of 1935?

A. Yes, sir.

Q. What did you do down there in the way of inspection, if anything?

A. Several times I was in the engineroom; on the last trip that we are talking about? You see I was on her that last trip about ten or twelve days, I guess.

Q. Do you remember being on her before that year?

A. Yes, I went up to Lauderdale and brought her out of Lauderdale.

Q. Where to?

A. Miami.

Q. On that occasion were you in the engineroom?

A. Yes, sir.

Q. On these two occasions what did you do in the way of making any inspection of the Seminole?

A. I naturally would go in the engineroom and with the engineer we would inspect the pipes and lines and wires and so forth.

Q. What did your inspection of the gasoline equipment disclose?

A. It never disclosed anything that I thought in my mind was any way out of reason; there was never any leaks that we could ever find.

Q. Did you observe any leaks anywhere in that gasoline system?

A. One time we overhauled a pipe that was leaking when we were filling gas.

Q. When was that?

A. 1935; on that last trip.

Q. Where was the boat?

A. At the Royal Palm Dock.

Q. That is the only leak you know about?

A. Yes.

Q. What type of switches was there on the Seminole?

A. Open knife switches.

Q. From your experience will you tell me whether or not it is customary for boats of that class to have that type of switch in the engineroom?

A. On all boats that I have been on it is customary, and always on all small boats.

Q. The evidence shows, Captain Baker, that there was a drain line for gasoline in the engineroom of the Seminole, with two valves on the end; do you remember that?

A. Yes.

Q. From your experience with boats of that class, will you tell me whether or not that is customary.

Mr. Matteson:

It seems that I will have to object to that. I do not think any amount of custom can justify an unsafe practice. I object to the question as to whether it is customary or not.

The Court:

Well, I think he can give his experience. I will overrule the objection.

A. Yes, that is customary on all boats I have ever been on; I never have been on a boat where you couldn't get gas out of the tanks in the engineroom.

Q. Is there any reason why on the Seminole that it is important to have a source of gasoline supply apart from the thought of supplying fishing boats?

A. Getting gas for priming your engines and supplying the fish boats; that is all I know that gas is taken for.

Q. Assume that your motors stall and stopped and you were near a lee shore, would there be any need to have a supply of gasoline readily available in the engineroom?

A. Yes; those engines need priming at all times.

Q. What would be the reason for that; I mean the reason for the needing of the supply of gasoline.

A. To prime the engines with.

Q. What ventilation or ventilators did the engineroom of the Seminole have?

A. She had two fourteen inch cowl ventilators through the boat deck to the engineroom, and it had eight two inch pipes with goose necks coming out of the bilge, and up alongside of the engineroom.

Q. Where did they come out of the deck?

A. Right at the engineroom deck there; it was raised about six inches above the main deck.

Q. What windows did she have?

A. She had one window in the port side that went right outside, and one on the starboard side that went into an alleyway.

Q. From your experience, Captain, did you ever observe any lack of proper ventilation there?

A. No, sir.

Q. Have you had occasion to go to the Seminole at Pilkington's and take her out of storage?

A. Several times.

Q. On those occasions do you remember when you went into the engineroom?

A. I always went in the engineroom.

Q. What have you observed on those occasions about the ventilation in the engineroom?

A. In storing a boat we always leave these windows open, and when there was cowl ventilators it always seemed that there was ample ventilation there at all times.

Q. In your employment on the Seminole who was it that had the dealings with you that resulted in your engagement?

A. Mr. Hawkins mainly.

Q. Did you ever receive any instructions or were you ever employed by Mr. Phipps?

Q. Do you remember Mr. Scott?

A. Very well.

Q. Did he ever participate in that?

A. Yes, sir.

Q. Anybody else?

A. Not as to my employment, no, sir.

Q. Coming down to the cruise of 1935, who was it that made the arrangements with you?

A. Mr. Hawkins.

Q. What was done about the crew?

A. I was down on the Keys on my small boat, and a part of the crew that was on the Seminole was on her

when I brought her down from Ft. Lauderdale; the engineer was still on; I don't know whether Bryant was there or not, but Bryant was on the trip, and I took the balance of the crew off of my boat.

Q. You provided some of the crew?

A. Yes. I provided five of the crew myself off of my boat.

Q. I take it that you do not know who made the arrangements for the others?

A. No.

Q. Do you remember what members of the Phipps family were on this cruise?

A. Mr. and Mrs. John S. Phipps and Mrs. Amy Guest, and the younger Guest, the boy; what is his name—the son—Winston, I think.

Q. During that cruise did you receive any instructions from Mr. J. S. Phipps of any character?

A. Nothing more than any charter would; we operated where they wanted to go, and that's all; just regular charter instructions.

Q. Did he give you any instructions as to the condition of the boat?

A. No, sir.

Q. Did he give you any instructions to any part of the engineroom?

A. No, sir.

Q. Where did the party leave the boat?

A. Lower Matecumbe.

Q. Did anybody give you any instructions at that time as to what to do with the boat?

A. No, sir.

Q. Do you remember anybody who was on that cruise who wasn't a member of the Phipps family?

A. There were several; Mr. Hawkins was on there at one time and Mr. Layman was on there.

Q. Did you get any instructions from either of them as to what to do with the boat?

A. Only from Mr. Hawkins to bring her back to Miami.

Q. Did he tell you anything else at that time?

A. Not that I remember.

Q. Did you later get any further instructions as to what to do with her?

A. Yes.

Q. And from whom did they come?

A. From Mr. Hawkins.

Q. What were they?

A. To take the boat to Ft. Lauderdale and lay her up.

Q. Did you get any instructions from Mr. John S. Phipps about laying the boat up in any respect at that time?

A. No, sir.

Q. Did anything occur on your way to Lauderdale with reference to the gasoline supply?

A. Well, we knew we were short of gas when we left Miami, but we thought we could make the storage shed, and when we stopped at noontime to get lunch for the four of us on the boat, we didn't stop altogether. I told the engineer to stop and he said she was pretty low in gas, and I insisted on stopping, and I told him I could stop at Ft. Lauderdale and put in gas if necessary, and he said that he thought he had enough to make the shed.

Q. Did you experience anything else on that occasion on the way up to Pilkington's basin?

A. One of the motors started quitting, started cutting up, and the engineer called me and told me that I had better handle her as fast as possible. I was handling her on one engine anyway, because one of them he thought was out of gas.

Q. What did you do about it?

A. Just operated one engine; that's all. I didn't use the other engine. I didn't "ring" the other engine at all. I don't know whether it stopped or whether it was running when we cut it off; I just don't know.

Q. About what time of the day did you arrive at Pilkington's basin?

A. Around 1:30 I would say.

Q. What did you do in the course of getting the boat ready to leave there during the balance of the time you were there?

A. We shut off the valves; shut off all water valves, shut the valves all the way off; I did that. I looked in the engineroom, forward and aft and the rest of the crew was all busy doing pretty much everything that "belonged" to be done.

Q. What part of the bilges in the Seminole did you go into that day?

A. I was all through her from stem to stern.

Q. What was the condition of those bilges?

A. Her bilges was always clean; the Seminole was a steel hull boat; she was very easy to keep clean, and she was kept clean at all times.

Q. Did you find any liquid of any sort in those bilges?

A. No.

Q. Did you smell any gasoline any place in that boat?

A. No, sir.

Q. Were you in the engineroom that afternoon?

A. Yes.

Q. What did you observe in the engineroom?

A. In laying up a boat I always take it as my responsibility for the final word, and I would always go and look over everything that I could see, and especially the gas lines and switches and so forth, and so on, as I always do when she is laid up.

Q. What did you observe about the gasoline lines?

A. All of the gasoline lines were closed when I was there, and I personally tightened every one; I put my hands in every one and tightened every valve that was in the line.

Q. The record shows that there were four tanks, each of which had a valve.

A. Yes.

Q. Did you examine those valves?

A. Yes.

Q. How did you leave them?

A. All shut tight.

Q. The record shows that there were two valves by which gasoline could be drawn off. Did you examine those valves?

A. Yes.

Q. How did you leave them?

A. Closed.

Q. The record also shows that there were two valves, one in each motor line, designated traps; did you look at those?

A. No, sir.

Q. Who was the last person out of the engineroom that day?

A. I was.

Q. Did you observe the switches on the switch board at that time?

A. The lights were left on in the engineroom. We left the lights on so that I could see, and then I went over and pulled off the switches, the main switch; that was the last thing I did when I came out of the engineroom.

Q. Did you observe the glass gasoline gauge in the engineroom at that time?

A. Yes, two or three times that afternoon I looked at it.

Q. What did it show?

A. Nothing.

Mr. Botts:

I can't hear you; what did you say?

The Witness:

Two or three times I looked at it because I was anxious to see how long the gas would last.

By Mr. Underwood:

A. I am speaking of the time when you left the engineroom for the last time that day. Did you look at the gasoline gauge at that time?

A. We always measure the gas when we leave; it is always checked up and put in the log book. When we leave the boat we always check up to see how much was left in the boat at all times.

Q. What did you see as to the gasoline gauge at that time?

A. There was none showing whatsoever.

Q. How was the port window in the engineroom left at that time?

A. The port window was open.

Q. How about the starboard window?

A. That was open.

Q. Do you remember about the skylight?

A. No, sir, I couldn't say about that skylight; I don't remember whether it was open or not; I don't remember whether it was left down or shut at that particular time.

Q. How did you get out of the engineroom on that occasion?

A. I climbed up the ladder, the iron ladder.

Q. Through the hatch?

A. Through the hatch.

Q. Was anything done about that hatch after you got on deck?

A. It was locked.

Q. Who locked it?

A. The engineer locked it and gave me the key.

Q. How many keys did you give you?

A. He gave me one.

Q. What did you do with that key?

A. I put it with the—I had three more and I put them all together and brought them down to Mr. Hawkins at his request in Miami.

Q. When did you give those keys to Mr. Hawkins?

A. The next following morning.

Q. Do you remember whether they were separated or held together?

A. All held together on a piece of string.

Q. Now, Captain Baker, the record shows that there were two windows in the alleyway that ran along the starboard side of the engineroom. Do you recall how those windows were left when you all left the boat that day?

A. The Seminole had, besides the windows and the screens, Venetian shutters, I would take it; there were Venetian shutters, which were left about three-quarters up, I would say, all over the boat.

Q. How were the windows themselves left?

A. They were down, I think, all over the boat.

Q. Now by "down" just what do you mean?

A. That means they were open.

Q. They go down into a recess in the wall?

A. Yes, down into a recess in the wall.

Q. Did you have any conversation with Captain Pilkington that afternoon?

A. Yes, I had a little when I got off the boat.

Q. What was that conversation?

A. I told him that I was leaving the boat there and that those windows was half down, and if it came a rain (it looked like it was going to rain—that afternoon) that I wanted him to make sure that the boat was shut up. He said he couldn't put her under the shed that day, but would in a couple of days—

Q. Where did you leave the boat?

A. Left her at his dock, in front of his house, but not under the shed.

Q. Not under the shed?

A. No, sir.

Q. Did you observe any signs in Captain Pilkington's basin at any time with respect to gasoline?

A. No, sir.

Q. Were you ever advised by Captain Pilkington at all with reference to gasoline in respect of the laying up of the boat?

A. No, sir.

Q. For how many years have you in this vicinity laid boats up for summer storage?

A. Every year.

Q. For how many?

A. I would say twenty years anyway.

Q. What has been the practice as to draining tanks of the vessels being laid up for summer storage of gasoline?

A. I never personally drained the tanks in them.

Q. On the previous occasions that you laid the Seminole up?

A. Yes.

Q. Did you ever drain her tanks?

A. Never.

Q. On your own boat do you ever drain the tanks?

A. No.

Q. Do you know whether people generally drain the tanks or not?

A. There is an insurance clause in there which says you are supposed to drain them, but I know of no boats that entirely drain the tanks when they have generators on them; they leave the gas for operating those generators.

Q. These cowl ventilators that come up through the engineroom; from what place were they trimmed?

A. Trimmed?

Q. Turned.

A. On the boat deck.

Q. Out in the open, you mean?

A. Yes, sir.

Q. What time on that last occasion did you leave the Seminole; what time of the day?

A. About six o'clock.

Q. Did anybody leave with you?

A. There was four of us there; two of us came to Miami and two went to Palm Beach.

Q. I think you said that early in the year 1935—perhaps it was February—that you went up there and brought the Seminole to Miami.

A. Yes.

Q. Did you buy any gasoline to bring the Seminole to Miami?

A. I think the engineer got five gallons of gas going up? I am positive that he did get five gallons to start the motors with.

Q. Do you remember whether there was any gasoline in the tanks when you boarded the Seminole on that occasion?

A. Yes.

Q. Do you remember about how much?

A. Three hundred, I think.

Q. You mean three hundred gallons?

A. Yes.

Q. Was that showing the gauge?

A. Yes, sir.

Q. Can you tell us how that gasoline gauge was constructed; describe for us, first, the glass part itself.

A. It was a regular steam type boiler gauge with an extra heavy glass, with rods on the side.

Q. Where did those rods fit with respect to the glass part of the gauge?

A. In front of the gauge.

Q. What was their purpose?

A. To protect that gauge.

Q. Did they protect it?

A. They were still there the last time I saw it.

Q. What did you do with the log books of the Seminole when you left her in 1935?

A. Put them in the safe.

Q. Where was the safe?

A. In the Master's room—the Captain's room.

Q. Now, Captain Baker, getting back to 1929, I show you a document which has been marked Exhibit "CC"; is that your signature?

A. Yes, sir.

Q. Did you ever make a contract with the Seminole Boat Company?

A. Yes, sir.

Q. Following the making of the contract what did you do in a general way with the Seminole?

A. She was for charter as a charter boat.

Q. What did you do about that?

A. I don't know just what you mean.

Q. Did you make any charters?

A. Yes; I made several charters; I had four or five charters that winter.

Q. Who was it in the general course that made the charters?

A. I did.

Q. Who collected the charter hire?

A. I did.

Q. Did you account to anybody for that?

A. I used to account to the office mostly; mostly to Mr. Simon, who was in charge of the office up there.

Q. How long did that continue, do you remember?

A. It continued through 1930.

Q. Do you remember any charters after that?

A. No, sir; not at that particular time.

Q. Following 1930, do you know anything about chartering the Seminole?

A. I wasn't always on her; in a general way I had my own charter boat, but I would get off of her and go on the Seminole when we got a charter; several times I have been with Mr. Phipps and Mr. Moylan, of the Purity Baking Company in Chicago.

Q. Have you offered the Seminole for charter since 1930?

A. Yes, sir.

Q. During the time that you were on the Seminole what did you do about the upkeep and the maintenance of the boat insofar as authority to do things?

A. I had authority to do things, and I had an account with the Seminole Boat Corporation that I used to draw on and put money back in. As the money would come in I had that account that I could draw on.

Q. During this time who was it that decided on things you needed?

A. I did.

Q. Did you consult anybody about any of those things?

A. Usually I consulted Mr. Scott. If there was any major things I would go to Mr. Scott with them.

Q. Did you ever discuss these things with Mr. Phipps at that time?

A. No, sir.

Q. Now, Captain Baker, you have told us that you have been operating gasoline driven vessels for quite a long time. Do you know anything about any special valve for gasoline lines?

A. No, sir.

Q. Have you any opinion as to which is better, composition or ground seat valves?

A. Well, the composition seat, if it is well looked out for, is absolutely perfect. Ground seat valves (if they get anything under them) will leak, but a composition one is as good as the other, as far as I know; that's all I know.

Q. Do you remember whether the motors of the Seminole had backfire arrestors?

A. Yes.

Q. Did they?

A. Yes.

Q. When you were on her in 1935, did you experience any short circuits or any grounds in the electrical system?

A. No, sir; none was reported to me.

Q. Did you observe any?

A. No, sir.

Q. In 1935, did you see enough of the bilges in the bottom of the Seminole to be acquainted with the condition of the conduits in which the wires laid?

A. Yes.

Q. What was the condition of the wiring conduits?

A. Yes. In 1929 we put in new conduits from the batteries to the rheostat which was all the way across on the switch board.

Q. I am asking you about the condition of the conduits as you observed them in 1935.

A. They had been put in between—someone had worked on them during my absence; somebody put those in and they were in fair condition in 1935.

Q. Did you do anything in your experience on the Seminole about her electric wiring in the staterooms and above the engineroom compartment?

A. In 1929 we took off all the molding and examined all the wires that we could get to in the molding of the staterooms and the deck house and the dining room and so forth; all that we could get at.

Q. Was any part of that renewed?

A. Yes; some of it was renewed but very little.

Q. When the job was finished how did you leave it?

A. It was pretty good, I guess; I didn't have no trouble with it.

Q. From that time on did you have any trouble with it?

A. No, sir.

Q. Who did the work, what persons?

A. I helped and the engineer, Jack Otter, at that time did the majority of it.

Q. You mean the crew of the boat?

A. Yes, sir.

Q. Captain, it appears that the Seminole's gasoline filling line was bigger than the vent pipe?

A. Yes.

Q. Have you had any experience with that situation on other boats?

A. Yes; all tanks are vented on all boats; I don't know of anyone that has the same size filler-pipes as the vents.

Q. Which is usually the smaller?

A. The vents.

Mr. Underwood:

That is all.

Cross Examination.

By Mr. Matteson:

Q. Mr. Baker, you did some chartering of the Seminole in the early part of 1929 and again in the early part of 1930; is that correct?

A. Yes, sir.

Q. To whom did you charter the Seminole in 1929; do you recall?

A. We did to Mrs.—

Q. Was that Ann Murdock?

A. Yes.

Q. How long did she have it?

A. About two and one half months.

Q. That was the only charter that you made in 1929, was it?

A. Yes.

Q. All right; how about 1930?

A. Yes.

Q. To whom did you charter her in 1930?

A. In 1930 to Mr. Moylan and I chartered it to Mr. Alstaire McIntosh.

Q. Those are the only two?

A. No; there is another one; there is one more.

The Reporter:

What did you say?

The Witness:

There is one more. You will have to excuse me, because in my business I have to talk very low.

By Mr. Matteson:

Q. Is that all?

A. There is one more, but I can't remember who it was just now. In 1929, at the stock crash, the boat was too big for charter business.

Q. So you had two charters that you can't remember in 1930?

A. Yes.

Q. And one in 1929?

A. Yes, sir.

Q. According to the ledger account here the last item on account of charter hire of the Seminole was April 1, 1930; is that about the time that you remember?

A. Yes.

Q. When was the Seminole put in storage in 1930, do you recall?

A. Sometime in April, I think, or the first of May.

Q. That was about June, wasn't it?

A. I think it was sometime in May.

Q. Then she was in storage until late November that year, wasn't she?

A. I can't recall all of these dates; I took the Seminole in and out so many times, on so many different occasions that I can't recall the dates. I went up and got her many times; whenever she was ordered out I would go up and get her.

Q. I was trying to figure out about how many times it was.

A. I am just trying myself; I know there was at least four times that I went up there and got her and brought her out.

Q. Four times?

A. Yes.

Q. And each of those four times she was out for a short period?

A. Yes; in 1929 when she came out she was out for quite a while when she went north.

Q. You didn't go with her when she went north, did you?

A. No, sir.

Q. I am talking about the period from 1930 on. You say you went and got her about four times.

A. Yes.

Q. And each of those were for short periods lasting approximately two or three weeks, is that your recollection?

A. Two or three weeks at a time.

Q. And those periods were the only times from 1930 on that you had anything to do with the Seminole?

A. That is all, sir.

Q. You never visited her at Ft. Lauderdale except when you went to get her, did you?

A. Yes, several times. I was up there.

Q. Do you remember any special time that you were ever up there—I am talking about the times other than those that you went to get her?

A. Yes; one time I went up and took the batteries off of her; took the batteries out and brought them to Miami; that was sometime around 1932, I guess, or 1933; I went up there and got the batteries and brought them to Miami.

Q. Were new batteries put on at that time?

A. No; they were just working on them; later on in the summer I took them back, together with an electrician, and put them back in there.

Q. Why were they brought to Miami at that time?

A. They just had to be repaired; that is all; they were brought her just before repairs.

Q. Is that the only time that you brought the batteries to Miami?

A. Yes.

Q. Your occupation is Boat Captain; isn't it?

A. Yes.

Q. You are a boat captain rather than boat engineer?

A. Yes, sir; I am a boat captain.

Q. Now during the last three times the Seminole was out was Mr. Schlappi the engineer?

A. Three times?

Q. Yes.

A. I guess he was.

Q. What is that answer?

A. I think so.

Q. Was he a good man as engineer?

A. A very good man.

Q. Did you rely on him for conditions in the engine-room?

A. Yes, sir.

Q. What is that?

A. Yes, sir.

Q. Was there any need to check up on him?

A. I checked on everybody; when I am Captain of a small boat I always do my own checking.

Q. Do you call the Seminole a small boat?

A. Yes. It is not a big boat.

Q. What is the biggest boat you have been Captain of.

A. Well, I have been Captain of good sized vessels.

Q. How big is the Molly-O?

A. Much smalier than the Seminole.

Q. How long is she?

A. Seventy feet.

Q. Do you call her a small boat?

A. Yes, sir. I am my own engineer on the Molly-O and have been for ten years.

Q. You do not carry a separate engineer on her?

A. No, sir.

Q. When you are asked to take charge of the Seminole on this last trip were you told that you are being employed by Mr. Phipps?

A., I was down on the Keys on my boat and I got a telegram from Mr. Hawkins saying that "Mr. John S. Phipps wants you to be Captain of the Seminole". Now whether that meant that he wanted me to take charge of a charter party or not, I don't know.

Q. You were informed by Mr. Hawkins that Mr. John S. Phipps wanted you to take charge of the Seminole, is that right?

A. Wanted me to act as Captain of the Seminole.

Q. Did you know Mr. Schinigoi, the steward on the Seminole on this last trip?

A. Yes, sir.

Q. He was your steward on the Molly-O, wasn't he?

A. Yes, sir.

Q. Did you tell him that you were being employed by Mr. Phipps to take the Seminole out?

A. No, sir.

Q. Do you remember that?

A. No, sir, I said I was going with Mr. Phipps.

Q. You would not deny that you told Mr. Schinigoi that Mr. that Mr. Phipps had hired you, would you?

A. No more than I would say on my own boat; any man that takes my boat—

Q. Did you know that Mr. Schinigoi has testified that you told him that Phipps had told you—

A. No.

Q. You didn't know that?

A. No.

Q. Will you answer yes or no, so we can get it in the record?

A. No.

Q. You discussed your testimony with your lawyers in the case before coming to Court, did you?

A. Yes, sir.

Q. Did they tell you that Mr. Schinigoi's deposition had been taken in New York?

A. Yes, sir.

Q. Did they tell you that Mr. Schinigoi had testified that you told him that Mr. Phipps hired you?

A. No, sir.

Q. They didn't tell you that at all?

A. No.

Q. Are you sure of that?

A. Yes.

Q. How much water did the Seminole draw?

A. Approximately four feet.

Q. Was that both forward and aft?

A. Yes.

Q. And amidships?

A. Yes.

Q. You spoke of the necessity of getting gas for priming the engines. Is it necessary to prime the engines only when they are cold, is that true?

A. No, I never started the Seminole's engines, but I think they needed gas at all times.

Q. You needed it to prime the engines when you started them cold?

A. Yes.

Q. You do not say that it is necessary to prime them when they are warmed up, do you?

A. I couldn't tell you that, I think they did; I think they had to put gas in them every time.

Q. Did you ever have to do that?

A. I never have started the engines.

Q. You never started the engines of the Seminole?

A. No.

Q. Did you ever see a boat with a gasoline tank on deck from which gasoline could be drawn if necessary?

A. Yes, sir.

Q. That is frequently done, is it not?

A. Yes, sir.

Q. If you have a tank on deck from which you can draw gasoline when you need it, then there is no need of having a draw-off line in the engineroom also, is there?

A. If it was equipped that way; if it was equipped that way, it would require an extra gas tank; that is all.

Q. And that tank, under that arrangement, would be out on deck?

A. Yes.

Q. And if it were out on deck there would be no danger of any leakage from the tank or the valves getting into the engineroom, would there?

A. If it wasn't near the engineroom it couldn't near the engineroom it couldn't get in.

Q. I want to ask you about the way the windows on the Seminole was left when you left the boat at Ft. Lauderdale in April, 1935. Did I understand you to say that the windows were all left open?

A. Yes; the glass windows were all open on my instructions. Mr. Schinigoi did that.

Q. Were they fully down?

A. I wouldn't say that they were all right down at the bottom, but I would say that they were at least three-quarters of the way down.

Q. And that is all of them around on the main deck?

A. Yes.

Q. Did these windows have wooden shutters that went outside of them or inside of them?

A. They had Venetian blinds inside of them; but they were not solid.

Q. Were these Venetian blinds laid in a solid frame?

A. Yes.

Q. With the slats laid in at an angle?

A. Yes.

Q. And they fitted into each window, did they?

A. Yes.

Q. And you say you could raise them up and lower them down the same as you could the windows, is that right?

A. Yes.

Q. How are these windows, or Venetian blinds, or whatever you call them, left when you left the Seminole?

A. Left pretty near shut; I would say about three quarters of the way; three-quarters of the way shut.

Q. Before you left the Seminole, did you go all around the main deck to see how these windows had been left by Schinigoi?

A. To each individual window; I went through the boat entirely, before I left I went entirely through the boat.

Q. Who left the boat first, you or Schinigoi.

A. I think we got off about the same time, maybe half a minute apart.

Q. You went off together?

A. Yes. I came out of the engineroom and I went all over the boat. I went to all of the windows, just like you have here; the windows were all down; which means that they were open, and the Venetian blinds, as I call them, were about three-quarters up; three-quarters closed.

Q. When you left the boat at which end did you leave it?

A. I got off right about the middle, right about the center.

Q. Did you see Captain Pilkington there?

A. Yes.

Q. Did you have the keys at that time?

A. Yes, sir.

Q. Was the boat locked up?

A. Yes, she was locked up.

Q. The after door on the main deck was locked?

A. Yes.

Q. And the engineroom hatch was locked?

A. Yes, sir.

Q. And were the quarters on the upper deck locked?

A. Yes, sir.

Q. Did you give the keys to Captain Pilkington then?

A. No, sir.

Q. You took them with you when you went away?

A. Yes.

Q. Do I understand you to say that when you went away you told Captain Pilkington to close the windows if it rained?

A. That is right. He had an ordinary pass key himself. He could take that pass key and get in the boat. He couldn't get in the dining room or the deck house, but he could get in that "hall" with the ordinary pass key.

Q. You assumed that he had some kind of a pass key that would let him in?

A. Yes, he had them ever since the Seminole had been up there; he could go in that stern deck; he could always get in there. It was just an ordinary pass key that you could buy two for a nickel, and it was customary—

Q. It was customary for you to leave the keys with Captain Pilkington, too?

A. That is right.

Q. So on this occasion you told him to go into the boat, which was locked, and close the windows in the event it rained?

A. All of those windows were pulled back. I took the keys to the deck house and dining room and the engineroom with me. He could get in the engineroom in the hull of the boat through this window near the alleyway; he could always get in the engineroom.

Q. Why did you take the keys away with you?

A. Because I left some silverware there and Mr. Hawkins wanted me to—Mr. Hawkins wanted to take the silverware off, so I brought the keys to the dining room and turned them over to him. He got it a couple of days later, and that's the reason I turned the keys over to him when I came to Miami.

Q. You always left the keys before?

A. Yes.

Q. Didn't you trust Captain Pilkington?

A. Yes, but I had orders from Mr. Hawkins to bring the keys to Miami.

Q. These pans that were under the gasoline tanks; you could see those from underneath, could you?

A. You could see them; yes, you could see them underneath.

By Mr. Matteson:

Q. And what material do you say they were constructed of?

A. It was iron on the underneath pans, and then there was a wooden front end to the tank, it was set in, which you could see very plainly through those holes cut in the bulkhead for the gasoline lines to come out of. It was very plainly seen.

Q. How deep were those pans?

A. The pan itself,—I didn't know until the boat burned, just how deep the pan was, because you couldn't see.

Q. How deep were they?

A. I wouldn't venture to say.

Q. Well, give us some idea; was it six inches or more or less?

A. Probably four inches.

Q. Probably four inches?

A. Yes, sir.

Q. And were the edges of the metal plates turned up to make the sides?

A. Yes, sir.

Q. Were the pans flat?

A. Flat on the bottom, yes, sir.

Q. And were they level?

A. Yes, sir, when the boat was level.

Q. And this wood that you say that was inside of the pans for the tanks to sit on, just describe to us; how much of it was there? Was there a platform, or just a couple of beams, or how was it?

A. It was pretty solid.

Q. What is that?

A. It was solid, and chiseled out for the edges of the tanks to sit in. It was a frame to hold the tank. I would say it was about two inches and a half deep.

Q. And it filled the bottom of the tank?

A. Yes, sir.

Q. Came right out to the edges?

A. Yes, sir, very close.

Q. So that you had a tank that was about four inches deep—I mean a pan that was about four inches deep?

A. Yes, sir.

Q. And it was practically completely filled with a wooden platform, is that it?

A. Practically filled, yes, sir.

Q. And the tank rested on the wooden platform?

A. That is right.

Q. Well, where was this drain line that you saw?

A. Went out of the forward starboard side; went down in the bilge, and then overboard,—in the engineroom, and overboard.

Q. And it came out of the forward starboard side,—starboard side of the tank, is that right?

A. Yes, sir, that is right.

Q. How wide was this pan fore and aft?

A. Fore and aft, the tank, probably two and a half feet, three feet, probably.

Q. Well, it was practically the same width as the tank?

A. Yes, sir, the pan.

Q. And this drain line, when it came out of the pan, did it go down?

A. Straight down, yes, sir.

Q. How far down?

A. Went down to the beams; went down to the frames of the boat; then came back up again about a foot and a half; went down along the beams and then came up about a foot and then went out.

Q. Did it come under the engineroom floor?

A. No, sir.

Q. Did it go below the level of the engineroom floor?

A. It was on the same level if the engineroom floor had been up to those tanks.

Q. And the engineroom floor was about how far above the bottom of the ship?

A. A foot and a half.

Q. Now where did this pipe lead outboard?

A. Run into—went into the toilet drain; went out the side.

Q. The toilet was on the port side, wasn't it?

A. One on the starboard side too.

Q. Where was the toilet on the starboard side?

A. In the first stateroom you come to there.

Q. First stateroom you come to?

A. Yes, sir.

Q. Aft of the engineroom?

A. Forward of the engineroom.

Q. Forward of the engineroom?

A. Forward of the engineroom, yes, sir, over by the tanks.

Q. I understood you to say this drain line led aft towards the engineroom.

A. It went down, and it was on the—the tanks was forward of the engineroom; this went down and on the side and then back into the first toilet drain that went out.

Q. Now the one that you saw on the port side,—I didn't trace it. We built some racks in there to hold the valves and oil and so forth under these tanks; the storage room under those tanks. And we built these racks for sorting out valves and fittings and everything was kept under those gas tanks, which we could get under at all times.

Q. Did you have quite a quantity of parts of that kind under there?

A. Yes, sir.

Q. So that any time you needed something you could find—probably find something of the kind in these racks under there?

A. Yes, sir; the engineer.

Q. That was the engineer's department rather than yours?

A. It was the engineer's department more than mine, yes, sir.

Q. Now you say this drain went into the drain of the toilet?

A. Yes, sir; went overboard.

Q. How was it connected there?

A. It was a fitting, just an ordinary fitting went into this toilet fitting.

Q. And what part of the toilet fitting?

A. Just before it got overboard; the steel hull, she had big iron fitting there, just before it went into the overboard, there was a drain went out of that tank, a three eighths.

Q. Connected into that—

A. Fitting, yes.

Q. Into that drain?

A. Yes.

Q. Well, there was water passing through that drain frequently, wasn't there?

A. Yes; it went overboard just the same.

Q. And then if there was water passing through that drain, it would pass back up through this drain line as well, would it not?

A. The tank is about a foot and a half higher than—two feet higher than that drain.

Q. You had a length of pipe coming back and down, and again up; now if this is connected to a pipe, at one end through which water passed, the water comes back through that pipe until it finds its own level again?

A. Finds it own level, that is right; if there is anything above that level it will run out.

Q. Then this drain line that you speak of must have been partially filled with water at all times, is that right?

A. Part of the time I would say it was filled with water. I didn't go into it very thorough, because I wasn't much interested; the only thing, I saw it in there, that is all.

Q. You just saw there was a line there?

A. Yes, sir.

Q. You don't regard that as a very efficient drain, do you?

A. No, I didn't at the time regard it as a very efficient line; but it was there just the same.

Q. And the one on the port side, I understood you never did find that?

A. I didn't trace it; I had no occasion to trace it.

Q. Where were you when you were approaching Fort Lauderdale when this one engine quit?

A. When the one engine commenced to cause trouble we was almost at the sheds.

Q. How far away?

A. I would say we had made the last turn there, about, not over a thousand feet away.

Q. And so you made the last thousand feet with one engine only?

A. I don't know whether the other engine was running or not; I don't know. I just depended on the port engine to bring her up there with, to stop.

Q. When you stopped for lunch that day, I understand the engineer told you that you were pretty near out of gas?

A. Yes, sir.

Q. And he didn't know whether you would have enough gas to get up there?

A. Yes, sir.

Q. Then in spite of that you told him to keep on running the engines while you had lunch; is that right?

A. Yes, sir; I told him to; yes, sir; but he didn't; he shut them off.

Q. He shut them off?

A. He shut them off; yes, sir.

Q. Oh, I see.

A. We went in that canal, I am pretty certain he shut the motors of; he insisted that we didn't have gas enough.

Q. I see; he insisted on having his way, and shut the engines off?

A. Yes, sir.

Q. Is that right?

A. That's right.

Q. Well I don't quite understand your idea in telling him to keep them running.

A. We were going to be there just such a short time, probably ten minutes, why shut off the big motors and start them all over again?

Q. And you thought if you did, you might have to buy some more gas on the way up, didn't you?

A. Have to buy gas?

Q. Yes.

A. I didn't know ten minutes would make much difference one way or the other.

Q. If you had to buy more gas, that would give you that much more in your tanks when you got there; is that right?

A. Be more in the tanks; yes, sir.

Q. And you were trying to figure on getting there with as little gas as possible, as I understand it?

A. Yes, sir; I wanted to get there with just as little gas as I could get there.

Q. I understand that before you left Miami there was some gas transferred from the Seminole to your boat; is that right?

A. I don't remember.

Q. What is that?

A. I don't remember that; I couldn't remember those small details in a case of that kind.

Q. Well I understood from Mr. Schlappi when he testified, that you said that you wanted to have as much gas as when you started out, or words to that effect?

A. Yes, I did; that is so, I guess I did; I don't see no reason why not.

Q. And that then a quantity of gas was transferred from the Seminole to your boat?

A. That small boat.

Q. Is that right?

A. Yes, sir; if he says so.

Q. You don't remember about that?

A. No, sir, nothing at all.

Q. Haven't any recollection of such conversation?

A. No, sir.

Q. Haven't any recollection of getting gas off the Seminole?

A. Not there, no.

Q. Haven't any recollection of how it was done?

A. Not a bit. I didn't do it; that's all.

Q. You were Master of the Seminole at that time, were you not?

A. Yes, sir.

Q. And you considered yourself responsible for her?

A. Yes, sir.

Q. And all her supplies?

A. Yes, sir. If I told him I wanted that gas, I was on the Seminole quite a number of times, you know, and just this one particular time I couldn't say; I couldn't pick out one time and say anything of that kind; I couldn't say that.

Q. Did you say anything to Mr. Hawkins about getting gas for your boat off the Seminole?

A. No; that was my business. If I felt like taking gas for my own boat, why I was entitled to that.

Q. You felt you were entitled to it?

A. Yes, sir. If I put it on there, I was entitled to that.

Q. You spoke of shutting a number of water valves on the Seminole when you laid her up. Tell me just what water valves you had in mind.

A. For all the toilets, and all, going through the hull.

Q. And where are those toilets?

A. Well, it was all over the forward and after end of the boat.

Q. There were bathrooms connected with most of the staterooms?

A. Yes, sir.

Q. And did you go in those bathrooms and close the valves there?

A. No, they was on the bottom. I closed the valves—the main valves going overboard. Underneath, you could walk through the Seminole, underneath, right down under her hull.

Q. And where were those valves located?

A. They was all located under the bathrooms.

Q. Located under the bathrooms?

A. Yes, sir.

Q. Bathrooms were at the sides of the boat, were they not?

A. Yes, sir.

Q. And this walkway was in the middle of the boat?

A. Yes, sir.

Q. And the walkway was between the water tanks, wasn't it?

A. Yes, sir.

Q. Were the valves in the walkway?

A. No, sir; they was out, the side of the hull, but you could get to every one of them.

Q. How many of them were there in the forward part of the boat?

A. I don't know; I wouldn't know.

Q. Were there any in the after part of the boat?

A. Yes, sir.

Q. Where were they located?

A. Same way.

Q. Now what water valves did you close in the engine room?

A. We closed the main water valves; Rollie did that; the pumps to the engines.

Q. Who was steering the boat coming up from Miami?

A. I guess I did it most of the way.

Q. Well, that was your job, wasn't it?

A. Well in a way; yes, sir.

Q. Well, did you do the steering?

A. Most of the way. There was only four of us on there; I guess I did most of it. I know I did it coming up New River, it was crooked and tough going.

Q. Do you say that on that trip you made several visits to the engine room?

A. Going up the river, no; going up the canal, yes. I was in there three or four times—in the canal I was three or four times in the engine room; going up New River I know I was steering all the time.

Q. What was the purpose of going into the engine room those times?

A. I was consulting with the engineer, Schlappi; I was also in the galley; I was all over the boat while we was going up.

Q. No more in the engine room than anywhere else?

A. No, sir.

Q. Well when you went to the engine room, what did you do? Just look in and speak to Schlappi?

A. If Schlappi wanted me for anything; we went in two or three times, I would call him up and go down; we would discuss this, that and the other about laying up the boat, that is all.

Q. Schlappi didn't need you for anything, did he?

A. Not as I know of, but we discussed that; when you have a few men on a boat, why it is all—everybody does what they can to help.

Q. You were going to leave the Seminole that night after you got to Fort Lauderdale, weren't you?

A. Yes, sir.

Q. So it was necessary for you to get all these various things looked after so you could get away from Fort Lauderdale, is that right?

A. We did as much as we could going up; yes, sir.

Q. And you were checking these various departments as you went along?

A. Off and on; yes, sir.

Q. You weren't in the engine room very long at any one time, were you?

A. No, sir.

Q. I understand you to say that when you left the Seminole, the switches on the switchboard had all been pulled?

A. Yes, sir.

Q. However, the batteries were still connected, were they not?

A. That is right, sir.

Q. So that any one man could get current on the switchboard by throwing the main switch and the discharge switch; is that right?

A. That is right.

Q. I understood you to say that you were aware of certain insurance clauses about laying up boats with gasoline, but that nobody pays any attention to them? Is that the substance of what you said?

A. Yes, sir.

Q. What are these insurance clauses that you speak of?

A. Certain places, they demand you draw the gasoline off. That is insurance; that is a requirement of the insurance company.

Q. Well that is the usual requirement of the insurance companies with respect to laying up boats, isn't it?

A. I don't know. On a boat the size of the Seminole, I don't know whether it is or not. I have never had an insurance agent tell me to draw the gas out of the Seminole when she was insured.

Q. Well the Seminole never was insured, was she?

A. Yes, sir, she was.

Q. While you were Captain?

A. While I was Captain, she was insured; the insurance lapsed while I was on there.

Q. Well these insurance requirements are safety requirements, aren't they?

A. To protect the insurance company.

Q. Well it is to protect the vessel from loss, isn't that right?

A. Yes, sir; I think so.

Q. That is the only thing the insurance company is interested in?

Mr. Underwood:

I object to that, on the ground that this witness can't know what the insurance company is interested in, and

I think he has given a very clear answer,—to protect the insurance company.

Mr. Matteson:

I think my statement was gratuitous and didn't call for an answer.

The Court:

I think it is subject to being stricken.

Q. Did you submit any bills for the electrical work that you did on the Seminole in 1929?—any statement of the expenses in connection with that work?

A. Yes, the bills was kept in those—in her log book; the actual expense was kept in the back of that log book, and I would turn in a general bill to the office. Itemized bills was always kept on the boat, of anything done by the crew.

Q. Well now would that bill show what work was done, turned into the office?

A. I don't think so; I don't think it would show what was done.

Q. So there is no record existing anywhere now, of the work that you say was done on the Seminole in 1929?

A. I don't think so. I wouldn't know. I know her books were all gone. By the way, we never did find the safe which was missing off the Seminole; somebody got to it before we did; the safe was gone; that never showed up.

Q. Were the log books in the safe?

A. The log books was in the safe.

Q. Where was the safe?

A. In the captain's room.

Q. Was it a fireproof safe?

A. Yes, sir.

Mr. Underwood:

Can Mr. Botts tell us anything about the safe?

Mr. Botts:

No, sir, I wasn't there when the boat was raised. * * *

A. There was an accurate set of log books kept on that boat, all the time I was there.

Mr. Matteson:

If your Honor please, there are two or three things more I would like to inquire into, but I would like to have an opportunity to examine a few of the exhibits before I do that. I suggest Mr. Botts could take it up at this point.

Mr. Botts:

I haven't a single question of this witness.

(Following discussion, at 4:45 p. m. the hearing was recessed until 9:30 o'clock a. m., of the following day, to-wit, Wednesday, May 17, 1939.)

Wednesday, May 17, 1939, 10:00 o'clock A. M.

Hearing resumed pursuant to adjournment of the previous day.

*2489 CAPTAIN WILLIAM P. BAKER resumed the stand and further testified as follows upon:

Cross Examination (Continued).

By Mr. Matteson:

Q. Captain Baker, there are just a few things I wanted to ask you. Was there a screen in the ventilator,—I mean, the skylight over the engineroom?

A. Yes, sir.

Q. Was there a screen in the port window?

A. In the port window? Yes, sir.

Q. That is in the engineroom?

A. That is in the engineroom; the outside window.

Q. And was the boat generally fitted with screens?

A. Yes, sir.

Q. All the windows had screens?

A. Yes, sir.

Q. Now over the engineroom there was a steel deck, wasn't there?

A. Yes, sir.

Q. That covered the engineroom and the tank space?

A. I don't know whether it went up to the tank space or not, but I think it did. I think that raised section of the engineroom deck went up to the tank space.

Q. And that went from one side of the boat to the other, didn't it?

A. Which, the—

Q. The steel deck over the engineroom.

A. No, that came in from her decks; you had about, I would say five foot deck space on each side. It didn't go all the way out—that was about five feet in. The deck was all one level, forward and aft,—the main decks. This engineroom, the raised portion of that was just like a house, took about the same width as your deck houses.

Q. This steel cover was raised above the deck?

A. Yes, sir.

Q. How much?

A. Approximately six inches.

Q. And how much between the sides of the ship and the edge of the raised steel deck, was there?

A. There would be four feet, I would say, on either side.

Q. About four feet on each side?

A. Yes, sir.

Q. And what did the deck there consist of?

A. She had a wooden deck, canvas covered.

Q. Now you spoke of seeing the trays under the tanks, yesterday?

A. Yes, sir.

Q. Through the openings around the valves?

A. Yes, sir.

Q. I show you this Libelants' Exhibit 4, which shows the valves on one of the tanks. Is that the sort of opening that you refer to?

A. Yes, sir, that's it.

Q. Before the fire, the tanks were so set that these valves were in the middle of these openings, were they not?

A. Yes, sir.

Q. So that the tank in this picture, Libelants' Exhibit 4, has been set up a couple of inches, apparently?

A. Yes, sir.

Q. And before the fire, the bottom of the tank had been below the bottom of the hole?

A. Well, I don't know as it was the bottom of the hole; right at it, almost.

Q. Right at it?

A. Yes, sir, my recollection.

Q. It would just about cover the hole?

A. Yes, sir.

Q. Well, the tanks practically filled the tank space, fore and aft, didn't they?

A. Yes, sir.

Q. Now I am not quite clear what you could see through this hole, before the fire, when the tank was in its original position.

A. You could go right in through there with your fingers, you could go right down to the bottom of the tank,—right down in that.

Q. You say there was room to put your fingers inside the hole?

A. Oh yes, and you could run through there and go right down, the space between the wood and this drain pan.

Q. Then what you observed before the fire would be based on feeling rather than seeing, is that right?

A. Yes; you couldn't see.

Q. You couldn't see?

A. No, sir, you couldn't see.

Q. Well then do I understand that it wasn't until after the fire that you saw the trays?

A. Well, you could see this, you could see the iron. You couldn't see the wood in there, because you didn't know—you could feel it in there but you couldn't see it. I never seen it until after the fire.

Q. The wood was under the tanks?

A. No, this is the tank here, where that tank set, there is an iron tray sits out here and then there was wood inside that iron tray, to catch the end of the tank.

Q. I see; and so the tank set on the wood?

A. Yes, sir, the tank say on the wood, not the iron.

Q. And did I understand you to say that this wooden platform in the tray under the tank was gouged out to fit the bottom of the tank?

A. Yes, sir. That I seen after the fire; anybody seen.

Q. And the wood was about two and half inches thick?

A. I would say so, yes, sir.

Q. Yesterday you were telling us about the drain valve and I am still not quite clear about it; I don't mean the drain valve, I mean the drain to the pan?

A. Yes, sir.

Q. Your answer as I recollect it says—

Mr. Underwood:

What page, please?

Q. Page 2059; that this pipe went straight down from the pan.

A. Yes, sir.

Q. Went down to the beams,—the frames of the boat?

A. Yes, sir.

Q. And then came up again about a foot and a half?

A. It went up to the toilet; right ahead of those tanks, I would say. It is pretty hard to estimate; probably six feet, eight feet, up there, is the toilet opening on the side of the boat; right straight ahead, outside.

Q. Referring to this blueprint which has been marked Respondents' Exhibit A, the toilet that you refer to is the one that is in the after part of the double stateroom, is that right?

A. That is right.

Mr. Underwood:

Was that at the stateroom just forward of the place marked, lobby.

Mr. Matteson:

Lobby, yes.

Q. I am not quite sure about this space that you have mentioned, a foot and a half. Is that the space,—is that the distance from the bottom of the tank down to the beams?

A. Oh no; no, it was—the bottom of these tanks sat on the same level as the living quarters in the boat forward. The bottom of her fuel tanks,—this deck from here aft, is the same level, the bottom of those tanks. Well, the same space that you had under here, that I could walk under, you had under those tanks; it is on the same level.

Mr. Underwood:

Indicating the deck from the bow back to the place marked Lobby.

A. I could walk under those tanks, I didn't have to get down on my hands and knees. You could walk around underneath those tanks, on the floor we had under there, for our fittings; didn't have to get down on hands and knees, you could walk on your feet, squatting down, underneath those tanks, which we had fitted with the compartments for—

Q. Well, the floor of the engineroom was about a foot and a half above the bottom of the ship?

A. Yes, sir.

Q. Now referring to the Libelants' Exhibit 10, this shows the auxiliary generator, doesn't it?

A. A little auxiliary generator, yes, sir.

Q. And that sat on the floor of the engineroom, did it not?

A. Rested about five inches above the engineroom floor; practically the same level.

Q. Well, under it I see the remains of a beam.

A. Yes, sir.

Q. Is that the level of the engineroom floor?

A. I think so.

Q. And how high was this shelf that was against the forward bulkhead of the engineroom and apparently over the auxiliary motor?

A. I couldn't tell you, I don't know.

Q. The opening through which the valve from the tank came, was underneath that shelf,—that is for number 1 or the port tank, was it not?

A. Yes.

Q. And the bottom of the tank you say was just about even with the bottom of the hole?

A. Yes, sir.

Q. Well, how high were those holes above the floor of the engineroom?

A. About three and a half feet probably; three feet. That is a working shelf, it is about three feet high; that is your work bench there, this is three feet high.

Q. Now you are pointing to something on the port side of the engineroom?

A. Yes, sir. That was your work bench, over there.

Q. That was where the toilet was too, wasn't it?

A. Yes, that was the level of the work bench, just about three feet high. This is much higher, that is where the bilge pump sat up on that, pretty high.

Q. So the bottom of the hole, as I understand it, was about, according to your estimate, three and a half feet above the engineroom,—the bottom of the hole that admitted the valve to the tank?

A. Yes, sir.

Q. Now this drain line—before I get to that. Then the tray would be how far below the bottom of the tank?

A. The tray wasn't more than probably an inch. It was chiseled out to where that tank sat down almost on that steel tank—that steel tray.

Q. That would be something below—

A. Yes, sir.

Q. —the bottom of the hole?

A. Yes, sir.

Q. Then as I understand it, this drain line went directly down to the level of the beams?

A. The beams, yes, sir.

Q. —of the beams?

A. The beams, yes, sir.

Q. —of the vessel?

A. Yes, sir.

Q. And that would be about a foot and a half above the actual bottom of the vessel?

A. Yes, sir.

Q. And then ran forward from there how far in a straight line?

A. Probably eight feet. I don't remember, it was down under there; probably eight feet straight forward.

Q. And then it came up with a right angle?

A. Yes, sir, it came up with a right angle.

Q. And connected with the discharge pipe from the toilet?

A. That is right.

Q. At the bottom of that pipe?

A. I think it ran into the side, the aft side; I think that is right.

Q. What is that?

A. The aft side I think is where they went in, I am pretty positive.

Q. And was the toilet discharge pipe above the water level?

A. It was about an inch or two under.

Q. An inch or two under the water level?

A. Yes, sir.

Q. You mean, the bottom of it?

A. No, the top.

Q. Did you have a sea-valve on that toilet connection?

A. Yes, sir.

Q. What kind of a sea-valve?

A. A gate-valve.

Q. Can you describe it to us?

A. A gate-valve, an ordinary gate-valve, is all I know.

Q. Well, what is a gate-valve?

A. Just like,—a gate-valve rolls with a—(illustrating) instead of going down to a seat.

Q. It is a sliding piece of metal that slides through a socket?

A. That is right.

Q. Then when the vessel was in commission, the discharge pipe would be full of sea water when the vessel was afloat?

A. That is right.

Q. And then that water would run back through this drain line and fill the drain line up to that level?

A. To that level, that is right.

Q. Which was higher, the discharge pipe of the toilet or the pan under the tanks?

A. The tanks were higher, they had to be; they sit on the same floor level with the toilet.

Q. The same floor level?

A. Yes, sir.

Q. How much difference in height would there be?

A. There would be at least four inches higher,—three inches higher.

Q. About three or four inches?

A. Higher than the drain; yes, sir.

Q. That is the tray would be three or four inches higher than the discharge pipe that the drain line was connected to, is that right?

A. Sitting on the same floor level; it sit on the same floor level as the toilet, the same level of the tanks,—the bottom of those tanks was on that same floor level, the toilet was that flush; we never had any water in this drain,—in those pans. I figure we must have had at least four to six inches drop there.

Q. Well, if for any reason the yacht listed to starboard, so that her starboard side was brought that much lower, four to six inches than it normally would be, the water would run back through the drain line into the pan, wouldn't it?

A. It was too far inboard, she couldn't change that far. Those tanks didn't go out to the sides by at least three and a half to four feet.

Q. Well, the point I am making is simply this; if the yacht listed so that her starboard side was brought

down four to six inches, you would have that much head of water on the discharge pipe, from the toilet, wouldn't you?

A. The toilet,—we never had any backup in the toilets.

Q. Well, I am not speaking of the toilet, I am talking just about the drain line.

A. The drain lines would be on the same angle as the hull; you got to change that angle.

Q. I appreciate that; I am just taking it a step at a time. If you listed—

A. Yes, sir, the outside would be farther under water than the inside.

Q. So that you would get a head of four to six inches, whatever your list was, on that drain line?

A. The outside, yes, sir. The side of the boat.

Q. And that wouldn't be an unusual thing for the Seminole to list in such a way as to bring her starboard side down four to six inches, would it?

A. Not a bit.

Mr. Underwood:

I didn't hear you, Captain.

A. Not a bit.

Q. And if you were going through a sea-way, so the waves are coming up from time to time, whenever you passed through a wave you get a greater height of water on the discharge pipe, don't you?

A. Well, when we was under way, all these pipes have got—they have got—what do you call those?—they have scoops on there, you know, where you protect that water from coming back.

Q. What do you mean by a scoop?

A. Well, a scoop is something put on a boat where, when you are going ahead, you create a vacuum in there. All the toilets had them.

Q. Similar to a visor effect?

A. Sure, it creates a vacuum, while you are running; always create a vacuum in there. We have them on all of them.

Q. So when that was in place it would be on the forward side of the pipe?

A. Yes, sir.

Q. And the after side of the pipe would be open?

A. Open, yes, sir.

Q. And if you are under way, the motion through the water creates a vacuum behind you?

A. Creates a vacuum.

Q. —by this contrivance. If you were anchored and rolling, of course it wouldn't have any effect?

A. That wouldn't have any effect at all.

Q. You say the water never did back up through this drain line into the trays, to your knowledge?

A. No, sir, not to my knowledge.

Q. Do you know that it was necessary for some of the engineers on the boat to wipe out that tray from time to time?

A. No, sir.

Q. Never heard of that?

A. No, sir, nobody ever reported that to me.

Q. Now the pipe going down, going across and coming up, forms what you call a trap, doesn't it?

A. Trap, yes.

Q. And any water that got in there would just stay there?

A. Stay there until more pressure is applied on the other end.

Q. It would have to be forced out by pressure?

A. Sure.

Q. And you couldn't very well put any pressure on a tray end of the line, could you, to get it out?

A. It would find its own level.

Q. Now yesterday, you were telling us about some crookneck pipes.

(A.) Q. Gooseneck.

Q. Gooseneck, I think; were they in the after part of the ship?

A. There was four on each side of that engineroom desk, as it come up. They was all on that deck; and there was of them, four on each side; two inch pipe.

Q. You are speaking of the steel deck over the engineroom?

A. Steel deck over the engineroom.

Q. Did they pass through that steel deck?

A. No, sir, they went through the wooden deck right at the side of—these goosenecks was right down just—came up right at the—right by the side of that raise. They wasn't on the steel deck, they was in the wooden deck, right immediately alongside.

Q. The only testimony we have had in the case before, about these crooknecks, as I recall it, is that there were some in the after part of the ship. Were there some back there too?

A. Yes, sir; there was some down there too; some aft too. There was four back there,—away back aft.

Q. Well, you say these were two inch pipes?

A. Yes, sir.

Q. And what is a crookneck?

A. Gooseneck?

Q. Gooseneck.

A. It is a half turn, comes all the way up, and goes back; just a return.

Mr. Underwood:

Indicating 180 degrees?

Q. Yes, sir, that is at the top of the pipe, there is a bend of 180 degrees?

A. Yes, sir; come around, right around like that.

Q. So that the end of the pipe is facing down to the deck, is that right?

A. Yes, sir; facing right down to the deck.

Q. And how far above the deck did you say these pipes go?

A. Go about, I would say they was about eight inches above the wooden deck; the highest part of them.

Q. The highest part would be about eight inches above the deck?

A. Yes, sir.

Q. And then the end of the pipe, after the turn has been made, where it is facing the deck, how high would that be above the deck?

A. About two and a half or three inches.

Q. How far apart were these pipes?

A. About four feet, four and a half feet, apart; one in each corner, and they was divided equally between that engineroom—I don't know just how far that is.

Q. Where did they come down in the engineroom?

A. They went in the ceiling between the engineroom and the—the outside; she had a partition out there, in that hallway; they come right down through there.

Q. Went down through the hallway?

A. Well, in that partition, in between the partition and the hallway; they went right through—they didn't go inside the engineroom, they wasn't inside; they went right down, after they got through the deck; then they was in the engineroom.

Q. Then they didn't go through the engineroom until after they passed through the floor of the alleyway; is that correct?

A. That is right, yes, sir; they was in the partition there.

Q. They were in the partition?

A. Yes, sir.

Q. And that is on the starboard side?

A. Yes, sir.

Q. Now on the port side where were they located?

A. One in each corner. That went down; there was—she had this pipe leading up and over, through, run right along the top of the deck there, came out of the corner, came right up and out; came out from under the side of the hull and turned and came right up.

Q. Were they inside the partition too?

A. No, there was no partition over that side; that is over the engineroom. Our engineroom went one side, it was right out to the side of the ship; they made the turn and came back up.

Q. How long were these pipes from top to bottom?

A. They was about nine feet down, I guess, from the top of the engineroom hatch to the floor; went through there and turned and went down, came along the sides.

Q. Well, did you ever follow those pipes to see where they led to?

A. I did a couple of them; I didn't all of them.

Q. Which two did you follow?

A. Followed the two forward corners; both forward corners.

Q. They are the only two that you actually followed?

A. That is all.

Q. To see where they went to?

A. That is all.

Q. And this one that was in the starboard forward corner, how close to the corner was it?

A. It was in the corner, set right in the corner of the batteries; went right up the other side of the batteries, on the outside of the engineroom.

Q. And the one in the port corner, where did that lead to?

A. Went right straight down, just under the engineroom floor.

Q. That was the corner in which the toilet was, wasn't it?

A. No, it was over, it was in by the—the toilet was sitting out at the side of the ship, and this gooseneck came in right over that; it was about four feet in.

Q. I show you this picture, Respondents' Exhibit 4-A, which has been introduced, showing the condition in the engineroom sometime after the fire, and some of the wreckage. Can you point out to us the pipe you are talking about there?

A. Well, this—that's the starboard corner. This pipe came right down through this corner here, right down this corner.

Q. That is the corner you say it came down through?

A. Yes, it was on the outside of this steel bulkhead; on the outside of that steel bulkhead.

Mr. Underwood:

Indicating the fore and aft alleyway bulkhead, inboard?

A. It wasn't in the engineroom, it was at the corner at the outside, where the batteries was.

Q. But you don't see the pipe, or any part of it, or the remains of it, in that picture, do you?

A. You couldn't see it in there, it wasn't in there.

Q. And you don't see it in this other picture, Exhibit 4-B, do you?

A. It wouldn't be here.

Q. What was that?

A. No, sir, you don't see it there.

Q. I show you Libelants' Exhibit 16, this picture at the left, which also shows some of the wreckage of the engineroom. Do you see anything that looks like that pipe in there, anywhere?

A. Let's get this straight in my mind, first. I don't get the picture, to tell the truth.

Q. Well, this picture, I think I can explain it to you; it is taken in the engineroom looking towards the port

forward corner where the toilet was; and I think this engine down here, underneath, is the little generator. Does that straighten it out for you?

A. Well, this pipe here came down right over through the top here and turned right down through this corner here; it went down by the toilet, came right down through there. You couldn't see it here, couldn't distinguish it if it was there. It would be right up against the bulkhead, on this side of the little engine, between there and this side of this little generator.

Mr. Underwood:

Indicating a part of the little generator motor.

A. Right in there, yes, sir. So much of that wreckage around, it is hard to distinguish.

Q. And these pipes that you speak of now were all in the engineroom space, as I take it?

A. All in the engineroom space? No, sir; the four on the starboard side were in the—

Q. In the alleyway?

A. In the alleyways.

Q. The four on the port side were in the engineroom space?

A. Yes, sir.

Q. Were these straight pipes or did they have bends in them?

A. They had bends in them. They had pipe fittings, that they was made of.

Q. So they were not straight pipes, straight down from the deck?

A. No, sir.

Q. Did you ever see those after the fire?

A. I never looked.

Q. Did you see the Seminole after the fire?

A. Yes, sir.

Q. When did you see the Seminole after the fire?

A. Plenty of times.

Q. Well, when was the first time you saw it after the fire?

A. Sometime in October.

Q. Several months later?

A. Yes, sir.

Q. Did you see the vent pipes or any remains of them, at that time?—these pipes you have been speaking of?

A. I couldn't recall whether I did or not. I went over her pretty thoroughly at one time, after I got hold of her.

Q. What is that?

A. I went through her pretty thoroughly one time; there was a lot of stuff missing off the boat,—plenty.

Q. I imagine so, after four months.

A. Yes, it was all gone.

Q. You never did see anything of them after the fire?

A. No, I don't remember; I never even looked; never even gave it a thought.

Q. I would just like to ask you one more question about this Libelants' Exhibit 4, showing the valve coming out of the number 1 tank. Is there any drain pan visible there now?

A. No, sir.

Q. Well, there should be, shouldn't it?

A. I don't know just how it is moved around; it should be.

Q. If it was still in place it should be visible?

A. Yes, sir.

Q. Do you see it in this Libelants' Exhibit 5?

A. I don't know whether that's it or not, I couldn't swear.

Mr. Underwood:

Indicating what?

A. I don't know whether that is the pan or not; I couldn't swear to that.

Mr. Underwood:

Mark the thing that you don't know whether it is the pan or not, will you, please?

Q. This right here, is that it?

A. Yes, sir, I imagine it is, but I don't know.

Mr. Underwood:

Draw a line from that, and mark it.

Mr. Matteson:

It is sufficiently marked, by a cross. • • •

Mr. Underwood:

By a cross just to the left of the piece of weed that comes out from the opening of the bulkhead.

Q. Well, this doesn't look like a turned-up side of a pan, this thing that you are pointing to, does it?

A. No, sir.

Q. Captain, you said that you had visited the Seminole at Ft. Lauderdale at other times than when you went up to get her?

A. Yes, sir.

Q. And you spoke of one time when you went up to get the batteries, and another time when you took them back after they had been repaired?

A. Yes, sir.

Q. Do you recall any other times that you were there?

A. I was up at the Seminole quite a number of times.

Q. You don't recall any other specific occasions?

A. I used to go up there and do a lot of painting, do anything that I would see needed to be done to the boat; a lot of odd times I would go up there.

Q. There was no other special time that you recall?

A. No, sir.

Q. Except some time when you went up to do some work on her?

A. To work on her; I used to go and come—

Q. One other thing I wanted—

Mr. Underwood:

May we have him finish that? "I used to go and come"—

A. On my own time; when I thought anything was needed up there, I used to go and look after the business of the boat up there.

Q. On this blueprint, I wonder if you could indicate for me the hatchway through which you say you got down in the forward bilge space.

A. The hatchway? Forward bilge space? Right in here.

Q. Will you show us again where that was; draw a little square to represent it?

A. Let's see, it was right in here, the hatch.

Q. You have drawn an oblong in the passageway, and I will draw a line from it and marked it, hatch.

A. Hatch, yes.

Q. Now was there any other hatch on that deck?

A. Not in here, no, sir.

Mr. Underwood:

Indicating the space forward of the Lobby.

A. Forward of the Lobby, yes, sir.

Q. Was there any other hatch on that deck, aft of that?

A. No, sir, not that you could get in.

Q. Was there one aft of the engineroom?

A. Yes, sir.

Q. Where was that?

A. (Witness drawing).

Q. You have indicated a space in the galley, is that right?

A. Yes, sir.

Q. That was how you got down in the after space?

A. Yes, sir.

Q. Captain Baker, one more thing I would like to ask you: I think you said it had been customary in other years to leave the keys with Captain Pilkington.

A. Yes, sir.

Q. So that on previous occasions when the boat had been there, Captain Pilkington had the boat's keys to get into the boat?

A. Yes, sir.

Q. Well, then, I would like to ask you to explain to us how it is that you know that he had what you call a pass key.

A. I know he had several of those things, he could get into the boat, because he asked me did I want him to turn the engines over, and I told him, no, I told him I didn't want him fooling with the engines.

Q. It was customary, was it not—if you know, when boats were stored there for Pilkington to turn them over, —turn the engines over during the period of storage, if the owners wanted him to? You knew that?

A. Yes, sir.

Q. Well, when he asked you, you didn't think that he meant to turn them over right away, did you?

A. Immediately?

Q. Yes.

A. I don't know what he meant; he just asked me if I wanted the motors turned over, and I told him, no, I didn't want him fooling with them.

Q. You told him you didn't want him fooling with them?

A. I didn't want him in the engineroom.

Q. You told him you didn't want him in the engineroom?

A. That's right.

Q. And you understood what he meant, when he asked you about turning the engines over, was, that if the boat was going to be there for a long period, he would occasionally go into the engineroom and turn the engines over, if you wanted him to—by hand, is that right?

A. I imagine that was his meaning. We never—

Q. That was the way you understood it?

A. That was his meaning, I suppose.

Mr. Matteson:

That is all.

By Mr. Botts:

Q. Now then, how long have you lived in Miami, Captain?

A. I have been here since 1897.

Q. Where did you come from when you came to Miami?

A. Born in Keywest, and come from there here.

Q. Are you related to Captain Clete Baker in any way?

A. Clede Baker? Yes.

Q. What is the relationship?

A. Brother. I never heard him called Captain, before.

Q. Now you made the statement that Captain Pilkington had a pass key that would unlock this rear door?

A. Yes, sir.

Q. Did you ever see him with such a key?

A. I think I have, on several occasions. I think he came out there with this big bunch of keys and got into this boat. He had plenty of them; I have been in with him several times.

Q. When he went into the Seminole?

A. The Seminole; he and I went in several times together.

Q. Well, you used the regular Seminole keys for that, didn't you?

A. Came out of this big bunch of keys; I don't know whether it was Seminole, or not.

Q. He came out with a big bunch of keys?

A. Yes.

Q. Now do you know whether these were the regular keys for the Seminole, that had been left with him?

A. I couldn't tell you that.

Q. You don't know?

A. No.

Q. Then you don't know whether this key that he unlocked it with, was the Seminole boat keys or not, do you?

A. No.

Q. Then when you said that he had a key, you didn't know,—you were just guessing?

A. I was guessing, yes. Anybody has got a pass key. He could get in the boat.

Q. If he had a pass key he could have gotten in the boat, is that what you want us to understand?

A. Yes, sir. He had a pass key, he had a bunch of them, ordinary two for a nickel pass keys.

Q. Now are you guessing again, or are you telling something that you know this time?

A. Well, I am telling something that I know. He used to get this pass keys and come out and let me in the Seminole, and let me in there if I didn't have one in my pocket.

Q. You mean he would go in and get some keys out of his office and let you in the Seminole?

A. That is right.

Q. And was that the time when the Seminole's keys were left with him?

A. Probably so.

Q. You don't know whether he had a pass key or not, do you?

A. No, I wouldn't swear he had one.

Q. You did swear to it yesterday, didn't you?

A. No, I didn't.

Q. All right, we will leave it that way. Now let's take up the subject of these pans underneath these gas tanks a little bit.

A. Yes, sir.

Q. Now I want you to correct me if I misunderstood you yesterday.

A. Yes, sir.

Q. Or, whenever you were testifying about it. My understanding is that after the fire you said that you saw these pans, and that there was some part of the charred wood in the pans under the tanks; is that right?

A. Some part of the charred wood?

Q. Some part of the charred wood that the tanks had been sitting on, or some part of the wood that the tanks had been sitting on.

A. A lot of wood was not even charred.

Q. A lot of wood was not even charred; all right. Then after the fire you saw these tanks still sitting on the wood that had been the foundation; is that right?

A. Well, all the tanks were moved, and some parts of them were sitting on wood and some were not.

Q. But you saw portions of those original wood foundations that had been under the tanks?

A. Yes, sir.

Q. And after the fire, you saw that, did you?

A. Yes, sir.

Q. And that wood foundation was at that time still resting in these pans, is that right?

A. Yes, sir.

Q. And you saw the pans, and the wood, after the fire?

A. Yes, sir.

Q. Now then I want to get at this—before I get to that. Referring to Respondents' Phipps' Exhibit A; on the blueprint there are two outlines of the boat. As I understand it, the one on the left hand side illustrates an upper level and the one on the right hand side illustrates the lower level; am I right?

A. Yes, sir.

Q. Now on the sketch on the lower—on the right hand side, representing the lower level, there is a word, passage, written here on three different places. One aft of the engineroom, one—I will say to the right side of the engineroom, and one forward of the engineroom?

A. That is right.

Q. Is the floor level of that passageway one continual level without any steps up and down?

A. That passageway? Yes, sir.

Q. Now there is a point here that I am not quite sure about. In this passageway, to the right of the engine? room, there is an opening which might either be a door or a window, so far as this blueprint is concerned. Is that a door or a window?

A. A window.

Q. And it has been testified by Mr. Hawkins that, standing in the passageway, the lower ledge of that window would be about waist high; is that about correct?

A. Yes, sir.

Q. Now then, here is the point that I have perhaps been laboring under a misapprehension. Is the floor level of the engineroom the same as the floor level of this passageway?

A. Oh, no, sir.

Q. All right; how much below the level of the floor of the passageway, is the floor of the engineroom?

A. I don't know; it is quite a bit.

Q. Well, give us your best—

A. I think when you—it must be at least three and a half to four feet; the top of your head just about reach that window, if you was in the engineroom.

Q. Then from the floor level of the engineroom to the sill of this window into the passageway, was perhaps approximately six feet; is that correct?

A. From the—

Q. Floor of the engineroom to the sill of that window, would be approximately six feet; approximately level or a little above the top of your head?

A. That is right.

Q. How tall are you, Captain?

A. Six feet.

Q. All right. Then if a person went from the passageway through the window into the engineroom, they would have a considerable drop on the inside, wouldn't they?

A. Yes, sir.

Q. And as I understand it, the foundation or base which supported the bottom of the fuel tanks was on the same general level as the floor of the passageway and Lobby?

A. That is right.

Q. Now these metal tanks, I believe—I mean, metal pans, underneath the tanks, I understood you to say they were steel?

A. Yes, sir; iron.

Q. Iron or steel?

A. Iron or steel, yes, sir.

Q. All right; and there are two of those tanks—two of those pans underneath the tanks?

A. Yes, sir.

Q. Each pan—or two tanks resting in each pan?

A. Yes, sir.

Q. And each of those pans rested on a wooden support or foundation, which in turn rested on the pan; and then the pan rested upon the supporting foundation; is that correct?

A. There was one—inch floor underneath this whole thing. When you got under those tanks you seen wood above it, there was one inch of wood, then there was a steel pan, and inside of that pan was this wood supporting the bottom of the tanks.

Q. I see; and this wooden floor that you saw on there, to the best of your knowledge, would be about a continuation of that wooden floor of the Lobby?

A. Yes, sir, I would say it was a continuation of the floor of the Lobby.

Q. Now when this drain that you stated came out of the pan which side drain was it you said went into the toilet outlet?

A. This one here in the starboard side.

Q. Then will you indicate by making a dot with this red pencil, on Respondents' Exhibit A, the approximate location in the corner of that—or in the pan where this drain outlet left the pan?

A. This is it, right there.

Q. All right; the witness has made a cross or dot in there.

Mr. Underwood:

May we draw a line from that, and mark it, Mr. Botts?

Mr. Botts:

Yes, certainly.

Mr. Underwood:

I will draw a line from that, the arrow pointing to it, and the line to the lower margin, marking "Pan outlet".

Mr. Botts:

Drain outlet. Well, pan outlet, yes.

Q. Now that outlet, from which that drain led, is at the point marked, pan outlet, indicating by the arrow head?

A. That is right.

Q. And that then left the pan at the forward side of the pan, is that right?

A. Yes, sir.

Q. And how far from the right hand—is this starboard?

Mr. Underwood:

That is right.

A. Right and left, now, anyway.

Q. Then from the starboard edge of the pan, how far was that outlet towards the center of the boat, approximately?

A. Towards the center of the boat?

Q. Umh umh; to illustrate this, suppose that this is the—you have indicated quite a ways in there. Suppose this is the edge of the pan; how far towards the center of the boat?

A. From the side of the boat?

Q. No, from the edge of the pan. I am trying to get the location—

A. To the side of the boat?

Q. I am trying to get the location crosswise of the boat; how far from the edge of the boat and towards the center of the boat that opening was. You have said it was right close to the edge, forward.

A. Right close to the edge forward; but it is right out in the corner. Those pans were oval shaped.

Q. The pans were oval shaped, they were not square?

A. No, sir.

Q. Oh, I see; well, I beg your pardon then. The pan then was not a square pan, but oval at each end?

A. Yes, sir.

Q. —circular at each end; I see. Then that question wouldn't be appropriate. I had it in mind it was a square pan.—Now then have you marked on this Exihibt A, anywhere, the toilet outlet to which that drain pipe from the pan was connected?

A. No, sir.

Q. All right. Will you indicate on Exhibit A, the toilet that was connected with the same outlet to which the drain pipe was connected?

A. (Witness marks.) Came in right about,—I take it that is the opening in the side of the boat, and this is the toilet. This came in here.

Q. Mark there—

Mr. Underwood:

It is already marked. Witness marks a dot under a circle which contains the letters, WC, in a space just abaft the double stateroom on the starboard side of the boat.

Q. And that dot indicates the toilet. Now then approximately where, through the skin of the ship, did this outlet valve pass? Was it—

A. Here is the outlets right there.

Q. In other words, the outlet was approximately opposite the toilet?

A. Yes, sir.

Q. And how far below the water line of the ship, was that outlet?

A. From the side of the boat? About two inches below the water line.

Q. Just below the water line?

A. Just below the water line.

Q. Now my understanding is that this toilet was protected from the water backing up, by a gate-valve?

A. Yes, sir.

Q. And that this drain pipe connection went into the toilet outlet between the gate-valve and the skin of the ship?

A. That's right.

Q. Now then this drain—this pan drain pipe, as I understand it, it went straight down, or approximately straight down from the pan until it got below the level of the floor in the Lobby?

A. Yes, sir.

Q. And then passed under the floor of the Lobby and connected with the outlet gate. Now when it got over to somewhere in the vicinity of the outlet gate, or outlet aperture in the hull of the ship, did it come up again?

A. Yes, sir.

Q. And how far was it turned in an upward direction, how many inches or feet, from the time it got over to the vicinity of the outlet?

A. It came up to that—I couldn't say; it came from the bottom of the boat up to that toilet; how far that is I don't know; I wouldn't say because I don't know.

Q. I want to ask you this question, and use this as a basis so we will understand each other. We will suppose that this lead pencil mark that I have made here represents the bottom of the pan?

A. Yes, sir.

Q. (Drawing on paper.) With the edges turned up; and that these two little parallel lines that I have drawn on there represent the downward course of the toilet pipes?

A. Yes, sir.

Q. Now then how far was it from the pan down to where this outlet pipe turned to run along underneath the boards?

A. Went down to the skin of the ship, which must be—

Q. How far was that drop?

A. Oh, I could sit under those tanks; I could sit down under there. I don't know how much that would be, three or three and a half feet, some such distance.

Q. Somewhere three to four feet, would that be correct?

A. Yes, sir, three to four feet.

Q. Then we will mark here, three to four feet; that down pipe; what was the character of that pipe?

A. Galvanized pipe.

Q. Galvanized pipe. Then it came down to an ordinary elbow, did it?

A. Yes, sir.

Q. All right, we will put in the elbow here, now. And then we will start running that pipe along there again. Now when the pipe made this turn, did it go—was there any other turn underneath the Lobby floor, or did it go directly over to the point where it turned up again?

A. Went straight on.

Q. Then there was a straight pipe?

A. Yes, sir.

Q. Coming over, and that passed entirely underneath this Lobby?

A. Yes, sir.

Q. And how wide was that Lobby floor, do you know—fore and aft? What was the distance fore and aft, across that—

Mr. Underwood:

The scale is on there.

A. I don't remember these figures,—how many feet. I can estimate that; I would estimate it—

Q. Well now then, your best judgment as to that, how wide was that Lobby?

A. Seven and a half feet.

Q. Well then, this pipe running along there would be some eight feet long, would it?

A. Eight feet long.

Q. Then we will put it, eight feet plus or minus,—more or less. Now then you came to another elbow, did you, that you turned—

A. Yes, sir.

Q. And that turned up?

A. Yes, sir.

Q. All right. Now how far upwards did that pipe run before it reached its—the point where it was connected with your outlet?

A. It is the same level; that pipe turned under the floor here, came about six inches under the floor,—this did.

Q. Then this pipe would then go up about six inches less than it had previously gone down?

A. Yes, sir.

Q. And then another elbow, was it?

A. Yes, sir.

Q. And then it went straight into a—some kind of a fitting?

A. Yes, sir.

Q. Either a nipple or something?

A. Some kind of a fitting.

Q. And then goes into a fitting here, and then here is your outlet pipe coming down here, and it fitted in there in some way?

A. Yes, sir.

Q. And here is your outlet pipe that goes up to the toilet, is that it?

A. Yes, sir.

Q. And then that would be how high? And it comes in there and then goes up a certain distance, and we have the toilet there?

A. Yes, sir.

Q. All right; and then here is the gate-valve in there, shutting off that toilet; is that right?

A. Yes, sir.

Q. Now then this pipe, when the vessel was in the water,—this pipe all the way down and up to about six inches below there, was underneath the water, wasn't it?

A. Yes, sir.

Q. So that that pipe remained full of water all the time, didn't it?

A. I think so, yes, sir.

Q. There was no valve or shut-off anywhere in this line?

A. No, sir.

Q. Whenever the boat listed over so that this was a foot underneath the water, then there would be—the water would just squirt right up into that pan, wouldn't it?

A. No, sir, absolutely not.

Q. What?

A. No, sir. The side of the vessel would go down. The side of the vessel would go down, but you get in this far, you are nearer the center of the vessel, the center wouldn't go down any; the sides will go down but not the center. It wouldn't come up in that toilet. That toilet was sitting on the same floor level, no water come in that toilet.

Q. All right. Well, then, in this pipe which is underneath the outlet from the pan, I will put a W there; that would be approximately where the water level would be?

A. Yes.

Q. And from that point up to the pan is approximately six inches, isn't that right?

A. Well, I am guessing at all those.

Q. Approximately six inches?

A. Approximately. I am guessing at those.
Q. All right. Mark six inches in there.

Mr. Underwood:
Will you mark, water level, there?

Mr. Botts:
I just indicated it by a W.

A. The water level is the same in the boat, I don't care whether you come to the side, you have always got a common water level all over the boat.

Mr. Botts:
Now I would like to have that sketch that has been identified by the witness, marked as Pilkington's Exhibit 11.

(The said paper was admitted in evidence without objection and marked Pilkington's Exhibit number 11.)

Q. Now then, I am interested a little in these ventilator pipes. Now as I understood you, in the space beginning with the bulkhead forward of the tank room, and back to the bulkhead or wall aft of the engineroom.

Mr. Matteson:
You said, between the tank room; did you mean that?

A. No, it wasn't forward of the tank room.
Q. All right; from the—to the aft wall of the engineroom, there were four of these gooseneck ventilators.
A. Yes, sir.
Q. On each side?
A. Yes, sir.

Q. And as I understand it the four which were on the starboard side didn't pass up through the engineroom, but passed up through the passageway.

A. Well, they was—the engineroom is steel, then it was finished with wood, there was mahogany finish, and there was the space.

Mr. Underwood:

Indicating the pipes passed down between the steel engineroom bulkhead and the joiner work in the passageway; is that what you indicated?

A. Yes, sir.

Q. As I understand it then, these ventilator pipes on the starboard side of the engineroom passed between a steel engineroom wall and a wooden wall, that was the wall of the passageway?

A. Yes, sir.

Q. And they passed directly up through there. Now will you take this white pencil and make four little circles along the wall of the engineroom, at the approximate points where those four pipes passed upward.

A. This is all approximate, too.

Q. I understand that.

A. One was right there.

Q. See if you can make a little circle there; all right, that's it. There are four on this side; would you mind if I make those just a little heavier; so if they blueprint that it will show up a little better. Now we have four white dots on the starboard side of the engineroom, and those dots are aproximately opposite the points in the wall where those four pipes passed up, encased in the wall?

A. That's right.

Q. All right. Now then will you similarly mark the points in the port side of the engineroom, at which those pipes came up?

A. This is where you ought to get up on this deck there, because there is your engineroom hatch, on that level right there.

Q. Let's put it down here.

Mr. Underwood:

May the question be made clear as to whether Mr. Botts means where these vent pipes passed through the deck or where they went into the bilge?

Mr. Botts:

In the floor of the engineroom, where they passed into the bilge.

A. Well, that is another story. They go down; this was a raised deck; that's your steel deck, on there. Well, they would go down through here.

Q. Well, suppose you mark on the top of the deck, at the point where they came out; we will mark it there, and then we will mark it again down below, where they went into the bilge.

A. They came out right on these corners here, like this,—four of them. Now this thing here went over and came down—

(Hearing was suspended briefly.)

Mr. Underwood:

Captain Baker has indicated on Respondents' Exhibit "A" by four dots on the port side abreast the raised engineroom deck on the upper deck the approximate location of the points where the gooseneck ventilators pass through the deck. He has indicated likewise by four dots on the starboard side the places where the gooseneck ventilators pass through the deck; on the lower deck he has indicated by four dots on the port side, one to port

of the shelf and to starboard of the toilet close to the forward bulkhead, one close to the port side of the ship just forward of the window, one on the port side between the window and the chief engineer's room and one in the port after corner of the chief engineer's room, indicating the points where these vents passed into the bilges.

(By Mr. Botts):

Q. How many times have you visited the Seminole since the fire?

A. Visited the Seminole since the fire?

Q. Yes.

A. Well, I practically lived with her; I went to Fort Lauderdale and got her and towed her to Miami, and immediately when I got home she was stored in Miami, and I have had charge of her ever since.

Q. When was the first time after the fire that you saw the Seminole; how long?

A. October that year.

Q. Was that the occasion in which you saw these pans with some burnt wood, some of it burned, and what was left was resting in the pans?

A. All times since then.

Q. You have seen it any number of times since then?

A. Yes, sir.

Q. And the pans have been there in that position ever since, except perhaps for the little weathering?

A. Yes.

Q. Now there was a window in the port side of the engineroom?

A. Yes.

Q. And that window was screened?

A. Yes.

Q. How high above the engineroom floor was the sill of that window?

A. Above what?

Q. The engineroom floor.

A. Six feet probably.

Q. Was the sill of the window on the port side that opened through the skin of the ship at the same level as the sill of the window, the starboard side that opened into the passageway?

A. Practically; yes, sir.

Q. Now was there an opening in the side of the engineroom, in the port side of the engineroom?

A. There was one in the engineer's quarters, and a door opened into the engineroom.

Q. So that the window in the engineer's room was about the same level as the window in the engineroom?

A. Yes.

Q. How high above the engineroom floor was the floor of the engineer's room.

A. The floor of the engineer's room was on the same level with the main floor of the boat.

Q. And that would be some three and a half to four feet above the level of the engineroom floor?

A. Yes.

Q. Now, Mr. Baker, I believe you stated that you gassed up your fishing boats from the supply of gasoline in the Seminole?

A. Yes, sir.

Q. How did you transfer that gasoline from the tanks of the Seminole to the boats that you were gassing?

A. If we took out any amount at all we took it out with a hose.

Q. How would that hose be connected?

A. With an ordinary coupling.

Q. How would it be passed out to the boats?

A. Take it through the window.

Q. Through the window?

A. Through the window, yes.

Q. If you didn't do it that way, how else would you do it?

A. Well, we had five-gallon cans, six gallon or seven gallon cans, and if we wanted to get five gallons, we would put it in a five-gallon can and pass it through the window.

Q. Pass it out through the window more than six feet above the level?

A. We had a work bench there about three and a half feet high.

Q. You climbed up on the work bench and passed it out that way?

A. Yes.

Q. How high was this work bench top above the engineroom floor?

A. From 32 to 33 inches.

Q. And the man would stand on the work bench and you would hand him the gasoline in these cans and he would pass it out that way?

A. Yes.

Q. Captain Baker, isn't it true that when the level of gasoline in your main tanks got low, that that was the only way you got gasoline out?

A. When you got it started the siphon will work on its level; the siphon will get it up; you can start it and the siphon will pull it up over a hill and—

Q. How would you force the gasoline in to your garden hose in order to get your siphon started?

A. It never got that low; I never had it that low.

Q. On the last trip that you went down you took gasoline out of the main tanks there to supply your fishing boats on that trip, didn't you?

A. Yes, sir.

Q. Did you take it out through the hose or did you take it out in the five-gallon can?

A. Both ways.

Q. Both ways?

A. Yes.

Q. Did you ever get so low in gasoline on that trip that you couldn't take it out through the hose?

A. Not that I remember.

Q. How is that?

A. I said not that I remember.

Q. In other words, there was always sufficient gasoline in those tanks so that you could take it out through the hose if you wanted to?

A. Yes.

Q. You are sure of that now?

A. Very sure.

Q. And the bottom of these tanks was about three and one-half feet below the ledge of that window, wasn't it?

A. Yes.

Q. So when the last gasoline was taken out you had at least three and a half feet of gasoline in your tank?

A. Yes; when we left down on the Keys.

Q. I mean when you left down on the Keys.

A. That is right; I don't know how much there was in there.

Q. There was at least three and a half feet of gas, wasn't there?

A. I couldn't tell you that; that would be entirely up to the engineer. He never reported the amount of gas to me, not down there.

Mr. Underwood:

May I have that answer read?

(Thereupon the preceding answer was read by the Reporter as above recorded.)

Q. In other words, you knew that you had enough in there so that you could take it out through the hose?

A. I guess I could if I had wanted to.

Q. How many times did you ever visit the Seminole when she was up in Pilkington's Boat Yard?

A. Quite a number of times.

Q. What was the occasion of your going up there?

A. I was working on the Seminole; I was master of the Seminole, and I would go up there; if I had any work to do, I would go up there, or I would go up there and look around; I would go just at any time, just like anyone would; that was my business, you know.

Q. You were not master of the Seminole on any monthly basis, were you?

A. No; I was master of the Seminole; I was on the "papers" almost all of the entire time, and I was captain of the vessel just the same.

Q. You only received compensation for the time you actually worked as captain?

A. No; I used to work on the Seminole.

Q. What work did you ever do on the Seminole other than act as captain?

A. I acted as captain, and what work was needed I would do.

Q. Tell me something that you did.

A. I did a lot of painting; I painted underneath the decks and I would go over the boat and clean it out, and would go over and look the boat over; that was the nature of my ordinary duties.

Q. You really then were the main man in charge of the Seminole, is that right?

A. Yes, as far as working—as far as the working parts of the boat was concerned, I was in charge.

Q. When you were not on the payroll as captain and was not receiving any compensation, you didn't go up there and do any work, did you?

A. I always got paid for any work that I did on the Seminole.

Mr. Botts:

Will you repeat the question. That answer is not responsive to my question.

The Court:
Read the question.

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. That question, it seems to me, ought to be out, because I got paid for anything that I did; I got paid for anything that I did on the Seminole; I never went up and worked without money.

Q. Do I understand that you are answering my question in the afirmative? I would like to get an answer to my question.

Mr. Underwood:
If your Honor please, I think the witness has answered it.

Mr. Botts:
He is trying to dodge it.

Mr. Underwood:
He has not tried to dodge anything. The answer is fully responsive to the question.

Mr. Botts:
I would like to have the question and answer read and let the Court decide whether it is responsive or not.

The Court:
Suppose you read it again.

(Thereupon the preceding question was re-read by the Reporter as above recorded.)

The Court:
Do you think you can answer that yes or no?

The Witness:
No, sir.

The Court:
Why not?

The Witness:
I don't understand the question, Judge.

The Court:
Let him read it again, and if you can answer it yes or no, and then give your explanation.

(Thereupon the preceding question was re-read by the Reporter as above recorded.)

A. For no compensation, no.

(By Mr. Botts):

Q. Now, how many times, as near as you can tell, did you ever visit the Seminole while she was in storage at Pilkington's storage basin?

A. I couldn't tell you anything about that; I worked up there for two and a half months, went and come every day; I visited her so many times that it would be impossible for me to tell how many times I was there.

Q. Now you have stated that when you left the Seminole there the last time you instructed Captain Pilkington not to go into the engineroom or turn over the engines; am I right?

A. Yes, sir.

Q. Isn't it a fact, Captain Baker, that you gave him exactly those same instructions every time you laid the boat up?

A. We never discussed it previous to this time; that is the first time he ever asked me.

Q. That is the first time that was ever discussed?

A. Yes, the first time he ever said anything to me about it.

Q. What year was that when you worked that two and a half months up there?

A. 1930.

Q. 1930?

A. Yes.

Q. What did you do?

A. General work all over the boat.

Q. You got paid for that work?

A. I always got paid.

Mr. Botts:

That is all.

Re-Cross Examination.

By Mr. Matteson:

Q. That was when you were getting her ready for charter, wasn't it?

A. Yes, sir.

Q. And you refinished the decks?

A. Yes; painted them.

Q. You say you are still in charge of the Seminole?

A. Yes, in a way; I still have charge up there.

Q. Are you being paid for it?

A. I get paid, yes.

Q. By whom are you paid?

A. By the Seminole Boat Corporation.

Q. I want to ask you if you remember that hole in the bulkhead between the engineroom and the tank space as you went through to get under the tanks?

A. Yes.

Q. That was just a hole cut in the bulkhead, was it?

A. Yes.

Q. And that was at the floor level, wasn't it?

A. The level under the tanks was lower than the floor of the engineroom.

Q. I understand that, but I mean on the engineroom side this hole was at the floor level?

A. Yes, sir.

Q. And the top of the hole was just about level with the bottom of the tanks, wasn't it?

A. I guess it was cut as far as it could go.

Q. It appears here in Libelants' Exhibit 9, doesn't it?

A. Yes.

Q. And that shows that it comes up practically to the level of the holes where the valves of the tanks come through, doesn't it?

A. Yes, sir.

Mr. Matteson:

That is all.

Re-Direct Examination.

By Mr. Underwood:

Q. You said that you were being paid for being in charge of the Seminole. Now I would like to have you tell us whether you are paid regular compensation the days when you would go up there and do something.

A. I got paid when I went up there and did anything. Do you remember where you were when the fire occurred on the 24th of June, 1935?

A. I was in Roslyn, Long Island.

Q. Had you been in the Seminole between the time you left her in Pilkington's in April and the time of the fire?

A. No, sir.

Q. Mr. Botts was asking you just now about the quantity of gasoline in the gasoline tanks when you were down on the Keys, whether you could run gas into the fishing boats by a hose. When was the last time you remember that being done?

A. I wouldn't know; I was out fishing, and I used to go fishing and some of the boats would come in to be gassed, so I wouldn't know; it was sometime down on the Keys—

Q. Did you yourself participate in the gassing of the boats?

A. Sometimes I would.

Q. And I take it that sometimes you would not?

A. Sometimes I wasn't even on the boat.

Q. Do you remember whether these tanks were used all at one time or in series?

A. Used them in series when we first started.

Q. Is it possible that when you gassed fish-boats—

Mr. Botts:

Just a minute. If the Court please, that question cannot be anything but a leading question. The Court, I am sure, understands what this question is going to be, and what it is designed for, and I object to that, because when he asks the question then the damage is done. Counsel knows that that is not a proper question.

Mr. Underwood:

I will withdraw it and put it another way.

Mr. Botts:

Let him testify and not you, if you don't mind.

Mr. Underwood:

I am scrupulously endeavoring to do that.

Mr. Botts:

Thank you; I hope you are successful.

Mr. Underwood:

Repeat the last question that was answered.

(Thereupon the preceding question was read by the Reporter as above recorded.)

(By Mr. Underwood):

Q. The last time that you observed any fish-boats gassed up by means of a hose, will you tell me what the level of the gas was in any tank?

A. I don't know.

Q. Can you tell me whether or not the level of the tanks was the same?

A. I couldn't do that either.

Mr. Botts:

You got your point and it wasn't proper, and you and I both know it.

Mr. Underwood:

I disagree with you. I am trying awfully hard not to lead.

Mr. Botts:

If you tried as hard not to testify, you would have done better.

(By Mr. Underwood):

Q. Do you remember how far down the after bulkhead of the engineroom went?

A. What?

Q. How near to the frames of the boat did the after bulkhead of the engineroom go?

A. I don't know.

Q. This space under the passageway, where there is some testimony that there were a number of pipes, water pipes and so on,—how far aft did that space go open before you came to a bulkhead that stopped you?

A. From the engineroom to the after-deck.

Q. Did the after bulkhead of the engineroom go all the way across the boat from the skin of the ship on one side to the skin of the ship on the other side under that passage-way?

A. No, sir.

Q. You said something yesterday, Captain Baker, about the details of what happened when you laid the Seminole up from time to time. I would like to ask you particularly about the details which you told us on this last occasion. Are you uncertain about anything that you said transpired at that time?

A. Well, naturally it was the last trip of the boat and it might be a little bit clearer than the others, but at this period, immediately after I was aproached by Lloyd's and asked for a statement, it was very much in my mind at that time.

Q. I do not think we have it in the record quite clear just what kind of engines those were. They were Winton engines, I take it?

A. Yes.

Q. Describe them for us; what type of engines they were and the cylinders and—

A. Winton's; 125 H. P. each, with the very finest construction there was.

Q. How many cylinders?

A. Six; very smooth-running engines; they were the best engines that money could buy.

Q. Tell us whether or not in operation at speed those engines vibrated?

A. No, sir.

Q. Captain, what has been your experience under way in the Seminole as to any vibration in the hull from the effect of the sea?

A. She had no vibration from the sea.

Q. Now you said yesterday, in response, I think, to one of Mr. Matteson's questions, that you wanted to arrive at

Pilkington's with as little gas as possbile. I would like for you to tell me the reason for that.

A. Well, I just wanted to get there with as little gas as possible, because on previous occasions when we would put the boat up with six or seven hundred gallons of gas, we would go back for it and it would have three or three hundred and fifty gallons, which is according to the records we have, and I didn't want that to happen.

Q. When you got back in October, 1935 to tow the Seminole to Miami, where did you find the Seminole?

A. She was tied up across the river from Pilkington's boat yard.

Q. How far from Pilkington's yard was she?

A. I would say 500 feet, or 600 feet.

Mr. Underwood:

That is all.

Re-Cross Examination.

By Mr. Matteson:

Q. Captain Baker, when you say some motors vibrate and some don't it is entirely a relative thing, isn't it; they all vibrate some?

A. Very little on her.

Q. You never knew a motor that didn't vibrate at all?

A. Not very much; she had the least of any boat I was ever on.

Q. One other thing: I was trying to find the place in the written record of Schlappi's testimony, but I understood him to say that the after-bulkhead of the engineroom did go all the way across under the alleyway.

A. We had two air tanks on the side; our air tanks was on that (pointing) side of the engineroom, aft the engineroom; there were two air tanks under there aft the engineroom, and off the engineroom on the starboard side you

could go through where those holes were cut for these tanks; you could go through there, if necessary.

Q. You could go through there?

A. Yes.

Q. I understood from Mr. Schlappi (if I am wrong about this, you can correct me) that in order to get into this after space you had to go back and go down through a hatch in the after part of the space.

A. You could go through that hole if you wanted to crawl through; you could get through there, if necessary.

Q. How large was the hole?

A. About this big (indicating).

Mr. Underwood:

Indicating about two feet.

A. You could get through that if necessary.

Q. You would have to squeeze through?

A. Yes, you would have to squeeze through.

Q. The bulkhead itself went all the way across?

A. Yes, the bulkhead itself went all the way across.

Q. You are just speaking of the hole in the bulkhead?

A. Yes.

Q. Do you recognize this exhibit 19 as the starboard engine?

A. Yes.

Q. Then this picture is a picture of the starboard after end of the engineroom, isn't it?

A. Yes.

Q. I see a series of valves and pipes that run back to the bulkhead not far away from the engines, is that right?

A. Yes; they are the water manifolds; they are the bilge pumps.

Q. Where is this hole you speak of?

A. This hole was right here on the side; you couldn't go through the engineroom; but it was under that passageway right there (indicating); you could go through the

end down there; these air tanks were laid back in that corner (pointing).

Mr. Underwood:

Indicating to starboard of the manifolds?

The Witness:

Yes; this picture doesn't go that far. You can go all the way under that passageway; not under there (indicating), but you could go through on this side (indicating); these are the tanks over on the side down in this corner after the engineroom bulkhead, starting there.

Q. Were the tanks entirely aft the bulkhead?

A. Yes.

Q. Then there were pipes leading from the tanks into the engineroom?

A. Yes, sir.

Q. And this hole that you speak of, is that the place where the pipes came through?

A. No; the tanks are put in there that way (indicating). It was cut this big to put those tanks through.

Q. A hole was cut there so that the tanks could be placed back there?

A. Yes; it is under the passageway aft.

Q. Where could you get in that passageway?

A. You could get in anywhere on the side; it was all open; that steel bulkhead in the engineroom didn't go all the way down.

Mr. Matteson:

That is all.

Re-Direct Examination.

By Mr. Underwood:

Q. Just to get this clear, Captain Baker: did this partition between the passageway and the engineroom indicated

on Exhibit A go down in the engineroom any lower than the floor of the passageway?

A. No, sir.

Q. Now, you have spoken about the hole in the after engineroom bulkhead?

A. Yes.

Q. Is that where the air tanks were put through?

A. Yes.

Q. Will you indicate on this blueprint where they are?

A. Underneath this floor here (indicating).

Q. Indicating the accommodations aft of the engineroom?

A. Yes.

Q. Just show us the bulkhead in which that hole was cut.

A. This bulkhead was here (pointing), and these tanks were set underneath here (indicating); there were two tanks, air tanks.

Q. The tanks were underneath or amidships the alleyway immediately aft the engineroom and the room marked "state-room" immediately after that; is that right?

A. No. They are underneath this floor in the hull of the ship.

Q. In the bilge?

A. Yes.

Q. You say there was a nole in the bulkhead, through which these tanks were inserted, and through that you could go down here (indicating)?

A. No; you would have to come down here and go down (indicating).

Q. Indicating the space beneath the passageway in the bilge?

A. Yes, sir.

Mr. Underwood:

That is all.

(By Mr. Matteson):

Q. Just to add another detail: in this photograph, Exhibit 4-A, looking into the starboard forward corner of the engineroom, you will see the partition on the starboard side of the engineroom there; is that right?

A. Yes.

Q. You can see where it stays down at the lower part of this picture?

A. Yes.

Q. Was that the level of the alleyway on the outside?

A. The alleyway, yes; the batteries are piled up high in that corner; from that point up the skin was all open.

Q. How much space was there between the bottom of that partition and the floor of the engineroom?

A. Three and one-half feet; the same level as the main deck under the engineroom level.

Q. I don't think that is very clear. Can you say it definitely?

A. This (pointing) is the main deck.

Q. You are referring to the lower deck plan on this blueprint?

A. Yes, sir.

Q. Then the engineroom floor was three and one-half feet, we will say, lower than the passageway level. That is all down under there (pointing).

Q. Let me ask you this also; from this picture I would gather that the passageway level was about even with the top of the hole in the forward bulkhead through which you got into the space under the tanks?

A. I don't know.

Q. Doesn't this picture here show the opening into the space under the tanks?

A. I don't know.

Q. They appear in this picture to be about the same level, do they not?

Mr. Underwood:

I object to what the picture shows; the picture speaks for itself.

The Court:

He can just state of his own knowledge.

A. I don't know; I just don't remember that; I just don't remember.

Q. You would not state that wasn't the fact?

A. No, I wouldn't say that wasn't the fact.

Q. On this upper deck plan are these little circles up there (pointing), do they represent cowl ventilators?

A. Yes.

Q. And this shows their relative position from the engineroom?

A. Yes, sir.

Q. Supose I mark this cowl ventilators?

A. All right.

Mr. Matteson:

That is all.

(By Mr. Botts):

Q. Captain Baker, did I understand you to say that one year you stored the boat at Pilkington's yard and when you came back there was gasoline missing?

A. Yes.

Q. What year was that?

A. I couldn't tell you; I think there were a couple of years.

Q. I see. Did you complain to anyone about that?

A. I surely did one year.

Q. To whom did you complain?

A. To Mrs. Pilkington?

Q. To Mrs. Pilkington?

A. Yes.

Q. How much gas was missing that time?

A. We figured we had lost 300 gallons.

Q. Did you mention that matter to your owners?

A. No, sir; I never said a word to the owners.

Q. You never said a word to anybody about it?

A. No; I never said a word to the owners.

Q. You thought that that was a circumstance that they were not interested in?

A. That's right.

Q. You didn't mention it to Captain Pilkington?

A. No, sir; he wasn't there; Captain Pilkington was away from that yard quite awhile.

Mr. Botts:

That is all.

By Mr. Underwood:

Q. Did you have anything to compare the amount of gasoline that was in the boat when you went to take her out with the amount of gasoline that was in the boat when you left it there?

A. The engineer always kept a log; it was always left on the desk; every time the boat was left there it would be put in the log; the running time per day, the amount of gas used daily and everything would be put in the log and left on this desk; it was always there.

Q. Was it a practice to make any note in there as to the amount of gasoline?

A. Always noted what was left when the boat was left there and what was there when we went back.

Mr. Underwood:

That is all.

Mr. Botts:

I have no further questions at this time.

Mr. Matteson:
No further questions.

Mr. Underwood:
That is all I have at this time of this witness.

(Witness excused.)

2602 Thereupon: ALLEN SIMMON was called as a witness in behalf of the Respondent Phipps, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Underwood:
Q. What is your name?
A. Allen Simmon.
Q. Where do you live?
A. Miami.
Q. What is your business, please?
A. I am with the First Federal Savings & Loan Association.
Q. Once upon a time, Mr. Simmon, you worked at the Miami office of one or more companies that the Phipps' family had an interest in, did you not?
A. Yes.
Q. When did you start in there?
A. I think it was about 1926.
Q. About when did you leave there?
A. October, 1931.
Q. For what company did you work?
A. I don't know.
Q. Who paid you?
A. Well, the checks were always made by L. M. Handley, paymaster.

Q. What was the name of the office at the time?

A. 1317 Biscayne Boulevard.

Q. What was the nature of your general work?

A. Well, I did some buying, and also some clerical work.

Q. Did you have anything to do with the Seminole while you were there?

A. Yes, at various times.

Q. Do you remember the time when the Seminole Boat Company was incorporated?

A. Yes.

Q. I am not asking you for the year, but do you remember that such a thing happened?

A. Yes.

Q. Prior to that time who was in charge of the office?

A. Paul Scott.

Q. After that time and until you left who was in charge of the office?

A. Mr. Scott.

Q. During all the time that you were there did you have anything to do with the Seminole?

A. Yes.

Q. In general what did you have to do with it?

A. Well, mostly I was concerned with the purchase of supplies and materials.

Q. What was the balance; in a general way?

A. Beg pardon.

Q. What was the balance in a general way; you say "mostly purchasing"; what was the rest?

A. Anything that I had any instructions to do.

Q. Where did your instructions come from?

A. From Mr. Scott.

Q. Now, Mr. Simmon, do you have any recollection of any work that was performed on the Seminole in the year 1927?

A. Yes.

Q. Who was captain of her at that time?

A. Captain Nelson.

Q. Where was the work done?

A. At Merrill-Stevens Boat Yard.

Q. What was the general nature of the work?

A. General overhauling of the vessel; the entire bottom was torn out and replaced, and the water tanks were removed, that is, their location was changed; they were re-welded, and the gasoline tanks were taken out and re-welded and replaced, and new feed lines were put in, and new plumbing lines were put in, and some new electrical wiring was put in, and there was a cabin built on the deck, and all of the wood-work on the sides was replaced wherever it was bad, wherever the wood was rotten, and of course it was painted inside and out.

Q. Do you remember how long she was there for that work?

A. I think it started the first part of August and was finished sometime the following January.

Q. The following January?

A. Yes.

Q. I show you a file of bills, Mr. Simmon; can you identify those as having anything to do with this work?

A. Well, I think that these bills that covered the work, or most of it, anyway.

Q. Do you remember whether you saw these at the time?

A. Yes.

Q. Do some of these bills bear your initials?

A. I don't know; I suspect they do; five or six of them do, I believe.

Q. Without taking time to run through them all, I show you a bill dated September 17, 1927, for a total of $4,442.78 in typewriting; are these words and figures "okay for payment as corrected AAS"; is that in your handwriting?

A. Yes.

Q. Have you been through these bills and totaled them up?

A. Yes.

Q. What is the total amount?

A. $27,124.93.

Q. Are you reading from a yellow sheet of paper on top of this group?

A. That is right.

Q. Do you remember when that was made up?

A. Shortly after December 31, 1927.

Q. Who made it up?

A. I did.

Q. These are your figures?

A. Yes.

Q. How was this work done; was it by contract or otherwise?

A. It was done on a labor and material basis.

Mr. Underwood:

I offer the bills in evidence.

Mr. Matteson:

I haven't had an opportunity to examine them, if your Honor please.

Mr. Botts:

Suppose they go in subject to an objection to be made later, just like we did the others?

The Court:

They are admitted subject to objections hereafter to be made, if any.

Mr. Underwood:

Let the record show that there are in here attached to some of these blue carbon copies of apparently original vouchers of the Boulevard Mortgage Company.

Mr. Botts:

That is all right; whatever the file is, it is.

(Thereupon the file of documents above referred to were marked Respondents' 4-L.)

Q. Mr. Simmon, have you been through these bills recently to pick out how much they include for certain items?

A. Yes, sir.

Q. Does this adding machine tape show how much was included in these bills for certain things?

A. Yes.

Q. How much?

A. Pipe and fittings, $173.05.

Q. Have you figured the total labor charge?

A. Yes.

Q. What was that?

A. $17,003.01.

Q. I show you some papers which are apparently Merrill-Stevens Dry Dock Company bills. Will you tell me whether or not you recognize those?

A. Yes, sir.

Q. For what boat was that boat done?

A. Seminole.

Q. Do you know whether that was a part of the same or some different job?

A. I think this is finishing up of the same job.

Q. The figures in this last group which I hand you are not included in the totals you have given us?

A. No, sir.

Mr. Underwood:

I offer these in evidence.

Mr. Botts:

With the same understanding.

The Court:
Same ruling.

(Thereupon the file of documents above referred to was marked Respondents' Exhibit 4-M.)

Q. Did you at any time in the vicinity of 1928 make a calculation to ascertain the amount of the expenses on the Yacht Seminole for a period of time?
A. Yes, sir.
Q. Do you remember what that period was?
A. I think it was for a period of about two years, but I may be mistaken.
Q. I show you two sheets of analysis paper; can you tell me whether or not they refresh your recollection?
A. Yes; I rely on the dates shown here, July 6, 1926 to June 21, 1928.
Q. In whose handwriting are these two sheets?
A. Mine.
Q. Were they accurate when you made them?
A. To the best of my knowledge they were.
Q. Did they correctly show the amount spent during that interval for the various things stated?
A. I believe it does.

Mr. Underwood:
I offer this in evidence.

Mr. Matteson:
I think that is subject to some explanation: is this a summary of what is in the other bills?

The Witness:
It includes those other items, but there are also some other expenditures that are not included in those bills; it covers a longer period of time and greater amount of expense.

Mr. Matteson:

Mr. Underwood, is this a statement of what the books show?

Mr. Underwood:

I will ask the witness.

(By Mr. Underwood):

Q. What did you get your information from when you made up these two yellow sheets?

A. Original invoices.

Mr. Matteson:

That is a statement of what the original invoices show?

Mr. Underwood:

Yes.

Mr. Matteson:

If that is the purpose, I have no objection.

The Court:

Let it be admitted.

(Thereupon the statement above referred to was marked Respondents' Exhibit 4-N.)

Q. Did you later on, Mr. Simmon, make another calculation as to the expenses incurred in connection with the Seminole?

A. Yes, sir.

Q. Do you remember now what periods you covered?

A. I think it was a comparative statement covering possibly about three or four years.

Q. I show you six typewritten sheets of paper; does that refresh your recollection?

A. Yes.

Q. Who made up that tabulation?
A. I did.
Q. Did you make the calculations?
A. Yes, sir.
Q. Were they accurate when you made them?
A. Yes, I thought so.
Q. What was the source of your information?
A. Original invoices.
Q. Does the statement correctly show the amounts for salaries, wages, repairs and maintenance, operating expenses, dockage, furnishings and equipment and insurance for the years 1926, 1927, 1928, 1929 and 1930 to June 30th?
A. I believe that it does.

Mr. Matteson:
As revealed by the documents he consulted?

Q. Does it also accurately show the income from charters?
A. Yes, I believe it does.
Q. You made this up yourself?
A. Yes, sir.
Q. At that time?
A. Yes.

Mr. Underwood:
I offer this.

Mr. Matteson:
If it is a statement that was revealed by the records, I have no objection to it.

The Court:
I understand that that is the purpose for which it is submitted or o[illegible]ed.

Mr. Underwood:

I offer it for everything that it shows, your Honor.

Mr. Matteson:

If it is anything more than a statement of the records, of course, it is not the original record and is not the best evidence, and there has not been anything shown to show that the witness has personal knowledge of the items.

The Court:

I will admit it for that purpose. If there is anything further about it, we will consider it on the final hearing.

(Thereupon the statement above referred to was marked Respondents' Exhibit 4-O.)

Q. Mr. Simmon, during what part of the time covered by Exhibit 4-O did you have anything to do with the Seminole?

A. During the entire time.

Q. Were you familiar at that time with any work that was done on the Seminole?

A. Yes, sir.

Q. Whose task was it in those days to look over the bills as they came in?

A. Mine.

Q. Who approved them for payment?

A. I did.

Q. Did you or did you not know what work was being done during those years?

A. Yes; generally I was supposed to know what was going on.

Q. Now on Exhibit 4-O, the third sheet entitled "operating schedules", I call your attention to the third item which reads "Overhauling and repairing lighting system, including Edison batteries, generator and wiring, $330.38;

do you have any recollection as to what work was done at that time?

A. Yes; there was some wiring in the boat that had never been placed in conduit; in other words, it was well—it was of course insulated wire, but it wasn't fully protected, so all wiring was replaced and placed in conduit or wire mold.

Q. What does that amount of $330.38 include?

A. It includes only material.

Q. We are not clear about that; you use the word "conduit" and you used the words "wire mold"; I am not sure whether you used the conjunctive or disjunctive between; will you please tell us about that?

A. Well, I think this particular material referred to both; the wire mold, as I referred to it, consists of a metal base and a metal covering; it is U-shaped covering with a flat metal base.

Q. That is what you refer to as wire mold?

A. Yes.

Q. By "conduit" to what do you refer?

A. Conduit is a round pipe.

Q. Which of those does that figure of $330.38 include?

A. Well, a certain amount of both.

Mr. Underwood:

That is all.

Cross Examination.

By Mr. Matteson:

Q. This document which has been marked Phipps' Exhibit 4-M, Analysis of expenditures for the Yacht Seminole, July 6, 1926, to June 21, 1928,—for what purpose was that made up?

A. It was made up for the purpose of showing the total expenditures for that period on the boat.

Q. For what purpose was such a statement required?

A. It was required for Mr. Scott.

Q. Prior to that time Captain Nelson had been in charge of the boat, had he not?

A. That is correct.

Q. Was this statement gotten up in connection with the checking up on Captain Nelson?

A. No, sir.

Q. It was about the end of the period that you indicated on that statement that Captain Nelson was discharged, was it not?

A. No; I think that was prior to that time; I think he left as Captain of the Seminole prior to that time.

Q. Captain Nelson was in charge of the repairs that were made at Merrill-Stevens, was he not?

A. Yes, sir.

Q. And he approved the expenditures before they came to you, didn't he?

A. Yes; I think he checked the bills before I got them.

Q. And when you approved them you relied on his okay?

A. Not entirely; no.

Q. That is, I take it, you had a general familiarity with what was going on, but you relied on him for details, is that right?

A. That is correct.

Q. And the work was done under the direct supervision of Captain Nelson?

A. Yes.

Q. Take this account of Merrill-Stevens aggregating about $27,000.00, Respondents' Exhibit 4-L, charging a total of $27,124.93; is that the amount that was paid to Merrill-Stevens?

A. It wasn't the total amount by any means; it was the amount that was paid from the beginning of this one large repair operation until December 31 of that year.

Q. That amount represented on the recapitulation at the top of the bunch of papers was actually paid to Merrill-Stevens?

A. Yes, sir.

Q. Was any part of that afterwards refunded?

A. Not that I know of.

Q. It is a fact, is it not, that there were financial irregularities discovered in connection with this job and Captain Nelson's connection with it?

A. I don't recall that they were uncovered in direct connection with this job; they were perhaps suspicioned, but I don't think they were actually uncovered in connection with this job.

Q. It was found that in connection with some of the matters which Captain Nelson handled for the Seminole that he had been making a profit personally out of the work, isn't that a fact?

A. That is correct.

Q. And it was for that reason that he was discharged?

A. Yes.

Q. I take it, Mr. Simmon, that as far as this work represented by this bill is concerned, you never were able to get at the bottom of the matter?

A. No; as far as we could find there was no irregularities in this work.

Q. Did Captain Nelson make some restitution in this connection?

A. Not that I know of.

Q. Now in introducing this Exhibit 4-L you made a preliminary statement as to what you understood the work covered and I think you mentioned, among other things, the removal and replacement of the gasoline tanks. Will you point out to me where that is indicated in this file of bills?

A. I don't know that I can point to any particular items in here. I can point to items that covered that, that is, you will find items in here for oxygen and acetylene which

was used in welding, and you will find items for boilermakers' labor, and also for welders' labor used in that and other welding operations.

Q. Let me ask you this: there was other welding and cutting done on the Seminole that did not relate to the gasoline tanks?

A. Oh, that is right.

Q. And that was true with respect to the bottom and the sides of the boat?

A. Well, they were mostly riveted; as far as I know they were practically all riveted.

Q. Can you tell us whether or not the plates of the Seminole were welded in place?

A. I know that they were welded around the engine-room and up the sides; as to whether they were welded entirely over the bottom I don't know.

Q. There was considerable welding in connection with the bottom and side plating of the Seminole at that time, is that right?

A. Yes.

Q. In connection with the job all the old riveting on the old plating was cut out by burning, was it not?

A. All taken completely out.

Q. Were you familiar with the details of that personally, or just in a general way?

A. Well, I visited the yard quite a few times during the course of the work and saw what was going on, and have a general idea of what they did.

Q. But the man who was in direct supervision was Captain Nelson?

A. Yes; he was supposed to be there all the time.

Q. Do you know whether or not any trays were made for the gasoline tanks at that time?

A. Yes, sir; there were two trays made for them.

Q. Were they welded, do you know?

A. They were made out of zinc, and I think they were welded, yes.

Q. Do you know of your own knowledge that there was any welding done on the tanks themselves at that time?

A. Yes, I do.

Q. Now just where was this welding on the tanks?

A. In all of the seams; the seam on the bottom of the tank and up each side, as I recall it.

Q. Now, Mr. Simmon, do you say that all of the seams of the gasoline tanks were welded at that time?

A. Yes, sir.

Q. Of course it would be possible to determine it by inspection even now, wouldn't it?

A. I don't know.

Q. You have not had any shipyard experience yourself, I take it?

A. Oh, no.

Q. Or any experience in the construction of tanks, is that right?

A. No, I haven't had any instructions in that.

Q. I mean, Mr. Simmon, as far as ship matters are concerned you are a layman like the rest of us?

A. Yes, sir.

Q. I will ask you whether from such general knowledge you had of this job you are now in a position to say definitely that the seams of the gasoline tanks were actually welded at that time?

A. Yes, I think they were; I am fully convinced they were.

Q. Where was the welding on the tanks; by that I mean was it done on the boat or on the shore?

A. No; at the time that was done both the water and the gasoline tanks were taken out and that work was done on the side of the boat; it was on the ways on the side of the boat, right beside the boat; the work was done right there

Q. Was the deck of the boat taken off at that time?

A. No, I don't believe it was; pieces were taken of, but I don't think—there must have been some bad wood, rotten wood, that had to be taken out and replaced, but not the deck as a whole.

Q. The deck over the tank compartment consisted of steel plating, did it?

A. Over the engineroom, I believe.

Q. And that wasn't removed?

A. No, I don't believe it was.

Q. Do you know in what manner the tanks were removed from the tank compartment at that time?

A. It wasn't very much trouble about it; the whole bottom was out of the boat.

Q. I take it that the frames were still there?

A. What?

Q. The frames of the boat were not removed, were they?

A. Not all of it; a great deal of it was good.

Q. Do you know what I mean by frames?

A. You mean ribs?

Q. Yes.

A. Yes.

Q. The ribs of the boat were not removed at that time?

A. Part.

Q. What part?

A. Wherever they were badly enough rusted.

Q. That doesn't tell me very much.

A. I couldn't tell you what individual ribs were taken out.

Q. Can you tell me what part of the ship's ribs were taken out?

A. No; I couldn't say that they were taken out of any specific portion of the boat, but they were removed as it seemed necessary; certain ribs were pretty well gone by corrosion and those had to be replaced; others that were all right, they were left in.

Q. Were any entire ribs removed or just partly?

A. I couldn't say just now.

Q. Mr. Simmon, if the deck wasn't removed and the ribs were not removed, the tanks could not be removed out of the tank compartment any further than the engine-room, could they?

A. I don't know why they couldn't; the entire side wall on one side of the engineroom was off, and entirely open.

Q. You say they cut open one whole side of the ship in the way of the engineroom at that time and put the tanks out through the space where the side of the ship had been?

A. I don't know just how they took them out, but the tanks were taken out of there.

Q. As a matter of fact, Mr. Simmon, you can't tell us just what openings were made in the hull of the ship at that time, can you?

A. Only to this extent: that at that time the entire bottom was off.

Q. When you say the entire bottom was off, you refer to the plating, do you not?

A. That is right.

Q. Even if the plating is removed you still have the ribs of the ship?

A. Yes.

Q. Do you know how wide the ribs of the Seminole are spaced?

A. I don't recall exactly, but I would think they were apart 30 inches possibly, although I didn't measure them.

Q. How big were these gasoline tanks; can you tell us that?

A. I haven't any idea.

Q. Where were they when you saw them?

A. Oh, opposite the boat; right beside the boat, fairly close to the boat; on the ways at Merrill-Stevens.

Q. In what shape were they?

A. They looked pretty good when I saw them.

Q. I do not mean condition; I mean shape.

A. They were cylindrical tanks.

Q. How big?

A. Anything I might say about the size would be purely a guess, because I haven't any idea about the measurements of them; it is merely my memory of what they looked like ten years ago, and that is fairly unreliable, I would think.

Q. That is equally true of your recollection of all the details of this work, is it not?

A. No, I cannot say that it is.

Q. Except as it is represented by accounts that you referred to, that would be true, wouldn't it?

A. No; I have certain features in mind; there are certain features that you would remember, because it would make more of an impression on your mind.

Q. Which are the features that so impressed themselves on your memory back ten years ago?

A. One big feature was visiting the yacht there and being able to look through the entire yacht with the exception of the paneling around the cabins.

Q. When you say the entire bottom was off, you are referring to the steel plating?

A. Yes.

Q. I suppose it looked something like the skeleton of a whale at that time?

A. Just about.

Q. Where was the Seminole at the time this work was done; I mean where was it in Merrill-Stevens?

A. It was on the largest ways, and they were located between what is now the main building and the bridge south of there.

Q. You say she was on the ways—exactly what was it she was on?

A. What?

Q. You say she was on the ways; was she on a cradle or rails or had she been moved off to one side?

A. She was on the ways practically all of the time she was there.

Q. By "ways" you mean on the cradle which was on rails?

A. Yes, sir.

Q. There was no contract for this work, I take it?

A. No.

Q. If it was done under the direction of Captain Nelson, the various things that were done were done by his orders, is that right?

A. Yes.

Q. So that there was no contract on the part of Merrill-Stevens to do any specific work other than as items were ordered by Captain Nelson?

A. That is right.

Q. As far as having the necessary work done or as to what was to be done, you relied on Captain Nelson's decision, is that right?

A. To a certain extent; the work that was to be done was mapped out in advance or planned in advance in a general way.

Q. By whom?

A. Captain Nelson presented the original request that the work be done and an estimate of what it would cost.

Q. What was that estimate, do you recall?

A. Well, as I recall it, it was about $30,000.00; between twenty-five and thirty thousand dollars.

Q. How much did the job finally cost?

A. About thirty-seven or thirty-eight thousand dollars, as I recall it.

Q. Who approved Captain Nelson's plan?

A. Mr. Scott, I believe.

Q. With whom did Mr. Scott consult about it, do you know?

A. I don't know.

Q. Mr. Scott was the representative of the Phipps' interests here at that time?

A. As far as I was concerned his word was the final word.

Q. He was your boss?

A. Yes.

Q. He was the boss of everybody in that office, is that correct?

A. That is correct.

Q. And he was the representative of the Phipps' interests in Miami at that time?

A. I don't know.

Q. You know that he attended to various personal business affairs from time to time for them?

A. No, I couldn't say that I do.

Q. Who was the owner of the Seminole at that time; do you know?

A. John S. Phipps.

Q. That was your understanding?

A. Well, I know that because it was recorded that way at the Customs House.

Q. Did you have anything to do with that?

A. Yes, I recorded the papers when it was entered in the port of Miami.

Q. Did you have anything to do with the preparation of the papers?

A. No.

Q. Who gave you the papers to be recorded, do you recall?

A. Mr. Scott.

Q. And they had been executed by Captain Nelson, had they not?

A. I don't recall.

Q. Do you recall the alleyway that went past the engineroom on the main deck of the Seminole?

A. You say on the main deck?

Q. We will say the lower deck; I will put it that way.

A. Yes.

Q. As you went along that alleyway there was a partition on the side between the engineroom, separating the alleyway from the engineroom, was there not?

A. Yes, sir.

Q. Was there any paneling or woodwork on that partition, do you recall, or was it painted steel plate; I think that was all steel work.

Q. You don't recall seeing any workwork there?

A. No, I don't; there was a window in it; I remember that.

Q. A window leading into the engineroom?

A. Yes.

Q. And there were also windows leading from the passageway to the outside of the ship?

A. Yes, sir.

Q. Did you have any conferences with Mr. John S. Phipps with respect to this work that was done at Merrill-Stevens?

A. No.

Q. This work in this second batch of vouchers that was introduced and marked Phipps' Exhibit 4-M,—that was prior to the work represented by the vouchers in this batch marked 4-L, was it not?

A. Yes, I believe it was; some of it was prior and some subsequent.

Q. So this bunch which has been marked 4-M is just a series of miscellaneous bills, some before and some after the big job at Merrill-Stevens, is that right?

A. Yes.

Q. Now this Exhibit 4-O, comparative statement of operations from 1928 through 1930,—for what purpose was that made up?

A. That as I recall it, was made up at Mr. Scott's request to show a comparison between the cost of opera-

tions prior to the organization of the Seminole Boat Company and subsequent.

Q. There is nothing about the statement that indicates that, is there?

A. Not on its face.

Q. It is a running statement that runs from 1928 through 1930?

A. That is right.

Q. And there is no indication on this statement whatever to indicate the division point between the date of incorporation and the date subsequent, is that right?

A. I do not see any on here.

Q. So as a comparative statement between the date of incorporation and afterwards, we can't make any comparison unless you insert the date of incorporation at the proper place, can you?

A. No.

Q. And if you insert the date of incorporation you would have to insert it in the middle of one of the years, would you not?

A. I just don't recall when the operations were begun or were taken over by the Seminole Boat Company; whether it was in the middle of the year or not.

Q. There is a discrepancy here that I do not quite understand. This Exhibit 4-N shows a total of expenditures on the boat Seminole from July 6, 1926 to June 21, 1928, of over one hundred thousand dollars, but on this comparative statement that you have, if you total all of 1926, 1927 and 1928, you will still be well below the one hundred thousand total. Can you explain to us the reason for that discrepancy?

A. Yes, in a general way: This statement here eliminates practically all of the extraordinary repairs, betterments and additions.

Mr. Underwood:

Indicating that Exhibit 4-O eliminates the data referred to on the top line of Exhibit 4-N.

The Witness:

Yes.

By Mr. Matteson:

Q. I do not quite follow you on that, because the data on the top line of 4-O totals $45,000.00 and the data under the same heading "Repairs and maintenance, statement of operations," totals, just by mental arithmetic, forty-two or forty-three thousand dollars.

A. Yes. I said most of this amount here has been eliminated from this statement here.

Q. You say that most of the items on the top line of 4-N has been eliminated from 4-O, is that correct?

A. That is correct.

Q. I still do not quite follow that, because you do have in the comparative statement about forty-three thousand dollars, whereas the item on the top line of 4-O "Extraordinary repairs", and so forth, totals $45,000.00 and there is only a difference of $2,000.00.

A. This statement is supposed to be a comparative statement of operations and as such does not properly include, from an accounting standpoint any of the extraordinary repairs, betterments and additions.

Q. In your statement of repairs and maintenance in the comparative statement of operations, you do have an item of $35,974.00 in the year 1927?

A. Yes.

Q. Do you say that that was only ordinary current repairs and maintenance?

A. I would not say that it was only ordinary current repairs, but it certainly consists of repairs necessary for the maintenance of the boat, and doesn't consist of "Better-

ments and additions", which is ordinarily to be considered a capital expenditure.

Q. It must be the fact that by comparing the two statements, Mr. Simon, that the major portion of this item of $45,000.00 on 4-M is carried in to this $35,000.00 on 4-O, is that right?

A. That is entirely possible.

Mr. Matteson:

If your Honor please, I would like to have an opportunity to study these statements that have been submitted; it is hard to analyze them quickly, and I think the witness will be available.

Mr. Botts:

Maybe I can ask him a few questions.

The Court:

All right.

Mr. Botts:

I am sure he will be here the rest of the day.

The Court:

All right; you may proceed.

Cross Examination.

By Mr. Botts:

Q. Mr. Simon, do you recall who was superintendent of Merrill-Stevens at that time?

A. Superintendent, you say?

Q. Yes.

A. Mr. Thebault.

Q. That is Ed Thebault?

A. Yes.

Q. Do you know whether Ed Thebault is here or not or where he is; do you know whether he is living or dead?

A. Someone told me he was dead.

Q. I heard that too. I just wanted to find out and that—

A. That is what I heard.

Q. With reference to the gasoline tanks, Mr. Simon, do you have any idea at all about how large these tanks are?

A. This is purely a guess, but just as I remember the tanks, if seems to me that they were possibly three feet in diameter or thereabouts, and possibly five feet or a little more in length.

Q. That is your best recollection?

A. Yes, sir.

Q. How many of those tanks did you see?

A. Four.

Q. Now, how many times did your visit this shipyard during these operations, do you recall?

A. I don't recall.

Q. Well, do you know how frequently you visited it?

A. I tried to get there several times a week.

Q. Your best recollection is that you went there several times a week on an average?

A. That is right.

Q. Now, Mr. Simmon, do I understand that the entire plates were taken off of the bottom and sides of the Seminole wherever there was still plates?

A. Yes, sir.

Q. Do you know whether those steel plates were discarded and new ones put on, or whether the old ones were replaced?

A. No; it was all new steel that was put on.

Q. All new steel?

A. Yes.

Q. Now, I am no more nautical than you are; maybe we will have to explain what we are talking about sometimes, but let's try to get together.

A. All right.

Q. The ribs of a ship, as I understand it, are the members, either steel or wood (in this case steel) that go down around the bottom of the ship from one side to the other and to which plates are fastened.

A. That is what I have always thought.

Q. All right, then we are together on that.

A. All right.

Q. Now Mr. Simon, do you have any recollection about the size of the ribs in the Seminole, the size of the steel, I will put it?

A. Well, I will say they were possibly quarter to three eighths of an inch thick, and as I recall they were double angle irons.

Q. Now by "double angle irons" do you mean a piece of steel that would be roughly in the shape of a "T" when they are put together?

A. That is right.

Q. Two irons at right angles to each other were placed together so that it made a T-shaped steel arrangement?

A. Yes.

Q. Now then the part of this angle iron which would be next to the plating of the ship would be what was the top of the "T", is that right?

A. The flat part, yes.

Q. Then what would correspond to the stem of the "T" would run in towards the inside of the ship?

A. Yes.

Q. Now, Mr. Simon, do you recall what would be the width of the "T" part of this structure of the ribs; would it be six or how many inches across?

A. Of course this is a guess, but I would say about four to four and a half inches.

Q. About what would be the length or what would correspond to the stem of the "T"?

A. Half of that dimension probably; two and a half to two inches.

Q. And this steel was molded into the shape of the ship so that the combined shape shown by these ones replaced was roughly the shape of the hull of the ship, is that right?

A. Yes.

Q. Now how many of these ribs were removed from the ship during this operation, do you know?

A. I wouldn't have any idea.

Q. Were any of them entirely removed or was it just pieces here and there?

A. I don't know that any of them were entirely removed.

Q. It would be a piece cut out with an acetylene torch or something like that and another piece set in its place; is that the way it was?

A. Yes.

Q. And this new piece would be welded into place?

A. Yes.

Q. Now do you have any recollection at all as to whether there were three or a dozen or more than a dozen of these sections or ribs removed and replaced?

A. It was quite a large number; I would say it was at least half of them.

Q. You think that perhaps half of the ribs had sections removed?

A. Yes, sir.

Q. And replacements made?

A. Yes, sir.

Q. Did you ever see any of these ribs when they had been cut and were ready for replacements?

A. I presume I did; I was there during practically the entire time of the repairs.

Q. Do you have any recollection as to the length of the pieces that were removed?

A. No, but I judge it was a pretty good size; the boat was about, I suppose, forty to forty-five feet wide, something like that.

Q. What was the largest piece that you can recall that you saw taken out?

A. I wouldn't have any idea; they were varying lengths.

Q. Give us the maximum length.

A. Possibly ten or twelve feet, and that is purely a guess.

Q. Now then these pieces would be taken out at random wherever the rusting process had advanced so far that it seemed to be necessary?

A. Yes.

Q. Now do you recall that around the vessel from the bow to the stern, and at the top of the ribs there was a longitudinal stringer that went from the bow to the stern of the vessel, and to which the upper ends of the ribs were attached by welding or otherwise?

A. Yes, sir.

Q. Now do you know the name of that steel part that I have described?

A. No, I don't believe I do.

Q. If anyone should call it "deck stringer plate", you would be willing to accept that as being the name for it?

A. I expect I would.

Q. Well, we will refer to it until we are better advised as to it. We will refer to it as a deck stringer plate. Now, no part of that was renewed, was it?

A. Not as far as I remember; no, sir.

Q. That was a piece of steel considerably heavier than the ribs, wasn't it?

A. It should be.

Q. And none of that was taken out?

A. (No audible answer.)

Q. Now, did you observe the operation of removing these tanks from the tank room?

A. No.

Q. You didn't see them when they were taken out or when they were put in?

A. No, not at any time that I recall.

Q. Do you know whether or not the steel wall around the engineroom was removed?

A. Yes, it was.

Q. They removed that wall?

A. Yes, clear up to the deck level.

Q. On both sides?

A. Both sides.

Q. Do you know the purpose of doing that?

A. Sir?

Q. Do you know the purpose of doing that?

A. Putting in the new plates?

Q. Do you know what supported the steel deck when these walls were out from under it?

A. They had so many props around there, that I expect they had some for that; the thing was practically in a cradle.

Q. Now you have stated that there was some zinc pans underneath these tanks.

A. Well, they were put there at this time, I believe.

Q. Now what makes you think that they were zinc?

A. The reason is that I remember we bought some zinc plates for that purpose.

Q. Did you see these pans after they had been constructed?

A. I saw them when they were being made there on the dry-docks.

Q. Do you recall the shape?

A. Yes, generally they were flat pans.

Q. With a turned up edge?

A. Yes.

Q. How high was that edge turned up, do you remember?

A. Oh, I would imagine maybe six inches, or maybe a little less.

Q. How thick was the metal on these pans?

A. I don't remember what thickness it was.

Q. What was the shape of the pans; I mean were they the shape of this table or the shape of the tanks, or what was the shape of them?

A. In general they were rectangular pans, two pans, one under each two tanks, and it was designed to do that.

Q. They had square corners that extended out so as to encompass the circular tanks, is that right?

A. Yes; that is my recollection.

Q. How many of these pans do I understand there were?

A. Two; there was one for two tanks on one side and one under the tanks on the other side.

Q. Were these pans solid metal?

A. Yes, sir.

Q. Upon what did these pans rest?

A. I think there were some steel cross members on a sort of platform that they rested on.

Q. By platform, Mr. Simon, do you mean wood or metal?

A. Metal, as I recall it.

Q. There wasn't any wooden floor underneath there?

A. No, not that I remember seeing; I think there was some wood on top of the pans, between the pans and the tanks as I recall it.

Q. How could you see them?

A. They were placed on top.

Q. On top of what?

A. Inside the pans.

Q. Did you see them in there; did you see this wood in there?

A. Yes, I think so.

Q. When they were putting the tanks in?

A. No, I believe they were in there.

Q. How could you see them?

A. There is an opening that you could get in there through.

Q. Was the bulkhead taken down forward and aft of the tank locations also?

A. I believe it was replaced between the—I don't know what forward and aft is; I don't know what you mean by that.

Q. We will say towards the bow and towards the stern?

A. I am not sure of the location, but I think the steel bulkhead was replaced between the engines and the tanks, but not the other bulkheads, as well as I recall.

Q. Your best recollection is that the bulkhead which would be forward of the tank compartment wasn't replaced in steel?

A. It wasn't replaced at that time; I think there was a steel bulkhead before that.

Q. After the tanks were placed in there that steel bulkhead wasn't replaced, is that right?

A. The original bulkhead was left in there; I mean it wasn't taken out and a new one put in there.

Q. Then the steel bulkhead forward of the tank location wasn't taken out at all?

A. You mean the one between the tanks and the rest of the boat?

Q. Yes.

A. No, the one between the tanks and the engineroom was replaced.

Q. With a new one?

A. That is right.

Q. Now what about the steel supports underneath the tanks; were those renewed or did they stay there?

A. They were "new"; before this work was done the tanks had been at a much lower level, and they had great difficulty in getting the gasoline to properly feed when

the gasoline got low in the tanks, so they were raised at this time to overcome that difficulty.

Q. Where were the tanks while these new supports were installed? Where were they?

A. I imagine that was before they were replaced; I don't remember where they were at that time.

Q. Did you see them while they were replacing the tanks into their locations?

A. You mean while they were in the process of being put back in?

Q. Yes.

A. No.

Q. You saw no part of the process of taking them out or putting them back in?

A. I don't recall seeing that. I remember that I saw them before they were taken out and I saw them after they were taken out and after they were put back in.

Q. As I understand it, you did not see any of the process of welding the tanks?

A. I wouldn't say that I did; I couldn't say that I didn't either; I don't remember.

Q. You have no recollection on that point at this time at all?

A. No.

Q. Then your statement some time ago that they were welded is not based on anything that you recall?

A. It is not based on any remembrance of the actual operation of the welding job, no, but I saw the tanks before they were taken out and I saw them when they were ready to go back in, and I saw them after they were back in there, and I know they were completely cleaned out, and in order to do that they certainly had to take them out of there.

Q. How do you know that they were completely cleaned out?

A. For instance, Captain Nelson showed me a lot of residue and stuff there that he knocked out of the tanks.

Q. Then do I understand you to say that the tanks were taken apart?

A. I think that is right, yes.

Q. Do I understand that the seams of the tanks were reriveted?

A. I think they were all welded. They had a peculiar bottom.

Q. In what way was the bottom peculiar?

A. It was inverted.

Q. How did they cut these rivets that had been in there to get them apart to get inside of the tanks; how did they do that?

A. I don't know that, sir.

Q. Did you see these tanks when they were apart?

A. I think I saw two of them with the bottoms out.

Q. When they were put back together do you know whether they were riveted or not?

A. I am quite sure that they were all welded.

Q. Well, Mr. Simon, do you mean that they were riveted and welded or just welded?

A. They would naturally be riveted, I suppose; I don't recall; I know that they were welded around the bottom of each.

Q. How do you know that?

A. I saw them.

Q. Did you see them actually being welded?

A. No, not that I recall.

Q. Now do I understand you to say that when you saw these tanks you examined the bottom seam and that that bottom seam was welded?

A. That is my recollection, yes.

Q. Now then are you sure of that?

A. As sure as you can be of anything in that length of time.

The Court:

I think this is a good stopping point.

Mr. Matteson:

I would like to ask a question or two at this time.

The Court:

All right.

By Mr. Matteson:

Q. Mr. Simon, I just want to call your attention to the fact that these bills are made up day by day showing labor charges and material charges on each date. Wherever there is a labor charge, opposite the statement of the charge there is a statement of the particular work that that job of labor was used on that day; do you see what I am calling your attention to?

A. Yes, I do.

Q. I think you will find, as you go through these, that that is true all the way through. Now I would like you, if you will, to go through these bills and pick out the labor items that you say refer in any way to the gasoline tanks in the Seminole, that refer to the trays underneath them; that refer to the removal of the tanks or any part of the bulkhead or the tank compartments, and that in any way relates to welding, either of the tanks or elsewhere, on the vessel. Will you be kind enough to go through these documents that were produced, and in the morning be prepared to call our attention to the items that you say represent repairs of that type.

A. I will be glad to do anything I can, but, as I said before, I don't think you can identify them; I doubt very much that you can.

Q. I am calling them to your attention, and if you come back tomorrow morning and say you can't do it, we will do it ourselves from the documents, but I want to give you the opportunity to do it.

A. All right.

(Thereupn an adjournment was taken to 9:30 o'clock a. m., May 18, 1939—the next day.)

Thursday, May 18, 1939, 9:35 o'clock a. m.

(Hearing resumed pursuant to adjournment of previous day; the witness MR. ALLEN SIMMON, resuming the stand upon:

Cross Examination (Continued.)

By Mr. Botts:

Q. Now Mr. Simmon, I want to learn a little bit more about these tanks in that operation. You stated that one of these cross bulkheads, either forward of the tank room, or between the tank room and the engineroom, was removed. Now which one was it?

A. As I explained that, I didn't know what you referred to as the forward; but it was the bulkhead between the engineroom and the tanks.

Q. All right. That bulkhead was removed?

A. Yes.

Q. Now was this bulkhead removed before the tanks were removed, or after the tanks were removed?

A. I couldn't say; I wasn't there at the time the tanks were taken out.

Q. All right. Well, do you recall at the time when you saw these tanks lying out on the ground, or somewhere beside the boat, do you recall whether that bulkhead,—that engineroom bulkhead, was in place or not?

A. As I recall, it was not in place at that time.

Q. It was not in place at that time. Now then do you recall now seeing the tanks after they had been replaced in the boat,—while they were in place in the boat?

A. Yes.

Q. After they had been taken out and put back?

A. Yes, sir.

Q. Now then was this bulkhead in place at that time, when you saw these tanks after they were put back in?

A. No, I don't believe it was, when I saw it.

Q. In other words, you saw the tanks put back and in place in the tank room, and after that this dividing bulkhead was replaced; is that it?

A. That's my memory, yes.

Q. Now just what portion of the tanks were welded?

A. I couldn't say definitely, but I remember that the bottom was welded; because that was called to my attention particularly.

Q. Was there anything in the physical appearance of it from which you could and did observe the weld?

A. I don't quite understand your question.

Q. If two pieces of metal are welded together, there will be a seam or place showing where the weld occurs, won't there?

A. Yes, sir.

Q. Now then I want to know whether you observed such a welded seam, to use that term, at the point where the weld was made on those tanks.

A. Quite sure that I did.

Q. Well now then do you know that you did?

A. I think so.

Q. Well, is there any doubt about it in your mind?

A. No.

Q. Then you did or did not, now which was it? Did you see that weld?

A. I stated that I saw the weld on the bottom of the tank.

Q. That is what I want to get at, I don't want any thinking about it. Mr. Simmon, I believe that you stated something with reference to the shape of the bottom of the tank. Could you draw on that piece of paper a sketch

illustrating not to scale, of course, but illustrating in a general manner the point that you make; assuming that this tank had been sliced right through down the center of it so as to expose a cross section of it; could you draw a picture of one of those tanks? Make it two or three inches long, and if you want something to use as a ruler, why you can use the side of this pad. (Witness draws.) Now then will you make on that sketch, the words, bottom, and top, indicating? (Witness writes.) Now then will you mark the point where you observed the welded seam? (Witness marks.) All right, will you just draw—suppose you carry that arrow on out here and mark, weld. Now then will you connect that with the welded seam on the opposite side?

A. I already have.

Q. There would be a weld there also, wouldn't there?

A. Yes, sir.

Q. All right, there is the weld.

A. Yes, sir.

Q. Now then I notice that you have indicated the bottom of the tank, the metal, does not seem to come down flush with the bottom of the side; is that based on a definite recollection as to that condition?

A. That's my memory of the condition of the tank.

Q. That the metal from the bottom didn't go quite down as far as the metal from the side?

A. Yes, sir.

Q. So that the weight of the tank then would have to rest entirely on the metal of the side walls?

A. Yes.

Mr. Botts:

I will ask this sketch to be filed as Pilkington's Exhibit 12.

(The said paper was admitted in evidence and marked Pilkington's Exhibit number 12.)

Q. Now then did you personally observe these tanks, or any one of them, while the bottom was out of it?

A. Yes, sir.

Q. Now how many of them did you see with the bottoms out?

A. Two as I recall.

Q. And did you observe any part of the process of taking the bottoms out?

A. No, I didn't.

Q. You don't know how it was done, at all?

A. I haven't any idea.

Q. Now you stated that the tanks were elevated some distance above their original location, when they were replaced; is that right?

A. Yes, sir.

Q. How far was that elevation, to your best judgment?

A. I don't know.

Q. Well now, could you indicate it in feet or half of feet,—that close, do you suppose?

A. I can only say this, that I think they were raised at least two feet, possibly more than that.

Q. Well, then, we would be safe in saying that they were raised at least eighteen inches, wouldn't we?

A. I would think so, yes, sir.

Q. And possibly as much as two and a half to three feet?

A. Possibly.

Q. Now do you know what was done with the old foundation upon which these tanks had previously been resting?

A. No, I do not.

Q. You don't know whether it remained there or was cut out, or what was done with it?

A. I haven't any idea about that.

Q. These port and starboard steel walls—that would be right and left on the boat—

Mr. Underwood:

Left and right, respectively.

Q. Both of those walls were removed, were they? I am speaking now of the tank room.

A. Of the tank room?

Q. Yes.

A. I don't recall. What I refer to as the inside wall, that is the one that was inside of the boat, I don't recall whether that was removed or not. Certainly the outside wall was.

Q. Well now then, do you know which was the outside wall?

A. I don't mean to say, the outside wall; I mean the wall which the outside of the boat formed.

Q. Which wall of the tank room, if either, was formed by the outside skin or hull of the boat?

A. You mean, as to right and left?

Q. Umh hmh, as you looked forward.

A. I don't remember, frankly.

Q. That blueprint shows that this alleyway was on the right hand side of the boat as you looked forward, and the wall of that alleyway formed one of the walls of the tank room, didn't it?

A. Yes.

Q. And that wall between the alleyway and the tank room, as I understand it, was not removed; is that right?

A. That's it. I didn't recall whether or not it was removed.

Q. It might have been?

A. It might have been.

Q. Now how big was this substantial pile of rust and scale and so forth that you said was pointed out to you as having come out of these tanks?

A. Oh, possibly as big as your hat, maybe.

Q. Well, was it a peck?

A. I am afraid I haven't had enough experience with a peck measurer, to state.

Q. Well, a peck is eight quarts.

A. I wouldn't think so, no.

Q. Were the engines removed?

A. As I recall, they were, yes.

Q. Did you see the engines outside of the boat?

A. I don't recall, Mr. Botts; I am not sure.

Q. Well, then are you certain one way or the other as to whether the engines were removed?

A. No, I am not sure.

Q. Now when the tanks were cut open and rust cleaned out, then the old bottoms were put back in the tanks?

A. It is my belief that they were.

Q. And do you know, when they were put back, whether the tanks were riveted together and then welded, or just welded?

A. As I recall there were rivets driven through both of the sections,—that is the side sections and the bottom section, and then the welded seam was made, as I have shown you on the sketch.

Q. And the rivets weren't welded?

A. No, as far as I know.

Q. I beg pardon?

A. I say, not so far as I know.

Q. Well, you saw this other welding; if the rivets had been welded, you would have seen it all right, wouldn't you?

A. I expect so.

Q. So the rivets were not welded, were they? What was your answer?

A. I say, I think we can take it for granted that they weren't.

Q. I don't want to take anything for granted, I want to know. Now were the rivets welded or were they not?

A. If they were I didn't know anything about it, I didn't see any evidence of it.

Q. Were the tops taken off of these tanks?

A. Not that I know of.

Q. You saw the bottoms taken out, but you did not see the tops off?

A. That's right.

Q. So far as you know the tops were not removed?

A. That is correct.

Q. The side seam, that would be the vertical seam in the tank when it was in place, was not taken apart?

A. I didn't see it taken apart.

Q. Do you know whether that seam was welded or not?

A. No, I don't. I don't recall.

Mr. Botts:

That is all I have. Mr. Matteson is going to examine on those records, so I won't go into that.

By Mr. Matteson:

Q. Before I do that, I would like to ask you about these pictures; for instance this picture, Libelants' Exhibit 3: Do you recognize the bottom of the tank that shows through the hole?

A. Yes, sir.

Q. As—in that picture; and the rivets show there too, do they not?

A. Yes.

Q. And there is no evidence of any welding on the rivets, is there?

Mr. Underwood:

I object to that; the question is asking the witness to interpret the picture.

(Argument by counsel.)

The Court:

I will overrule the objection. Mr. Witness, you can use the picture as helping to refresh your recollection, not to interpret the picture.—He can utilize that for any questions that Mr. Matteson asks him, to refresh his memory as to what he is asked about.

Q. I will put it this way: Looking at the picture, and seeing the appearance of the rivets there, does that fix it in your mind that the rivets were not welded? Does that help you to do that?

A. Well, I don't recall that the question of the rivets being welded, was raised at all. As I said, I don't remember that the rivets were welded at all.

Q. Now this welded seam that you speak of would be completely out of sight in this picture, would it not?

A. Yes, sir.

Q. No possibility of seeing that?

A. That is right.

Q. It would be above the lower edge of the tank, as it shows in the picture?

A. It should be concealed behind this edge here.

Q. Do you know anything about the technical side of riveting?

A. No, I am not a boiler maker.

Q. Do you know how near to the edge of a plate it is proper, under boiler making practice, to place a rivet?

A. No, sir, I do not.

Q. Well, on this diagram you have shown us that the inverted bottom side of the tank is some distance above the lower edge of the tank.

A. Well, that drawing of course is not to scale; that was merely a slight offset. I perhaps exaggerated that.

Q. Well, how far above the bottom edge of the tank would you say the cap or the bottom of the tank, came?

A. You mean, this edge here?

Q. Yes, the inverted bottom, how far above the bottom edge of the outside tank would that be?

A. Oh, I wouldn't think it was any more than the thickness of the metal itself.

Q. What was the thickness of the metal of the tanks?

A. I don't recall.

Q. Wasn't the plating of the tanks, quarter inch plating?

A. You mean, the material, quarter inch?

Q. Quarter inch or five-eighths; do you know what thickness it was?

A. No.

Q. From your recollection of it, can you tell us how thick the plating of the tank was?

A. No, I don't think I could.

Q. Your recollection is that the distance that the bottom of the tank was above the bottom of the side, was about the equivalent of the thickness of the sheets of the tank, is that right?

A. Yes, sir.

Q. Can you say that the seam around the top of the tank was welded or not?

A. I couldn't say.

Q. Looking at this picture Libelants' Exhibit 6, and refreshing your recollection from that, can you tell us whether the top of the tanks—top seam of the tank was welded?

A. I wouldn't want to pass an opinion from looking at it there, no, sir, just what it would be. I don't recall actually seeing it.

Q. And the side seam of the tank, the vertical seam, can you tell us whether that was welded?

A. No, I cannot. As I stated sometime ago, I don't recall whether it was.

Q. Then the only welded part of this tank that you know of, was this seam on the underside of the bottom, is that right?

A. That's all I remember seeing.

Q. You have had no technical training I think you told us, with respect to matters of this type?

A. No, sir.

Q. Can you describe to us the appearance of this welded seam? How could you tell that it was a welded seam?

A. Well, I have seen a lot of welding before.

Q. Well, tell us, as you looked at this tank, how you were able to determine whether or not it was a welded seam.

Q. Merely because the evidence of the weld, as I recall it, was very apparent.

Q. In view of your lack of training and technical experience you wouldn't be able to tell us whether the tank, —whether the seam had been properly welded or not, I take it?

A. You asked me the question about technical experience, I thought you mean in connection with boats, or with tanks, things like that. But previously I have been familiar with the welding process.

Q. That is in the construction of buildings?

A. No, strictly in foundry work.

Q. And what experience have you had along that line?

A. Practically raised in a foundry.

Q. What kind of a foundry?

A. Malleable iron foundry.

Q. Where was that?

A. In—the location of it?

Q. Yes.

A. East Moline, Illinois.

Q. And when was the last time that you were there?

A. 1923.

Q. And did you work in the mill?

A. Oh yes.

Q. What kind of work did you do?

A. A little bit of everything.

Q. You are an accountant, are you not?

A. Yes.

Q. And is that the kind of work that you did there?

A. No. I was just at school at that time, getting what jobs I could. At foundry during vacation.

Q. Have you ever done any welding on tanks?.

A. No, sir.

Q. Did they do any welding on tanks at this factory where you worked?

A. On tanks?

Q. Yes.

A. Not that I recall.

Q. No tank work there?

A. No.

Q. I think you told us before, you don't pretend to be a technical expert with respect to welding of this kind?

A. No.

Q. Were the rivets that had been in the tank, burned out, do you know, or how were they taken out?

A. I don't know. I didn't see them taken out at all.

Q. How were the surfaces prepared before the parts were put together again? Have you any idea about that?

A. What surfaces do you mean?

Q. I mean, when the bottom was put back into the tank, do you know—

A. No, I didn't see any of the work done on there.

Q. Didn't see any of the work done?

A. No.

Q. Were the rivets replaced in the same holes where they had been before, do you know?

A. I couldn't say.

Q. You told us yesterday that there had been a certain amount of welding on the plates of the hull. When I read your testimony over I still wasn't clear as to where plates on the hull were welded. Can you tell me that?

A. I don't know that I am very clear, myself.

Q. Some of the plates on the hull were welded?

A. Yes, sir.

Q. Do you know the difference between cutting and welding by burning?

A. Yes, sir.

Q. Do you know the difference in the process?

A. In a general way, I think.

Q. What is it?

A. Cutting is the—just what it implies, cutting of the metal in pieces; and the process of welding is a process of building up with additional metal,—joining the parts.

Q. I take it that you aren't able to explain to us the difference in technique between the two?

A. No, I wouldn't attempt to pass an expert opinion on it.

Q. Well, is cutting sometimes done with an acetylene torch?

A. Yes.

Q. Do you know anything about zinc plates, with respect to the hull of a vessel, such as the Seminole? Did she have any zinc plates, do you know?

A. I don't know.

Q. Do you know what zinc plates are?

A. Yes; I know what they are.

Q. I mean, do you know what they are as applied to the hull of a vessel?

A. No, I don't.

Q. Do you know that zinc plates are frequently applied to the hull of a steel vessel, to reduce electrolysis; to absorbe electrolysis?

A. No.

Q. Were any zinc plates put on the hull of the Seminole at the time these repairs were made?

A. I don't know.

Q. You never heard of that method of reducing electrolysis on the hull of a steel vessel?

A. Yes, I have heard of it, but very recently; I know nothing about it at the time.

Q. You don't know anything about it with respect to the Seminole?

A. I beg your pardon?

Q. You don't know anything about it with respect to the Seminole?

A. No, sir.

Q. When did you first hear of zinc plates as attached to the hull of a vessel for that purpose?

A. Last night.

Q. Mr. Underwood, explained it to you?

A. Yes, sir.

Mr. Underwood:

You give me too much credit, Mr. Matteson.

Q. Who did explain it to you?

A. I think this gentleman over here; what is his name.

Mr. Underwood:

Mr. Gibbs or Mr. Meloy.

Q. Now you said that when the repairs to the Seminole were contemplated in 1927, that Captain Nelson got up an estimate, do you recall that?

A. Would you mind stating that again, please, sir?

Q. I understood you to say yesterday that when the repairs to the Seminole in 1927 were contemplated, that Captain Nelson got up an estimate?

A. That is right.

Q. I asked you whether the work had been planned in a general way by him; you said that Captain Nelson presented the original request for the work to be done, and an estimate of what it would cost. That is page 2207. Do you recall that?

A. Yes, sir.

Q. Was that plan and estimate presented in writing?
A. Yes.
Q. Do you know where that writing is now?
A. No, I don't.
Q. Where should it be?
A. I haven't any idea.
Q. Where was it the last time that you saw it?
A. It was in the file at my desk.
Q. And what file was that?
A. I don't know that the file was labeled.
Q. Do you have a file relating to the Seminole?
A. Well, I would think that it was filed among other papers.
Q. And when you left that office what became of that file?
A. It was left there, so far as I know.
Q. Part of the files of that office?
A. Not a part of the regular filing system, no.
Q. Well, was it turned over to somebody?
A. No, not officially as I recal. It was left there with these other papers.
Q. Did you turn over whatever papers that you had to the proper custodians when you left that office?
A. That depends on what you mean by turning them over. They were left there, I didn't take any of them with me.
Q. Well, they weren't left to be thrown out, they were left to be taken charge of by the proper party, is that right?
A. I don't know that I at the time though much about them.
Q. Anyway, you don't know where it is now?
A. No, I haven't any idea.
Q. Isn't it a fact that Captain Nelson estimate for that work was $7,000.00?
A. Was how much?

Q. $7,000.00 approximately,—his first estimate?

A. Oh, no; no, as I recall, it was around $30,000.00.

Q. You are quite sure that that was his estimate, around $30,000.00?

A. Quite sure.

Q. Where is Captain Nelson now, do you know?

A. I haven't any idea.

Q. As a matter of fact, isn't he Master of a Yacht here in Miami right now?

A. Nelson?

Q. Yes.

A. I didn't know it.

Q. You hadn't heard that?

A. No.

Mr. Underwood:

Is it suggested that he is?

Mr. Matteson:

He was the last time I knew, a couple of months ago.

Mr. Underwood:

When your representative last interviewed him, he was in Miami?

Mr. Matteson:

We interviewed him,—one of our representatives interviewed him, but for their own information. That was about two months ago.

Q. As a matter of fact, Captain Nelson has been in Miami more or less regularly ever since 1928, has he not?

A. I don't know, I haven't seen him.

Q. Were any members of the crew, other than Captain Nelson, on the Seminole during repairs?

A. No, I don't recall that we had any other men on the regular payroll at that time; in fact I am quite sure we didn't.

Q. How long was the Seminole?

A. As I recall she was about 105 feet long.

Q. From what records was this statement,—comparative statement of operations, taken, can you tell me?

A. Those were taken from original invoices.

Q. Well, for instance, take the year 1926, from what source was that information taken?

A. Original invoices.

Q. In what files?

A. In the same files that I kept in my personal custody.

Q. That was in the office at 1317 Biscayne Boulevard?

A. That is correct.

Q. They are not records that have been introduced in this case, so far as you know?

A. Some of them are.

Q. 1926?

A. I don't know. No, I guess not.

Q. Now I asked you yesterday if you would take this bill of Merrill-Stevens and go through it and see if you could pick out any items that you would say relate to the gasoline tanks of the Seminole. Have you done that?

A. I have gone through the bills, yes, sir.

Q. Did you find any such items?

A. I found no items that specifically stated they were for gasoline tanks.

Q. It is a fact, is it not, that you verified when you went through, that all of the labor charges are designated as being applied to some particular kind of work?

A. Not all of them, no.

Q. Well, for instance on page—the page that happens to be open, September 26 and 27, 1927, do you find any there not designated?

A. Well, for instance here is, carpenter odds and ends.

Q. Well, I assume that when the item is carpenter odds and ends we can assume that that does not relate to the tanks of the Seminole?

A. That is right; but what I meant was, that there are items that are not the labor—the labor is not specified as to where it goes. For instance you will find going through here that there are a number of items entitled piping, that is all the explanation that was given; and here is drillers; well in that case it says, drillers and chippers.

Q. Do you find any undesignated item in this bill that you could refer to the work you have told us about on the gasoline tanks of the Seminole?

A. Well, a lot of material items that could apply; that is; oxygen, acetylene.

Q. The oxygen and the acetylene were also used on the bottom of the ship, were they not?

A. Oh, yes.

Q. I am talking about labor charges particularly; because as I take it, on each day you have certain labor charges certain material charges; the material must have been used by the men whose time is charged. That is right, isn't it?

A. I don't think that you can follow—I mean I don't think that it follows that the material listed here was necessarily used by these people in that particular—

Q. On the particular day?

A. On the particular day, nor on the particular function stated here.

Q. Well, anyway the materials and equipment used on the job would have to be used by someone for whose time a charge was made, would it not?

A. Yes, sir.

Q. So the items of time are the ones that tell us the nature of the work that was done?

A. Well, not accurately at all.

Q. You think not?

A. No, sir, I know it.

Q. Tell me this, Mr. Simmon; in order for these tanks to be opened up, they would have to be freed of gas and tested before the rivets could be burned out, would they not?

A. That's what I understand.

Q. And that is an item for which shipyards make a charge when that work is done, is it not?

A. Well, as I explained before, this work was not done under contract with the shipyard. Captain Nelson had complete charge of the job, he had complete charge of the labor, and he bought the material from the yard. The work was all done under his direction.

Q. Well, I appreciate that, but you don't have any idea that the Merrill-Stevens shipyard did anything that they didn't charge for, have you?

A. Well, what I meant was, that they didn't know what these men were doing, as far as the yard itself was concerned; they were acting under the supervision and direction of Captain Nelson. None of the shipyard men were in charge of the work at all.

Q. Have you ever had any experience with the gas-freeing of tanks?

A. Of what?

Q. Of the gas-freeing of tanks?

A. What do you mean?

Q. I mean, have you in your experience ever come into contact with a situation where the necessity of freeing tanks of gas before working on them, was involved?

A. In this particular case, yes, sir.

Q. Well, I mean in any other case.

A. Well, I know enough about an automobile to know that an empty tank is the most dangerous thing you can have.

Q. Free gasoline vapor anywhere is exceedingly dangerous, isn't it?

A. Yes, sir.

Q. Exceedingly exposive?

A. Yes, sir.

Q. Now I ask you, in going through the bill did you find anywhere a charge for freeing the tanks of gas?

A. No, sir.

Q. Cleaning the tanks?

A. No, sir.

Q. Do you find any charge for testing the tanks for freedom from gas?

A. No; it is like a lot of other items not shown on the bills, because Merrill-Stevens knew nothing about it; but Captain Nelson reported to me what he did about it.

Q. Well, the work of testing the tank for freedom of gas before work is done on it, is a technical matter that is performed by experts, is it not?

Mr. Underwood:

May we have the question specified, what kind of a tank?

Mr. Matteson:

I am talking about a tank that may have volatile gasoline fumes in it.

Mr. Underwood:

Well, I object to the question on the ground it is not sufficiently specific. There are all kinds of tanks,—tanks in tank steamships, and one rule applies to them; there are cylindrical tanks, of this sort, and another rule applies to that tank. * * *

The Court:

Are you talking about this particular tank that he saw there in the Seminole?

Mr. Matteson:

Well, my question was general, if the Court please; and I think it applies to all kinds of tanks, including these.

The Court:
He is not an expert on that, is he?

Mr. Matteson:
Well, I want to find out how much he knows about it.

The Court:
I haven't considered his testimony as being of an expert nature along these lines, so I think that it ought to be confined to just what he saw in these particular tanks.

Mr. Matteson:
Well, if your Honor please, my thought in the matter has been just this: This man has been produced here with the bills from Merrill-Stevens, and they have been offered in evidence in the case, and he has assumed to give testimony with respect to the work that was done there. I am trying to get an explanation if I can of the absence from the bills of the kind of charges that would be required if the work that he says was done, was done. * * *

(The question was read.)

A. I don't know.

Mr. Underwood:
Wait.

By Mr. Matteson:
Q. You don't know anything about that?
A. I don't know anything about testing for gas.
Q. And you have no explanation of why such a charge does not appear in this bill?
A. Oh yes, I can explain that.

Q. You think it may be hidden among the labor charges that are there?

A. That is right.

Q. And if that were true, it would mean that the work of freeing the tank from gas was done, was performed by the ordinary workmen in the yard?

A. And under the supervision of Captain Nelson. In fact he reported to me that that was done.

Mr. Matteson:

I move to strike that out, if your Honor please, as not responsive to the question.

(Argument by counsel.)

The Court:

It is a voluntary statement; I grant the motion to strike.

Q. How recently, Mr. Simmon, were you asked with respect to this work that was done back in 1927 in connection with this case?

A. How recently was I asked what?

Q. How recently were you asked about this work that was done on the Seminole in 1927 in connection with this case?

A. Right now.

Q. I assume that someone of the legal staff of the Respondent talked with you before you came to Court.

A. Yes.

Q. When was it that any of them first talked to you about this work in 1927?

A. I think sometime in March, as I remember it.

Q. March of this year?

A. Yes, sir.

Q. Is that the first time that you had occasion to go back and think about this job since the matter actually took place?

A. No.

Q. What occasions in the meantime have you had to recall these matters to your mind?

A. Well, Mr. Batchelor called on me at one time at St. Augustine and asked me questions about the case.

Q. And at that time you remembered very little about it, is that the fact?

A. About the questions that he asked me, yes; he didn't ask me about the work done on it.

The Court:

A little louder.

Q. You say he didn't ask you about the work that was done on the Seminole?

A. No, sir.

Q. That is, he didn't ask you?

A. That is right.

Q. And there was nothing in connection with that interview that caused you to go back to 1927 and think about this work, was there?

A. No, I don't recall any incident.

Q. So that the first time since 1927 or 1928 that you had occasion to go back and refresh your recollection with respect to this work was in March of this year?

A. That is correct.

Q. Now what have you had to refresh your recollection with respect to that work?

A. Mostly just the bills, invoices and so forth that have been presented here, and the statements.

Q. Just these that have been offered in evidence, is that right?

A. Yes, sir.

Q. Now what is there about this set of bills, Respondents' Exhibit 4-L, that refreshes your mind with respect to the work on the tanks?

A. I don't know of anything in connection with the bills that does.

Q. Now I would like to ask you about the supports on which these tanks were placed in the tank compartment, and I think you said they were raised up about two feet from their former position, is that right?

A. That was my understanding.

Q. So that after this job was done they stood two feet higher in the tank space than before?

A. As I understand. I don't know how much higher, but they were raised.

Q. That is your recollection, approximately?

A. Yes.

Q. What I am asking you about is what supports were put under the tanks for the tanks to rest on?

A. I don't recall definitely but it seems to me that there were steel angle irons and beams under there to support the tanks.

Q. Were those beams fastened to the forward and after bulkheads of the compartment?

A. I couldn't say as to that; I don't know.

Q. How many of these supporting beams were there?

A. I don't know.

Q. You don't know how they were installed or what supported them?

A. No; I don't remember.

Q. I take it, Mr. Simmon, that you are not a technical electrician either?

A. No, sir.

Q. Now, Mr. Simmon, I would like to ask you this: I show you this photograph, Libelants' Exhibit 9; do you remember this opening in the bulkhead here which is indicated in this picture by an arrow with the letter "A" at the end of it?

A. Yes, I think I do.

Q. That has been referred to by the witnesses as the old coal hole through which coal was shoveled when the

tank space was the coal space; do you recall that opening?

A. I recall the opening up there; but I don't recall anybody calling it a coal hole.

Q. Do I understand you to say that this whole bulkhead that shows in this picture, Libelants' Exhibit 9, was renewed in 1927?

A. Which bulkhead?

Q. This bulkhead between the engineroom and the tank compartment?

A. I don't recall that I said it was renewed; I said it was removed.

Q. I thought you said it was renewed?

A. No; I said it was removed.

Q. Was the same bulkhead put back in place?

A. So far as I know; I don't know whether that was removed or new plates put in there or not.

Q. Was it entirely removed?

A. As I recall it it was entirely out of there.

Q. As a matter of fact, you see this plate in the middle which is bolted in place, wasn't that the only plate that was taken out?

A. Not that I recall; the whole thing was off.

Q. And replaced after the tanks were in place, is that your testimony?

A. Yes.

Q. And this plate in which this hole is that I called your attention to appears, the old coal hole, as I call it, is that the same plate that was there before?

A. I couldn't say as to that.

Q. Is the hole identically similar with the one that was there before?

A. It is a hole, and I presume it is the same one; I don't know the same size, shape or anything else.

Q. Your testimony yesterday was, quoting from page 2089.

"Q. Then the steel bulkhead forward of the tank location wasn't taken out at all?

"A. You mean the one between the tanks and the rest of the boat?

"Q. Yes.

"A. No; the one between the tanks and the engineroom was replaced.

"Q. With a new one?

"A. That is right."

Now, which is it. Was a new bulkhead put in or was the old one put back?

A. I don't know whether there was new plates put in there or not. As I understood it, the question was as to whether this was removed or not, and I am sure that it was removed.

Mr. Matteson:

I gather from your testimony here that you volunteered the statement that it was replaced.

Mr. Botts:

No; he was asked if it was replaced with a new one.

A. It was replaced.

Q. You are not sure now whether it was new or old?

A. It was replaced but I don't know whether it was new construction or whether it was the same bulkhead.

Q. Well, if you are not sure how was it that you happened to answer this question:

"Q. With a new one?

"A. That's right".

Were you sure at that time that it was a new one?

A. I couldn't have been, because I don't know whether the material was put back in the bulkhead—whether the

material that was put back in the bulkhead was the same material or not.

Q. At the time you were asked this question: "With a new one", you said, "That is right", without any qualification or indication that you had any doubt in your mind. Was there a doubt in your mind at that time?

A. I couldn't say why I answered it that way; I must have been confused.

Q. When did this doubt first arise in your mind about that point?

A. I wasn't aware of any doubt at all; I am still under the same impression that I was.

Q. Was that a matter that was discussed last night too?

A. This bulkhead?

Q. This testimony that you gave yesterday.

A. Oh, no.

Q. Yesterday you were clear and definite in your mind that it was a new one when you answered the question.

A. I could not have been.

Q. You say now that you could not have been when you answered; is that what I understand?

A. Yes.

Q. Is that true of any other answers that you have given here?

A. I don't know, unless I could go over them.

Mr. Matteson:

I think that is all.

By Mr. Botts:

Q. Mr. Simmon, isn't it possible that you could be just as much mistaken about the welding of these tanks as you were about the newness of that bulkhead?

A. I had no intention of ever making any statement regarding the newness of the bulkhead, and I have no recollection of that question coming up before.

Q. Do you deny that you made the statement?

A. No, I can't deny it.

Q. Now then after these tanks were removed from the hull and opened and then riveted together again and welded, do you know whether or not they made any test of these tanks; I mean do you know of your own knowledge?

A. Yes; Captain Nelson reported the test to me.

Q. I am asking you what you know.

A. I wasn't present, if that is what you wish me to say.

Q. Mr. Simmon, when I ask you a question I want to know what you know and not what someone might have told you.

A. All right.

Q. Now then I wonder if you would mind telling me how it happened that you were informed last night about this process of putting zinc plates in the hull of a steel ship; how did that arise?

A. There was some discussion; I don't recall just exactly how the matter did come up; I know there was some discussion, but I don't know that I was a party to the original discussion.

Q. I wonder if maybe I could suggest something—

Mr. Underwood:

If your Honor please, I don't think the witness was permitted to finish his answer, although I may be mistaken.

The Court:

Did you finish your answer?

The Witness:

In the course of the conversation Mr. Monroe said something about the necessity for zinc plates on the hull. I don't recall who asked the question about it.

(By Mr. Botts):

Q. Or why it came up?

A. No, sir.

Q. I am wondering, Mr. Simmon, if this could have been the way that it arose: that you were asked to point out in these bills some charge for zinc material for making these pans and you pointed to these various charges for zinc plates in here, and they said, "no; that was something else". Is that the way it came about?

A. I think Mr. Monroe was going through the bills and I don't believe I was a party to the discussion. As I recall it, there was somebody else asking about the zinc plates.

Q. You were not trying to show him where the zinc from which these pans were made were charged in these bills?

A. I don't think I was a party to it at all.

Q. Now is there anywhere in those bills a charge for any sheet zinc for the making of those pans?

A. As far as I am concerned, I was under the impression that these zinc plates answered that purpose.

Q. That is what I thought.

A. Yes.

Q. And seeing those zinc plates in there is what suggested the thought that these pans were made of zinc, is that right?

A. Yes.

Q. And without that suggestion in there you would not have been able to identify the material for these pans, would you?

A. Now, don't misunderstand me. I thought that the pans—my recollection of them was that they were made of zinc even before I examined those bills, and I just took them as verification of my impression.

Q. You know now that there is no sheet zinc charged in those bills, don't you?

A. There is zinc plates in there.

Q. I said sheet zinc out of which the pans could have been made.

A. As far as I am concerned I wouldn't know the difference between sheet zinc and zinc plates.

Q. That is not the question I asked you. You may not be trying to dodge it, but it sounds like you are. You know now that in those bills there is not one single item for sheet zinc, don't you?

A. No, I can't say that because as far as I know zinc plates and sheet zinc are the same thing; I don't know that there is any difference.

Q. Your technical advisor did not tell you the difference between zinc plates and sheet zinc?

A. I have no technical advisor.

Q. The technical expert that told you about zinc plates last night didn't tell you that difference, did he?

A. No.

Q. There is no charge in these bills for sheet zinc, is there?

Mr. Underwood:

I object to that; he has covered it many times and the bills speak for themselves.

The Court:

He says he doesn't know the difference. Suppose you specify an item—

Q. There are numerous charges in these bills for zinc plates?

A. Only one that I know of.

Q. I have seen at least two, and I haven't gone through the pile.

A. At least one in a large amount.

Q. Charges in there for zinc plates, at any rate, whether one or more?

A. Yes.

Q. You don't know of any charge in these bills for any other kind of zinc except zinc plates, do you?

A. No.

Q. Now do you think it is possible that you could have been mistaken yesterday when you said these pans were made of zinc?

A. I can only state what I said yesterday, that I believed they were made of zinc.

Q. You were quite positive of it yesterday.

A. I said so.

Q. You have said that the charge was in there for the material, didn't you?

A. I suppose I did; I don't know.

Q. Did you, as requested by Mr. Matteson, very carefully go through these bills last night to try to identify any charges with reference to the work in respect of these tanks; did you look for them?

A. Specific charges?

Q. Yes.

A. Yes.

Q. Then you know that there is not a single charge in these bills, or any one of them, for removal of the tanks?

A. No. I think the charges are there; they are not so specified, but they are there.

Q. There are no charges in there which can be identified as being charges for removal of the tanks?

A. None which is identified in these bills.

Q. And there is no work so identified on them that would in any indicate that it was for removal of the bottoms of the tanks, is there?

A. There is no item in there that states it that way.

Q. There is no item in there for riveting the tanks, is there?

A. I don't recall as to that; I don't know whether there are any general items in there; there is nothing in there that states "riveting of tanks".

Q. And there is no charge in there for welding tanks?

A. No, not under that title.

Q. And there is no charge in there for replacing the tanks in the ship?

A. It is not so stated.

Q. And there is no charge in there for making pans, of zinc or otherwise, is there?

A. It is not so stated.

Q. Do you know who it was that determined these tanks, after being in use about five years, were required to be removed, opened and reassembled; do you know who determined that that was necessary?

A. Captain Nelson.

Q. Now I think we are clear, Mr. Simmon, that there is not one single reference to these tanks, as such, in any of these bills, is that right?

A. Yes; I think that is right.

Q. Then a reference to these bills would not in anywise serve to refresh your memory as to any work with respect to these tanks, would it?

A. No, I don't think it would.

Q. Then, as far as the work on the tanks was concerned, you are depending entirely upon your memory of a transaction that occurred some eleven years ago; right?

A. About ten or eleven years ago.

Q. Now, Mr Simmon, there were many, many different items of repair—items of repair performed in connection with this rehabilitation of the Seminole?

A. Yes, sir.

Q. Can you enlighten me at all on the subject of what it was with reference to these tanks which, after eleven years, that leaves still fresh in your memory the thought or belief that the metal of the bottoms of these tanks did not come down flush with the metal of the sides?

A. Yes, I can.

Q. All right.

A. There was a discussion; in the first place, Captain Nelson didn't know whether we would be able to use these tanks, or whether we should get new tanks, and that was one part of the estimate on the work which was left open for determination. The tanks were removed, and I was very much interested, because of the buying angle, as to whether or not we would have to order new tanks or not, so I went out there to see about it, and, as I recall it, he called me up when he was ready to show me the tanks. He had two of them opened, and he decided, and I concurred in his opinion, that the tanks were in good shape and as good as any new tanks we could get, and he said, "well, we will put them back together", and the next time I saw them they were ready to go back in the boat, and he told me about all the tests that he performed on them, and the test seemed as rigid as one could desire; so, after having tested these we decided not to purchase any new tanks. I recall that there was a question in my mind (as I admitted before)—I didn't know anything about tanks—there was a question in my mind as to whether or not he could take the bottoms out of these tanks and put them in and have them as good as ever, and he said that he could. He said that he would weld around there to make sure that they were as good as ever.

Q. And that refreshes your recollection that there was a little difference in the elevation of the bottom in relation to the sides, and you remember that clearly after all of these years?

A. Yes, I do.

Q. Now when you saw these tanks in position in the ship before that engineroom tank compartment bulkhead was replaced, the pans were then underneath the tanks, is that correct?

A. As far as I recall, yes.

Q. They could not put the pans under there after they put the tanks in, could they?

A. I don't know; they might have.

Q. You have stated that you think there are labor items on these bills which are not definitely identified as being with respect to anything else and which might have covered these items of removal, opening, welding, replacing the tanks and making the pans. I am going to ask you if you will take those bills and show me a single one of the character you have mentioned.

A. You mean limit it to one single item?

Q. One or more items, I will put it, which might have been with respect to the tanks.

A. The labor is all charged, or the greater portion of it, into the "bottom", and I think that the labor charges on these items were included in this charge.

Q. Show me one labor charge that could be so categoried, will you please?

A. It might have happened in one of these items (pointing).

Q. What is it?

A. Boilermakers; bottom plates; boilermakers' helpers.

Q. Are these the items that you say—

A. I say there are items like that practically every day all the way through here.

Q. I want you to point me out one.

A. Here is another and here is another.

Q. Boilermakers, plates, bottoms and sides might have been?

A. Yes.

Q. Down here is another one.

A. Yes.

Q. That refers to "bottom" and "sides" of the ship?

A. That is what it says here.

Q. I am asking you to point out one item of labor that might have been with reference to tanks; I am not interested in the sides of the ship. I can read myself.

Mr. Underwood:

I think that Mr. Botts should not be so sharp with the witness. The witness has said that the items that he pointed to might have been with reference to the tanks.

Mr. Botts:

He may have answered it to your satisfaction but he has not answered it to mine.

Q. Now, Mr. Simmon, I am not interested in the items that show "boilermakers, bottom and sides"; I can read those myself. I want you to show me one item of labor, one or more, that might have been with reference to removal of tanks, opening tanks, welding tanks, riveting tanks, replacing tanks and making pans. I want you to show me one item of labor of that kind, if you will.

A. There is no item in there which states that that is specifically what it is; for anyone of those operations.

Q. You have told me that many times, and you have told us that there are labor items that might have been, these unidentified labor items, that might have been for this purpose; they are the ones that I want you to point out, if you can. If you can't do it right now, suppose you take these and I will give you the rest of the day to find them. You can even take your experts to help you, if you want to.

Mr. Botts:

If the Court please, instead of taking up the time of the Court for him to do that, I am through with the witness until he advises me as to these items. I am going to ask him that he take these and take all the time he wants to and look for the items such as I have asked him about. Then we will know whether he can do it or not. Maybe we can go on with something else in the meantime.

The Court:

Do you wish to do that, Mr. Simmon; would you like to take them until this afternoon?

The Witness:

Your Honor, I don't believe they would help materially in any way.

Mr. Botts:

It would help me—

The Witness:

I have—I can explain why these items were not shown individually, and when I offered the explanation it has not been accepted, so my hands are tied.

(By Mr. Botts):

Q. When you get down to it, Mr. Simmon, your only explanation is that there is no such items there, isn't that right?

A. No, sir.

Q. You can't find them.

A. It is not specified as such, and I have stated that before.

Q. I have relieved you of that responsibility, and I will ask you if you can locate any unspecified and unidentified labor that might conceivably have been with reference to removing; reconditioning, re-welding and replacing these tanks.

A. The explanation that I gave sometime ago was that Merrill-Stevens made these charges, and they had no knowledge of the work that was going on, and practically all of this labor was charged into "bottom and sides", whereas, as a matter of fact, it wasn't all "bottom" and "sides".

Q. Then your answer is that the bill is wrong, is that correct?

A. That is correct.

Q. I think you said that the Captain of the ship was the man that superintended this?

A. He did.

Q. Did he give the charges to Merrill-Stevens or did Merrill-Stevens give the charges to him?

A. Merrill-Stevens had their record of the employees; they punched in on Merrill-Stevens' timeclock, punched in and out, and these bills were made up from their records there. Now, as to charging it to the different operations, they had no record of what the different operations were. That was up to Captain Nelson, and he made his report to me as to what the work was, as to what work was being done.

Q. Do you have any of those reports or were those verbal?

A. Mostly verbal.

Q. When was it, Mr. Simmon, that you, if you have been, were made aware that the reconditioning operation with respect to these tanks was important?

A. I don't recall; I wasn't consulted about the necessity for reconditioning, but I was told that the operation was going to be performed.

Q. That is not the question I asked you. I asked you: when, after the present case was in progress was it, that you were first made aware that, if you have been at all, it was deemed important to show that these gasoline tanks were removed and reconditioned.

A. Nobody ever told me that.

Q. Nobody ever suggested that to you?

A. No.

Q. That is all, unless you want to point out these items of unidentified labor—

The Court:

He says he doesn't care to do that.

Mr. Botts:

All right; then I am through.

The Court:

You heard what he said, and I take it for granted that he means that he doesn't desire to come back as a witness.

Mr. Botts:

Yes, I heard him. That is all.

(By Mr. Matteson):

Q. Do I understand you to say that Merrill-Stevens had no foreman on the job?

A. That is right.

Q. They kept no track of what work was done on the job?

A. No, sir.

Q. How do you know that?

A. It is a matter of knowledge; that's all.

Q. You mean that somebody told you that?

A. No; I know they didn't have any foreman on the job; that wasn't the arrangement with them at all.

Q. You didn't work at Merrill-Stevens?

A. No.

Q. You didn't keep their records?

A. No.

Q. You don't know what the source of their records might have been, do you?

A. No.

Q. You are just guessing at it?

A. Except that I questioned them on some of these bills and they had no record of what work was being done except their timeclock records.

Q. So all you know is something that they told you about that?

A. Yes.

Q. Doesn't it strike you as rather extraordinary that they didn't know anything about what their men were doing?

A. Beg pardon.

Q. Doesn't it strike you as rather extraordinary, Mr. Simmon, that they didn't know anything about what their men were doing?

A. Well, the men were working under Captain Nelson, and he was supposed to keep track of them and see that they were working.

Q. And he was supposed to tell each individual man what he was to do at any particular time; is that your understanding of it?

A. Yes.

Q. And that is based on what Merrill-Stevens told you when you inquired about the bill afterwards?

A. What?

Q. That is based on what someone at Merrill-Stevens told you when you inquired about the bill afterwards?

A. Yes.

Q. It is a fact, is it not, that the reason for those inquiries was that you suspected that the bill was much too high?

A. No, that wasn't the reason at all. The bills came through from time to time during the progress of the work, and I knew from Captain Nelson's reports that certain operations were going on, and the bills were coming in for the same "old operations", and I called them up about it, and that is when I found out that they had no record, only as to the work being done—they just charged these men "in".

Q. There was at one time, when you made inquiries of Merrill-Stevens a suspicion on your part that some of the work indicated on the bill had not been done; is that the fact?

A. No.

Q. Do you recall going to Merrill-Stevens in company with Mr. Brown to make inquiries on this point?

A. Not at this time.

Q. At any time.

A. That was six months, I guess, after this work was done.

Q. And that was the purpose of that inquiry at that time?

A. No, not to find out whether the work was done; there was no doubt about the work being done.

Q. You had no doubt about that in your mind at all?

A. No.

Q. You knew at that time, didn't you, that you had already discovered that Captain Nelson had receipted for gas on one or more occasions, for 200 gallons more of gas than he actually received, did you not?

A. I don't recall that; but I knew that he accepted some commissions on sales.

Q. Did you have charge of investigating the conduct of Captain Nelson?

A. I wouldn't say that I had charge of it, no.

Q. You had a good deal to do with it?

A. I helped to a certain extent.

Q. You had at least heard at that time that he had receipted for more gas on occasions than he had received?

A. It is possible, but I don't remember that particular incident now.

Q. You had no suspicion when you inquired about this bill that some of the work represented by the bill had not been done?

A. No; there was no question at that time of that kind.

Mr. Matteson:

That is all.

Re-Direct Examination.

By Mr. Underwood:

Q. What was the questioning about Captain Nelson at that time; at the time you went to Merrill-Stevens with Brown to make inquiries about this work, what was the point of your questioning at that time?

A. The point was to find out whether he had accepted any commissions on the work done.

Q. During the progress of this work how often would you be at the yard and see it?

A. There was no regularity but, as I recall it, I was there several times a week.

Q. Who checked over these bills as they came in?

A. I did.

Q. When they came in just how did you check them over?

A. I had written memorandums and reports from Captain Nelson as to the progress and nature of the work being done, and also a rough idea in general of the number of men being employed daily.

Q. Were they checked in any way against your own observation?

A. Naturally.

Q. How at that time did the bills compare as to the nature of the charge with what you yourself had observed the men doing?

A. Well, the bills, as I said before, did not agree in all cases because there was no accurate payroll record kept by Merrill-Stevens so that the charge could be put on the bill; I knew what the operations were from the memorandums.

Q. Mr. Matteson indicated while he was cross examining you that he wanted an explanation of why the work of gas-freeing tanks does not appear on the bills. Do you have any explanation of that?

A. Yes, it is the same explanation that this work was all done, and a large body of men were working on the boats; I think at times there was as high as 45 to 50 men employed on the boat, and Captain Nelson was acting in direct charge of these men, directing each just what to do, and even he did not go into detail as to every operation performed by each man, because there was no purpose of it; the main item was to see that we paid for the men employed there and the time they worked, and that the work was all done on the boat, and the fact is that it was one large operation of labor on the boat, and there was no real reason for breaking it down to a very fine cost accounting basis for each operation.

Q. You were asked about whether Captain Nelson's original estimate was in writing. I would like you to tell me what you have done, if anything, in an attempt to locate that?

A. I was at the offices at 1317 Biscayne Boulevard and went through every bunch of files I could find there, trying to locate the memorandums and the estimate.

Q. When did you do that?

A. It was about one month ago, or six weeks ago.

Q. During the progress of this trial last March?

A. Yes.

Q. Do you remember how late you stayed up that night trying to find it?

A. About midnight.

Q. Were you able to find it?

A. No, sir.

Q. Generally, to refresh your recollection as to these repairs that were done, what have you looked at?

A. I have looked at these statements and invoices; that is about all.

Q. Do you remember anything else?

A. I don't recall anything else.

Q. By the way, have you any connection now with Mr. J. S. Phipps or any member of the Phipps' family or any corporations in which they are interested?

A. None whatever.

Q. Mr. Matteson just asked you some questions about inquiries that you made at Merrill-Stevens at the time that the work was being done, as I understand his question: do you recall any inquiries during the course of the work while you were receiving bills for it?

A. Yes, sir.

Q. On what did you base that?

A. You mean the inquiries as to the charges?

Q. Yes; on what did you base your approval or amendment of the bills during the progress of the work?

A. I had a record of the rates being paid to the different classes of labor, and of course the extensions were checked on each daily; then I had a record or reports from Captain Nelson or memorandums as to the nature of the work being done, and I checked on them physically to an extent when I went out there, and it was based upon that knowledge that the bills were okayed, relying, of course, to a great extent, upon Captain Nelson's reports.

Q. I call your attention to a portion of one of Merrill-Stevens bills which ends up with items for September 17, 1927, and I call your attention particularly to the pencil marks and calculations below the typewriting. Will you tell me whether or not you made those?

A. No.

Q. Who did that?

A. Mr. Wilson.

Q. Do you remember whether or not that was done at your direction?

A. Yes, it was.

Q. Does that bear your okay?

A. Yes, sir.

Q. You spoke to me last night about a mistake you made in your testimony yesterday. Will you tell me what that was?

A. In reply to a question asking if this last was in my handwriting and I said it was inadvertently; I had no intention of stating that, because it is not.

Q. Do you recognize the handwriting now?

A. Yes.

Q. Whose is it?

A. Mr. Wilson's.

Q. Referring to the yellow sheet which is the first page of Respondents' Exhibit 4-L?

A. Yes.

Q. Will you tell me whether or not that was prepared at your direction?

A. It was.

Q. You have said something about your experience with welding, and I don't think it is clear just how or just what you have done in that connection. Will you tell me about that?

A. I worked in a malleable iron foundary and in many cases it is necessary to correct sand blows and cracks and other faults in castings by welding, to fill up the holes, and that was the extent of my experience with welding.

Q. What did you yourself do about that?

A. About the welding process?

Q. Yes.

A. Nothing individually.

Q. Did you ever do the welding yourself?

A. No.

Q. Did you see it done?

A. I was in charge of the department where it was done.

Q. Do you know what welding looks like?

A. Yes.

Q. When you saw these two gasoline tanks from which the bottoms had been removed, I wish you would describe to me what the inside of the tanks looked like at that time.

A. Well, as well as I recall, it was just bare metal, rather bright and apparently smooth; there wasn't any particular distinguishing characteristics about it.

Q. You say it was fairly smooth. Can you tell me whether or not it showed any signs of pitting or corrosion?

A. No, I don't mean that it was finely polished, a finely polished piece of metal, but, as I recall it, it was not pitted or corroded.

Q. How about the inside of the bottoms of the tanks at that time; how did they look?

A. They looked clean.

Q. How did they compare with the sides of the tanks themselves?

A. I would say they were in about the same condition.

Q. I would like for you to describe for me a little more the nature of this pile of materials that had been removed from the tanks, and which you said was about as big as a hat.

A. It was about the size of a hat.

Q. What kind of material was it?

A. The only way I can describe it is just to say dirt.

Q. What was the texture; what did the individual pieces feel like?

A. I don't believe I examined it; I didn't put it in my hand or anything like that; I just saw it the on the ground.

Q. Did it look like corn-flakes or sand or just plain dirt?

A. No, it looked more like a sort of mud; you might say that it looked like a sort of mud that dried or something.

Q. Looked like dry mud?

A. Not dried hard; it was a little watery; it seemed to have fairly good substance; it wasn't necessarily loose.

Q. What is your recollection of it as to color?

A. I don't recall any distinguishing color in it at all.

Q. Do you know the color of rust?

A. Yes.

Q. How did the color of that compare with the color of rust?

A. I don't recall seeing any rust color there at all.

Q. Do you know what scale from the inside of a tank looks like?

A. Well, I have an idea; I don't know that I am an expert on it, however.

Q. Well, what is your idea of the way scale from the inside of a tank looks like?

A. I would think it would come out like scale off of any object that rusts; sort of flakes or sharp pieces.

Q. Did you observe any of that in this pile of dirt?

A. I don't recall seeing any; no, sir.

Q. Now during the progress of this work just what was the relation between yourself and Captain Nelson?

A. Well, Captain Nelson had charge of the work, and I had no direct authority over Captain Nelson.

Q. To whom did he report as to the progress of the work and the amount of the charges?

A. He reported to me but not as the person in authority, but as a person who was doing the accounting and keeping the records of what was done.

Q. Will you tell me whether or not he did report to you as to the progress and the nature of the work?

A. Yes, sir.

Q. Will you tell me whether or not that was in the ordinary course of business at that time?

A. Yes, it was.

Q. What did he report to you as to the method in which the tanks were tested?

Mr. Botts:

Hold it. If the Court please, that is calling for hearsay testimony and I object to it, what Captain Nelson reported to him.

Mr. Matteson:
I join in the objection.

The Court:
Technically I think it is a good objection, but we have had no objections—

Mr. Botts:
We have had some, and we have let them get away with a good deal, but I insist on this objection; in other words, I am not objecting to leading questions and things like that, where it is merely to save time, and I have failed to interpose technical objections many times, but this is a question that I think borders on dangerous testimony which we might not have any possibility of controverting.

(Legal argument.)

The Court:
I will sustain the objection.

Mr. Underwood:
I want to ask the same kind of question with reference to another matter.

(By Mr. Underwood):
Q. Will you tell us, Mr. Simmon, whether or not Captain Nelson made any report to you as to the method of preparing the tanks before they were taken apart?

Mr. Matteson:
If your Honor please, I certainly object to that; this is obviously an attempt to get in Captain Nelson's testimony without calling him.

Mr. Underwood:

It is an attempt to get into the record reports made by a subordinate to a superior official and reports made in the ordinary course of business at the time.

The Court:

I think the objection is well taken. I will sustain the objection.

Mr. Underwood:

If your Honor please, there is another basis for that question; Mr. Matteson asked this witness if he had any experience about tanks and the freeing of gas, so he opened the door on this.

The Court:

You can let him answer the question for the record, if you want to. We do not have a jury here.

Mr. Underwood:

I will appreciate the opportunity to do that, if your Honor please, as to this question and as to the preceding question.

The Court:

You may do it.

Mr. Underwood:

May we have the Reporter read the question first, and then the preceding question?

Mr. Botts:

I understand the ruling is that at present it is inadmissible.

The Court:

That is correct.

(Thereupon the question was read as follows: "What did he report to you as to the method in which the tanks were tested"?)

(By Mr. Underwood):

Q. You can answer that.

A. Do you mean before they were taken apart?

Q. No; after they were put together again.

A. Captain Nelson reported to me that they were tested under high air pressure under water for any leaks, any air leaks, and he felt confident that if they didn't show any aid leaks under water under high pressure, they certainly would not leak any gasoline out of the tank.

Mr. Underwood:

Now, Mr. Colman, read also the preceding question to which the objection was sustained.

(Thereupon the question was read as follows: "Will you tell us, Mr. Simmon, whether or not Captain Nelson made any report to you as to the method of preparing the tanks before they were taken apart"?)

A. He told me that the tanks were filled with water and would eliminate any danger of explosion.

The Court:

Now your objection is to that?

Mr. Botts:

Yes, your Honor.

The Court:

The same ruling; I will sustain the objection.

Q. Mr. Simmon, as to these two drain pans, what was their color when you saw them?

A. What?

Q. I will put it this way: Do you remember how many times you saw those pans during the progress of this work?

A. Only once that I recall.

Q. What was their color at that time?

A. I don't know; they were all painted over in red paint.

Q. Yesterday you were asked a question as to the covering, if any, on the bulkhead which separated the engineroom and the alleyway; do you remember that?

A. I was asked a question as to what I thought the wall was, as to what it was made of between the engineroom and the—

Q. What was the wall made of?

A. Steel.

Q. Was it, according to your recollection, covered with anything on the engineroom side?

A. No.

Q. Was it, according to your recollection, covered with anything on the alleyway side?

A. I don't know about that.

Q. Now you said yesterday something about Mr. John S. Phipps being the owner of the Seminole at the time this work was done. I would like to know the basis for that statement: on what do you base that statement?

A. Why, I saw the form that was filed; in fact, I filed the form in the customs house here registering the boat here in the port of Miami, and it was put in in the name of the owner.

Q. Will you tell me whether or not that is the sole basis of your statement that Mr. John S. Phipps was the owner of that boat?

A. Yes, sir; that is the only knowledge I had.

Q. It is not quite clear to me Mr. Simmon, the difference between 4-N and Exhibit 4-O; I think you said one was a statement of expenditures, and that the other was a statement of operating expenses.

A. That is right.

Q. Will you distinguish these two phrases for me and tell me which one is which, please.

A. Yes. This one, which bears number 4-N is a statement of all expenditures; that means of money expended regardless of the purpose for which it was expended.

Q. Now what is the difference between an expenditure and an operating expense?

A. Well, they may be the same thing and they may not.

Q. When they are not the same, what is the difference?

A. "Expenditure" is a more inclusive term than this; it is a statement of the cash outlay during a certain period of time, regardless of when the bills may be incurred. A statement of operating cost allocates these charges to the period of time to which they are chargeable and against each—

Q. Maybe I am wrong, but as I understand it, expenditures include all cash outlay of every nature.

A. Yes.

Q. And the operating expenses distinguishes expenditures for operation—

A. It includes expenditures for capital charges.

Q. Now as to Exhibit 4-O you said something yesterday about it being a comparison between the operations under Captain Baker and operations of the Seminole Boat Company. Will you show me how they compare—perhaps, I can shorten it by asking you what the last column on the top page of 4-O includes.

A. The last column is supported by this schedule here; it is a statement of operations during the agreement with Captain Baker from October 31, 1929 to July 1, 1930.

Q. Do the prior columns, beginning with 1926 and going to 1929, include operations under Captain Baker?

A. Only for the portion of this period and a portion of this. You see, this statement here is from October 31, 1929 to July 1, 1930, and this column here is for six months.

Q. Indicating the 1930 column?

A. Yes. So that a portion of that amount shown in this column—

Q. 1929 column?

A. Yes. And all of this —

Q. Indicating 1930?

A. Yes; in this operating statement here.

Mr. Underwood:

That is all.

The Court:

I suggest that one of you ask the witness what was involved or what was incorporated in that $50 a day charge,—lay-day.

Mr. Underwood:

I think we can agree that is a charge for the use of the Marine Whaleway or the ways per day.

Mr. Matteson:

Yes, that is right.

Re-Cross Examination.

By Mr. Botts:

Q. How did it happen that your attention was called to this pile of stuff that came out of the tanks?

A. Well, as I explained before, the discussion of tanks was quite material, as to whether we would buy new tanks or not; and anything pertinent thereto was a matter of great interest at the time.

Q. And after they had been opened up, than your attention was called to this pile of stuff that was removed from the tanks?

A. That is right.

Q. And there had only two tanks been opened at that time, when this pile of stuff was exhibited to you, is that right?

A. Yes, sir.

Q. And you say there was no scale or rust in this pile?

A. Well, I said that I didn't see anything of the ordinary color of rust, no; looked like what I thought scale looked like.

Q. You mean you did not see anything in the nature of scale, is that it?

A. That's right.

Q. When you saw this pile, only two of the tanks had then been opened, is that right?

A. Yes, sir, I believe that is right.

Q. And you found those tanks in practically perfect condition inside?

A. Yes.

Q. And after finding these two tanks in perfect condition, then you still went on to the trouble and expense of opening up the other two, to find them also in perfect condition, right?

A. Yes, sir, that's my understanding of it. I didn't see it done.

Q. Now what color was this stuff that came out of the tanks?

A. I don't know how to describe the color of it; just a mass of stuff there. I don't recall that it had any color at all.

Q. What was the particular importance of this, that they would collect it together into a pile, or what you described as a mass? Wouldn't the normal thing have been to scrape it out on the ground and let it scatter where it would, instead of collecting it into a mass or pile?

A. Well, they couldn't very well scrape it out on the ground, because this was right alongside the boat where they were doing all the work.

Q. Well, was it on the dock, or what was it on?

A. I don't know; as I recall it, some sort of a platform there, the men were working on.

Q. Well, there wasn't any particular occasion for scraping it up or collecting it in a pile, was there?

A. No. I think it was just where they had knocked it out. I just happened to be there before they disposed of it, probably.

Q. Well, they didn't collect the mass or pile from one tank, and then collect the mass or pile from the other, did they?

A. I couldn't say; I wasn't there when they did it.

Q. You don't know. Well, you saw a mass or pile of stuff to fill a hat, and you don't know whether it came out of one tank or two, then, do you?

A. No, I don't recall. I presumed that it came out of both tanks.

Q. Now then at the time when you examined the bottom of these tanks to see that these bottoms had been welded, that was the same time that you examined the sides of the tanks and saw that they had not been welded; is that right?

A. I may be making a mountain out of a mole hill, but I don't believe I ever stated that the sides of the tanks were not welded. I simply stated that I don't remember as to whether they were welded or not, because it wasn't called to my attention. I remember about the bottoms of the tanks.

Q. And you don't know whether the sides were welded or not?

A. No, I don't make any statement about that.

Q. Your mind is perfectly blank on the question as to whether or not the sides were welded, is that right?

A. Yes, sir. I don't remember that at all.

Q. Don't remember the first thing in the world about it?

A. No, sir.

Q. And your memory is just as good today as it was yesterday on that question, isn't it?

A. I think so.

(At 12:01 P. M. hearing was recessed until 1:45 o'clock p. m. of the same day, to-wit, May 18, 1939.)

Afternoon Session.

2:00 o'clock P. M., Thursday, May 18, 1939.

(Hearing resumed pursuant to the noon recess; the witness ALLEN SIMMON resuming the witness stand upon further cross examination.)

By Mr. Botts:

Q. Now, Mr. Simmon, do you recall yesterday afternoon the following questions and answers, reading from page 2073:

"Q. Do you know of your own knowledge that there was any welding done on the tanks themselves at that time?"

"A. Yes, I do."

"Q. Now just state where was this welding on the tanks?"

"A. In all the seams; the seam on the bottom of the tank and up each side, as I recall it."

"Q. Now, Mr. Simmon, do you say that all the seams of the gasoline tanks were welded at that time?"

"A. Yes, sir."

Do you remember making that statement?

A. Yes, I think I do.

Q. And today you said only the bottoms were welded, didn't you? Do you have any explanation to make of that?

A. I said as I recall it today that I knew the bottoms were welded; I didn't know whether I had seen welding on the side or not.

Q. These pans that were made to go underneath the tanks, as I understand it, you are not now prepared to say whether they were made of zinc or what they were made of, is that right?

A. My impression of that hasn't changed at all. I thought they were made of zinc.

Q. That is merely an impression?

A. That is right.

Q. And am I right that you didn't see these pans until they were underneath the tanks of the vessel, is that right?

A. No, I think I saw them before they were installed.

Q. Did you see them when they were being made?

A. No; I think they were lying there right close to the job, ready for installation with the tanks.

Q. You didn't see them when they were being made?

A. No, sir.

Q. Then I call your attention to this question on page 2087, the question:

"Q. Did you see these pans after they had been constructed?"

"A. I saw them when they were being made there on the dry-dock".

Is that true?

A. Yes, I think it is substantially. I saw the pans there, but I don't believe that I had any intention of saying I saw them while they were being built.

Q. When you said here that you saw them while they were under construction, you didn't mean that, is that correct?

Mr. Underwood:

We object to that, he didn't say that.

Q. When you stated here that you saw them while they were being made, did you mean that or not?

A. I didn't mean that I saw them while they were actually working on them, making them; no, sir.

Q. Then your testimony yesterday, if it conveyed that impression you want to correct it, is that right?

A. Yes, sir.

Mr. Botts:

That is all at this time.

The Court:

Did you want to cross him on the matters that I allowed the answer to be made on? * * *

Mr. Botts:

I would rather not cross him on that.

By Mr. Matteson:

Q. I would like to ask you a little more about this pile of material you saw that came out of one or more of the tanks. Was that hard material or soft material?

A. I didn't make a thorough enough examination of it to say; I mean, I didn't feel it, I just looked at it.

Q. Was it in small pieces like sand or dust, or was it in large pieces.

A. No, it seemed to me to be more of somewhat the nature as if you dumped out some mud,—that texture.

Q. It was moist, was it?

A. Composite mass.

Q. Was it wet—moist?

A. I don't know anything as to that. I mean, it wasn't like dust, it wasn't just loose dust, it was more cohesive than that.

Q. It wasn't like rust or scale that you would find out of a tank?

A. No, I don't think so.

Q. Rust or scale is the sort of material that you would get out of a tank by knocking, isn't it?

Mr. Underwood:

I object to that on the ground the witness is not shown to be qualified; we haven't called him as an expert.

The Court:

I think he can answer from the standpoint of ordinary common knowledge. I overrule the objection.

(The question was read:)

A. Yes, I would think so, if there was any there.

Q. What would your idea of a lot of such material be, if you were going to use the expression "a lot of it"? What would you have in mind? Would you have in mind the hatful that you spoke of, or a larger quantity?

A. Well, I don't remember; did I say something about a lot of it?

Q. That isn't the point. I said, if you were to use that expression, what would you intend to convey by it?

A. A lot of what? Of the same kind of material?

Q. A lot of the same kind of material, yes.

A. Well, I think that would depend upon circumstances. I would think that—

Q. If you were going to say that you got a lot of it out of the tank, would you say that what you saw was a lot?

A. Yes, I would think it was, to come out of a tank like that.

Q. Then when you testified yesterday that Captain Nelson "showed me a lot of residue and stuff that he knocked out of the tanks", you had in mind only this quantity that you now speak of as being perhaps a hatful?

A. Yes, sir.

Q. But you didn't have in mind rust and scale such as you would knock out of a tank?

A. No, all I had in mind was this material that was shown to me as being taken out of the tanks.

Q. Now I think you said that you saw the tank both before the crowns were taken out, while they were out, and after they were put back; is that right?

A. Yes; I think that is correct.

Q. Can you tell us this: When the tanks—when you saw the tanks first, before they were taken apart, were the edges of the crowns and the edges of the tank together at that time, even with each other?

A. I don't believe I know. I don't remember examining that feature of it at that time at all.

Q. You can't tell us whether that was so at that time or not?

A. That is right.

Q. When you saw the tanks with the crowns or bottoms out of them, can you tell me whether any part of the side seam of the tank had been loosened,—any part of the line of rivets running up the side of the tank?

A. I don't recall that they were; I couldn't say.

Q. That would probably have to be done, to release the crown, would it not?

Mr. Underwood:

I object to that on the ground that the witness has not been shown to be qualified as a boiler maker. • • •

The Court:

Isn't your question directed to him as an expert on that?

Mr. Matteson:

If your Honor please he has testified to a lot of things here, and I am trying to test his recollection and find out what he recalls. • • •

The Court:

I think that question is subject to the objection; I will sustain the objection.

Q. Well, then as I understand it, your mind is a complete blank as to whether the side seam was released or not?

A. I have no recollection of the side seam at all.

Q. You spoke, or someone—I think you spoke of it, your being interviewed by Mr. Batchelor and asked for information about the Seminole; do you recall that?

A. Yes, sir.

Q. And at that time Mr. Batchelor asked you, did he not, as to what you remembered as to the things that you had done with respect to the Seminole?

A. I don't recall that. Mr. Batchelor's questions as I recall followed a different line of questioning altogether.

Q. Isn't it a fact that you, in words or in substance, at the time you talked with Mr. Batchelor, told him that the only definite thing you could recall was that you had made several attempts, at the request of Mr. Scott, to charter the Seminole, but without success?

A. State that again, please.

Q. Isn't it a fact that at the time Mr. Batchelor talked with you, that he asked you as to the things that you had done in relation to the yacht Seminole, and you told him at that time that the only definite thing you could recall was that you had made several attempts, at the request of Mr. Scott, to charter the boat, but without success.

A. I might have told him that I had made several attempts to charter the boat, without success; but I don't recall limiting it to that entirely, in relation to the boat.

Q. I show you a letter which I believe is signed by you, on September 28, 1935. Do you recall that letter?

A. I don't recall the letter. I see my signature here.

Q. That is your signature?

A. Yes, sir.

Q. That is a letter that you sent Mr. Batchelor?

A. I believe it is.

Q. And that was in reply to a letter of which this second document that I hand you is a copy, was it not?

A. Yes, sir.

Mr. Matteson:

I would like to offer these if your Honor please.

Mr. Underwood:

I have no objection.

(The said letters were admitted in evidence and marked respectively Libelants' Exhibits 118 and 119.)

Q. Now one more thing, Mr Simmon. You have been asked about several things that you said in your testimony yesterday, and I would like to ask you about one more. Yesterday, in answer to one of my questions, I believe you stated that according to your recollection there was no woodwork in the alleyway that went past the engineroom. Do I understand you now that you didn't understand that question to refer to the alleyway that went past the engineroom?

A. I didn't understand the question to apply to the alleyway itself. As I remember it, we were discussing the engineroom, discussing the various walls in the engineroom, and I thought the question asked, referred to the walls of the engineroom as you would look at the inside of the engineroom.

Q. And you really gathered the impression at that time from my question that I was suggesting that there might be woodwork on the bulkheads in the engineroom?

A. No, I didn't understand that at all. I knew you were talking about the wall along the alleyway, but I thought you were talking about it from the viewpoint of

being inside of the engineroom, as to what the wall was made of.

Q. Well, it would be very unusual for there to be any woodwork in the engineroom, with that type of a wall, would it not?

A. I would think so.

Q. I would like to read you the questions and answers, so we will be perfectly clear on this: Page 2079, my question was:

"Q. Do you recall the alleyway that went past the engineroom on the main deck of the Seminole?"

"A. You say the main deck?"

"Q. We will say, the lower deck, I will put it that way."

And your answer was "Yes." That's clear; the alleyway outside the engineroom is referred to, is it not?

A. Yes, sir.

"Q. As you went along that alleyway there was a partition on the side between the engineroom, separating the alleyway from the engineroom, was there not?"

"A. Yes, sir."

"Q. Was there any paneling or woodwork on that partition, do you recall, or was it painted steel plate?"

"A. I think it was all steel work."

I think there is a mistake in the minutes there; a;—there should be, A.

Mr. Underwood:

I will concede there is at least one mistake there.

Q. You said "I think that was all steel work".

"Q. You don't recall seeing any woodwork there?"

"A. No, I don't. There was a window in it, I remember that."

"Q. A window leading into the engineroom?"

"A. Yes."

"Q. There were also windows leading from the passageway to the outside of the ship?"

"A. Yes, sir."

Now do you say at this time that you did not understand, when you gave those questions and answers, that we were talking about the alleyway itself?

A. No, I thought the discussion was in relation to the engineroom, as to what the dividing wall was between the alleyway and the engineroom.

Q. What was there about these questions that confused you on that point?

A. I don't know, I guess it was just the general trend of the discussion. As a matter of fact I don't know whether there was any wood there or not, from the outside of it,—I mean the outside of the engineroom.

Q. You gave an explanation of these answers on your re-direct examination by Mr. Underwood; I assume that you had discussed this testimony that you gave yesterday, with Mr. Underwood before you made your explanation this morning?

A. With regard to this point?

Q. Yes.

A. No. I don't think so.

Q. You discussed that with no one before you made the explanation on re-direct this morning?

A. I don't recall doing so.

Q. And did anyone call your attention, before you made the explanation today, to the fact that Captain Baker had testified that that partition was covered with wood?

A. No, I don't know anything about his testimony at all.

Q. You say you don't even now know that Captain Baker testified that that partition was covered with wood?
A. No.

Mr. Matteson:
That is all.

Re-Direct Examination.

By Mr. Underwood:
Q. Mr. Simmon, do you remember who it was that Mr. Batchelor told you he represented when he called on you?
A. I think he told me it was Captain Pilkington.
Q. Sure about that? Is that your best recollection?
A. Yes, sir.

Mr. Underwood:
That is all.

Mr. Botts:
I want to reserve the right to recall this witness after I have had a chance to go through these bills over there. I probably won't want to ask him to come back, but I don't want to waive that right until I have had a chance to examine those bills.

The Court:
Is this witness under subponea?

Mr. Underwood:
No, sir, he is not.

The Court:
Will you return if Mr. Botts calls you and tells you he wants you to come back?
A. Yes, sir.

Mr. Botts:

I think it is improbable that I will.

The Court:

Either Mr. Botts will call you or else he will tell Mr. Underwood and he will call you. In other words, when you get information you are wanted, you come back.

A. I will.

(Witness excused.)

2722 MR. CHARLES ARTHUR WEISS, JR., as a witness on behalf of Respondents, was sworn and testified as follows:

Direct Examination.

By Mr. Underwood:

Q. What is your full name, please?

A. Charles Arthur Weiss, Jr.

Q. Where do you live?

A. Stewart Manor, New York.

Q. What is your business, Mr. Weiss?

A. I am an accountant.

Q. How long have you been an accountant?

A. Since 1915.

Q. By whom are you employed?

A. I am employed by Bessemer Investment Company.

Q. I show you a book and ask you if you can tell me what that book is,

A. This is the ledger of Mr. John S. Phipps.

Q. Covering what period of time?

A. From the year 1903 to 1919.

Q. Is that the ledger that covers his personal financial affairs?

A. Yes, sir.

Q. Do you know where the book just came from? Do you know who has custody of it?

A. You have custody of it.

Q. Who had custody of it before I got it?

A. Our office.

Q. Have you had anything to do with that book yourself, in the past?

A. Yes, I have had charge of the accounts and the records of numerous individuals and corporations of the Phipps family.

Q. Is that one of the books that have been in your charge?

A. It is.

Q. Are you in a general way familiar with the book?

A. Yes, sir.

Q. Can you refer in that book to any capital account for the Seminole?

A. Yes, I can.

Q. You have the page?

A. Yes, sir, page number 5.

Q. Can you tell me what that is?

A. That is an account headed, houseboat Seminole, and there is an entry dated—

Q. You won't be allowed to read it. Just tell me whether it is a capital account or some other account.

A. It is a capital account.

Q. It is a capital account of John S. Phipps?

A. Of John S. Phipps.

Mr. Underwood:

If the Court please, I offer in evidence a photostatic copy of that capital account.

Mr. Botts:

May I ask just one question: This "Transferred to new L" I suppose that means, new ledger?

A. New ledger.

Mr. Botts:

I don't see the materiality of it, but I have no objection.

Mr. Matteson:

There is no relevancy to the matter, or materiality.

The Court:

We will put the burden on Mr. Underwood, upon argument, to show the materiality. We will admit it.

Mr. Botts:

That is the only page of the ledger that has anything to do with the Seminole, is it?

Mr. Underwood:

It is not.

(The said photostat was admitted in evidence and marked Respondents' Exhibit 4-P.)

Q. Now Mr. Weiss, this document which you have just identified as Mr. Botts says contains the entry, transferred to new ledger. I show you another book, can you tell me what that book is?

A. This is the ledger of Mr. John Phipps.

Q. For what period of time?

A. For the period from May 1919 to December, 1922.

Q. Does it follow next after the one you looked at before?

A. It does.

Q. Now is there in that book any capital account for the Seminole?

A. Yes, sir.

Q. Will you point it out, please?

A. It is on page 20.

Mr. Underwood:

I offer a photostatic copy of that page.

Mr. Matteson:

If your Honor please, I would like to register a formal objection based upon its materiality and relevancy; I don't object to its competency.

Mr. Botts:

I just submit it with the same observation I made with reference to the other. If the Court thinks it may possibly have any materiality I won't object.

The Court:

I will admit it.

(The said photostat was admitted in evidence and marked Respondents' Exhibit 4-Q.)

Q. Mr. Weiss this Exhibit 4-Q refers in the right hand column to a new ledger; will you tell me whether this capital account was continued after this date?

A. It was.

Q. And where was it continued?

A. In Mr. John S. Phipps' next ledger.

Q. And what have you got after that?

A. I have a ledger page taken from his ledger.

Q. I notice that heretofore we have had books, now you have a single sheet of paper. Will you tell me what happened about that, at that time?

A. In the beginning of 1923 we changed our ledgers then from the bound ledger to the newer form of a loose leaf ledger.

Q. How many of the books of the members of the Phipps family and corporations in which they are interested, and which you know about, made that change at that time?

A. Practically all of them were changed.

Q. And this sheet which you show me, what is that?

A. This is the capital account of the yacht Seminole.

Q. Of whom?

A. Of Mr. John S. Phipps.

Q. Where did this ledger sheet come from? From his ledger?

A. I took it from his ledger.

Mr. Underwood:

I offer a photostatic copy of that ledger sheet.

Mr. Matteson:

If your Honor please, I would like to add to my former objection, the objection that a sheet from a loose leaf book, even if it is bound in a book, it is no evidence of genuineness whatever.

(Discussion was had.)

Mr. Botts:

So far as I am concerned I have no objection. • • •

The Court:

I will admit it.

(Said photostat was admitted in evidence and marked Respondents' Exhibit 4-R.)

Mr. Botts:

I don't think the witness has stated what period of time that covers; I think that ought to appear.

Mr. Underwood:

It speaks for itself, I say. You can ask any questions you think pertinent on cross examination.

Q. Now I notice on this Exhibit 4-R, there is a reference to Seminole Boat Co. on July 1, 1930. Can you tell me whether there is any record that follows this one?

A. There is.

Q. Do you have it?

A. Yes, I do.

Q. Is that it?

A. This is it.

Q. What is that?

A. This is a ledger sheet taken from the ledger of Mr. John S. Phipps, recording his ownership of twenty shares of capital stock of Seminole Boat Company.

Mr. Underwood:

I offer photostatic copy of that sheet in evidence.

Mr. Matteson:

If your Honor please, I take it our position is maintained as to all these documents without repeating ourselves?

The Court:

All right.

Mr. Botts:

I am going to object, on the ground it does not show what period of time is covered by this. I am going to move to strike the previous exhibits, on the same ground.

The Court:

I don't catch the significance of your objection.

Mr. Botts:

I would just like to know over what period of time this ledger sheet purports to cover the transactions; whether it is one day, one week, one month or ten years.

The Court:

In other words, you want, while the first entry on this is November 30, 1928, you don't know whether that is the beginning of this record.

Mr. Botts:

And I don't know when is the ending of the record or anything about it.

The Court:

I think the witness ought to explain that, Mr. Underwood.

Mr. Underwood:

If your Honor please, isn't that something to be brought out on cross examination?

The Court:

Possibly so.

Mr. Botts:

It does not have to be.

The Court:

You offer a book or ledger I will say, and I think it is proper to show what period that ledger covered, not what the entry showed but the period of time the ledger covered.

Q. Mr. Weiss, will you take these four sheets, three of which have been marked and the last of which has not yet been marked, and tell me first what you know of your own knowledge as to the period of time covered; second, interpret for us what the sheets, and the books show as to the period of time covered.

A. I know from my own knowledge that the books cover the period from 1921 to date. Previous to that, I am

reading from the records. The first document covers the period from February 24, 1915 to May 31, 1919. The second document, from May 31, 1919 to January 1st, 1923. The third, from January 1st, 1923 to July 1st, 1930.

The Court:

Let me just ask you; you are reading those dates which bear the last entry on these particular pages?

A. That is right, sir.

The Court:

Well, is that because the entry shows that it was transferred to a new ledger at that time?

A. Either transferred to a new ledger or this account closed.

The Court:

For instance, this one right here, could it cover a period of time in keeping Mr. John S. Phipps' books, in regard to the yacht Seminole, for an earlier date than the first entry and a later date than the last entry?

A. No, sir.

The Court:

It could not?

A. No, sir.

Mr. Botts:

There is one more that you have offered that he hasn't covered the period?

By Mr. Underwood:

Q. What period of time does this last one, as yet unmarked, cover?

A. That covers the period from November 30, 1928 to the present time; it is still in force. This is his account on his books at the present time.

Q. Now there is an overlapping of dates.

The Court:
Have you an offer there?

Mr. Underwood:
Yes, I offer the photostatic copy.

Mr. Botts:
Now I withdraw my objection.

Mr. Matteson:
I simply want to maintain my position.

The Court:
The objection is overruled; admitted in evidence.

(The photostat offered, was admitted in evidence and marked Respondents' Exhibit 4-S.)

By Mr. Underwood:

Q. Mr. Weiss, there is an overlapping of dates between July 1, 1930 on Exhibit 4-R and November 30, 1928 on Exhibit 4-S; can you explain that to me?

A. At both times—during that time both of these ledger pages were part of Mr. John S. Phipps' ledger.

Q. What is the significance of the date July 31, on Exhibit 4-R?

A. It records the transfer of the amount of that account to the account headed, Seminole Boat Company.

Q. Exhibit 4-S?

A. 4-S.

Q. What is the significance of the date, November 30, 1928 on Exhibit 4-S?

A. That records five shares of Seminole Boat Company stock set up on this ledger page.

Q. And does that have any significance as to the date when the purchase was made?

A. That is the purchase of five shares of stock; that records the purchase of five shares of stock.

Q. Do you have anything to do with the personal accounts of Mr. H. C. Phipps?

A. I do. I have charge of the keeping of his personal accounts.

Q. I show you a book, can you identify that book for me?

A. This is the ledger of Mr. Henry C. Phipps.

Q. Can you tell me whether that contains any capital account entry in respect to the Seminole?

A. It does.

Q. Show it to me.

A. Page 93.

Q. Is that the capital account for Mr. H. C. Phipps?

A. It is.

Q. On the Seminole?

A. It is.

Mr. Underwood:

I offer this photostatic copy.

Mr. Botts:

Covering what period?

Q. What period of time does it cover?

A. This covers June 30, 1919 to January 1, 1923.

Mr. Botts:

No objection.

The Court:

It is admitted.

(The said photostat was admitted in evidence and marked Respondents' Exhibit 4-T.)

Q. Have you found in Mr. H. C. Phipps' books, any prior capital accounts in respect to the Seminole?

A. No.

Mr. Underwood:

May I have that, Mr. Batchelor, please.

Q. Now this Exhibit 4-T contains an entry January 1, 1933 new ledger; what happened at that time?

A. That is when the new system of loose leaf ledger was inaugurated.

Q. What happened then?

A. That account was transferred to a new ledger sheet in Mr. Henry C. Phipps' ledger.

Q. Have you the sheet there?

A. I have.

Q. Is that it?

A. This is it.

Mr. Underwood:

I offer a photostatic copy of that.

Mr. Botts:

Did you cover the period of time?

Q. What period of time does that cover?

A. From January 1, 1923 to July 1, 1930.

Mr. Matteson:

I just want to maintain my position all through.

The Court:

It is admitted.

(The said photostat was admitted in evidence and marked Respondents' Exhibit 4-U.)

Q. What happened to Mr. H. C. Phipps' capital account when this account was closed out?

A. That amount in that account was transferred to the Seminole Boat Company Capital stock account on July 1, 1930.

Q. Do you have that sheet?

A. I have that sheet.

Q. Is that a sheet from Mr. H. C. Phipps' personal ledger?

A. Yes, sir.

Q. Is that the original sheet?

A. It is.

Q. What period does that cover?

A. From November 30, 1928 to April 1935.

Mr. Underwood:

I offer a photostatic copy of that.

(The said photostat was admitted in evidence and marked Respondents' Exhibit 4-V.)

Q. Now what do you have to do if anything with the personal account books of Mrs. Amy Guest?

A. I also have charge of those.

Q. Does she have a capital account for the Seminole Boat Company?

A. She does.

Q. Have you a sheet?

A. Yes, sir.

Q. Are her books looseleaf books too?

A. Her sheets are loose leaf.

Q. What sheet is that that you have?

A. This is the ledger sheet of Seminole Boat Company capital stock, taken from ledger of Mrs. Amy Guest.

Mr. Underwood:

I offer photostatic copy of that in evidence.

Q. What period of time does it cover?

A. From April, 1935 until the present time, and is still a part of and an open account on her ledger.

(The said photostat was admitted in evidence and marked Respondents' Exhibit 4-W.)

Q. Do you know of any other capital accounts in respect to the Seminole?

A. No.

Q. I show you another book, tell me what that is.

A. This is the ledger of Mr. Henry C. Phipps for the years 1914 and '15.

Q. Do you find any pages in there that refer to the Seminole?

A. On page 147 there is an account entitled, Yacht Seminole Expense.

Q. On what other pages does any reference to the Seminole appear in that book?

A. Page number 178, page number 179 and page number 180.

Q. Now on one of those pages, 178, some entries other than those in respect to the Seminole, appear, do they not?

A. That is correct.

Mr. Underwood:

I offer photostatic copy of those pages insofar as they relate to the Seminole.

Mr. Matteson:

That is Henry C. Phipps'.

Mr. Underwood:

That is correct.

Mr. Botts:

You said, insofar as it has reference to the Seminole; is there anything that does not refer to the Seminole, in those pages?

Mr. Underwood:

Not that I know of, but what I meant was, I offer the pages of that, and ask leave to substitute a photostatic copy. You may look at those pages.

(The said paper was admitted in evidence and marked Respondents' Exhibit 4-X.)

Q. Have you brought with you, Mr. Weiss, the ledger of H. C. Phipps beginning with 1915 and down to 1919?

A. No, I have not.

Q. Then you can pick up the expense account of H. C. Phipps in connection with the Seminole in 1919?

A. I can.

Q. Will you identify that in that second ledger, please?

A. That is on page 153.

Q. That is an expense account of Mr. H. C. Phipps in connection with the Seminole?

A. Yes, sir.

Mr. Underwood:

I offer photostatic copy of page 153. What time does that cover, Mr. Weiss?

A. Covers from May 1, 1920.

Mr. Botts:

May 1, 1920. For the purpose of readily identifying it, do you have any objection if they write "J. S. Phipps" I believe, on this?

Mr. Underwood:

H. C.

Mr. Botts:

Do you mind if they write that on top of that?

A. —to December 3, 1922.

(The said photostat was admitted in evidence and marked Respondents' Exhibit 4-Y.)

Q. Now following that, was the account transferred to loose leaf sheets?

A. That is right.

Q. Have you the loose leaf sheets?

A. I have.

Q. What period of time does that sheet cover?

A. This page covers from 1923 through 1935.

Mr. Underwood:

I offer photostatic copies of that sheet.

Mr. Botts:

I have no objection.

(The said two photostatic sheets were admitted in evidence and marked Respondents' Exhibit 4-Z.)

Q. Mr. Weiss, I show you a book which is marked John S. Phipps, 1903—1919; can you tell me what that is?

A. That is Mr. John S. Phipps' ledger for that period.

Q. And where in that ledger first appears any reference to the Seminole?

A. On page 249 there is an account called Yacht Expense.

Q. And that is an expense account?

A. Yes, sir.

Q. What other pages in that book contain entries with reference to John S. Phipps' expenses for the Seminole?

A. Page 318.

Q. Any others?

A. No others.

Q. What period of time do those two pages, 249 and 318, cover?

A. They cover the period from September 14, 1915 through May 3, 1919.

Mr. Underwood:

I offer photostatic copies of each of those pages.

(The said photostats were admitted in evidence and marked Respondents' Exhibit 5-A-1 and 5-A-2.)

Q. It appears from page 318 that this account was transferred to another ledger.

A. That is right.

Q. Can you show me that?

A. This is the ledger of Mr. John S. Phipps for the period from May 1919 to December 1922; Yacht Expenses continue on page 171 and 176.

Q. And the period covered by those pages, is what?

A. May 31, 1919 to February 28, 1923.

Mr. Underwood:

I offer photostatic copies of those.

(The said photostats were admitted in evidence and marked Respondents' Exhibit 5-B-1 and 5-B-2.)

Q. Now it appears from page 176 that there was a transfer to a new ledger.

A. That is right.

Q. Is that the loose leaf type?

A. That is right.

Q. Do you have the sheets there?

A. I do.

Q. What period do those sheets cover?

A. They cover from January 1923 and are still a part of his ledger, right down to the present time.

Mr. Underwood:

I offer photostatic copies of these sheets.

Mr. Botts:

Is that Mr. John S. or H. C.?

Mr. Underwood:

We have finished with H. C.: These sheets being four in number, for the period January 31, 1923 through the year 1935.

Mr. Botts:

Do I understand that you are not offering these sheets so far as they cover '36 and '37?

Mr. Underwood:

Correct.

Mr. Botts:

I object unless you offer all of the sheets.

Q. Mr. Weiss, I show you a sheet and ask you to tell me what that is.

A. This is the Seminole Expense Account from the ledger of Mrs. Amy Guest.

Q. What period of time does that sheet cover?

A. From May 1935 down to the present time, and is still an open account in her ledger.

Q. What is the last entry?

A. November, 1938.

Mr. Underwood:

I offer so much of that sheet as includes the year 1935.

Mr. Botts:
I object.

Mr. Underwood:
If your Honor please, I have offered Expense Accounts in respect to the Seminole of Mr. H. C. Phipps, beginning from about 1919, down to 1935. I have offered the Expense Accounts of Mr. J. S. Phipps from the beginning—that is 1915 down through the year 1935.—Now the ledger sheets which are here, carry the expense account down through November 1938, and I have offered them only through '35. Now the same is true of Mrs. Guest; I produced Mrs. Guest's ledger sheet which covers the period 1935 to November 1938, but I have offered only so much of that as covers the year 1935; and Mr. Botts, and perhaps Mr. Matteson, too, object, because I don't offer the whole.

Mr. Botts:
If you will offer the balance of the sheet, carrying it down to date, and not offer part of it, I have no objection. But I don't think you ought to offer a part without offering all; I think it is an incomplete record, otherwise. I object on that ground.

Mr. Matteson:
I join in that objection.

The Court:
Well, in order that we may get along, I think the whole thing ought to go in. I will rule that way and let you argue it. * * *

Mr. Underwood:
My position as to that is this, your Honor: This fire happened in June 1935. The question in this case, the critical time in this case, is the day of the fire. As to this

point, the issue is whether or not the Seminole Boat Company was a live, real corporation on that date, or a sham and a legal fiction. Nothing that transpired since that time has any bearing on what happened on that date. We could have dissolved the corporation the following day, and it would have made no difference as to its health and vigor and legal reality, on the day of the fire. The reason I have gone through the year 1935 instead of stopping on June 24th is because the accounts were not posted up through June 24th until after that date, but before the end of December, 1935. * * *

Mr. Botts:

In view of the fact that it is going in, I won't indulge in any comments on it at this time.

The Court:

I rule with the objector, and then you refuse to put in anything at all, with that ruling? Or do you put it in and reserve the right to re-argue the point at the final hearing?

Mr. Underwood:

I don't want to find myself in the position of having anything after 1935 going in upon my motion. My suggestion would be to have them offer 1936, '37 and '38, if they desire, and let me object.

Mr. Botts:

I am not meeting any of it.

The Court:

Suppose we meet that at the time; but in view of my ruling, you are offering the entire paper, but limited to the period that you specify?

Mr. Underwood:

I offer the whole sheet of paper, but no figures on it that relates to any time subsequent to 1935.

The Court:

I will admit it, with the contention of the Libelants.

Mr. Underwood:

Reserving to me the right to argue my legal right?

The Court:

That is right.

(The four photostats heretofore offered as a group, were admitted in evidence and marked Respondents' Exhibit 5-C-1, 5-C-2, 5-C-3 and 5-C-4; and the photostats showing Expense Account from ledger of Mrs. Guest, last offered, was admitted in evidence and marked Respondents' Exhibit 5-D.)

Q. Mr. Weiss, have you made an analysis of the expense of H. C. Phipps and John S. Phipps through the years beginning with 1914 and going down through 1935?

A. I have, from those books, yes, sir.

Q. I notice as to H. C. Phipps, you have skipped the years 1916, '17, '18 and '19, is that right?

A. That is right.

Q. That is because we don't have the books here?

A. That is right.

Q. Does this analysis accurately state the amount paid by both of those men as shown by these books?

A. It does.

Q. —during those years?

A. That is right.

Q. This column at the right, shows the difference between the amounts paid by them in five different years?

A. That is right.

Mr. Underwood:

I offer this, subject to control by the original records themselves.

Mr. Matteson:

As a summary of what the books show?

Mr. Underwood:

Correct.

(By Mr. Underwood):

Q. I notice in the right-hand column under 1920 there was a difference of a penny, and also 1921 and also 1923. What is the reason for those differences?

A. The ledgers show those differences because the total amount ended in an odd figure which wasn't devisable by two.

Q. Now in the year 1929 there is a difference of $3,007.57; do you know the reason for that?

A. There were some personal expenses in connection with the Yacht Seminole paid for by Mr. John S. Phipps that were charged in this account.

Q. Tell what they were.

A. I think they were incurred in connection with a special trip of the boat.

Q. In the year 1932 there is a difference of $83.63, Mr. John S. paying that much more than Mr. H. C.; do you know the reason for that?

A. I do not.

Mr. Underwood:

I offer the analysis merely as a convenient summary of what the books show.

(Thereupon the analysis statement above referred to was marked Respondents' Exhibit 5-E.)

Q. What is the total amount paid by Henry C. Phipps for the years 1920 to 1935, inclusive?

A. $166,932.47.

Q. And Mr. John S. Phipps for the same period?

A. $172,758.57.

Q. And Mrs. Guest?

A. $2734.89.

Q. Now, except for the differences represented in the righthand column, how does the amount contributed or paid by Mr. John S. Phipps compare with the total paid by Mr. H. C. and Mr. Guest?

A. They are equal.

Q. Mr. Weiss, what is the nature of the expense that is included in these ledger sheets that relate to expense as distinguished from capital?

A. The items covered in the ledger pages marked "Yacht Seminole Expense" represent the expenses of upkeep and maintenance of the Yacht Seminole.

Q. How were the operating expenses charged?

A. The operating expenses on the books of the Messrs. Phipps and Mrs. Amy Guest were charged in the miscellaneous personal disbursements account.

Q. Now, I show you a check, duplicate voucher and a statement. Will you identify those?

A. The check is a check of Bessemer Investment Company drawn on the Central Hanover Bank & Trust Company, dated September 9, 1935, to the order of Palm Beach Company in the amount of $357.92.

Q. Can you tell me from the voucher to whom that sum was charged and in what amounts?

A. It was charged to Mrs. Amy Guest in the sum of $178.96 and to Mr. J. S. Phipps in the sum of $178.96.

Q. Can you tell me what the statement attached to the duplicate voucher is?

A. It is a statement of the Seminole Boat Company in account with Palm Beach Company for July, 1935.

Mr. Underwood:
I offer this.

Mr. Botts:
No objection.

(Thereupon the statement, duplicate voucher and check were marked respectively, Respondents' Exhibits 5-F-1; 5-F-2 and 5-F-3.)

Q. I did not start as early in the year as I intended to, Mr. Weiss; I show you another check, voucher and statement. Will you tell me what that is?

A. This is a canceled check of Bessemer Investment Company drawn on the Central Hanover Bank & Trust Company, dated May 27, 1935, to the order of Palm Beach Company, in the sum of $1224.91.

Q. Can you tell me from the duplicate to whom that was charged?

A. It was charged to Mr. John S. Phipps.

Q. What is the statement attached to the duplicate?

A. A statement of the Seminole Boat Company.

Q. What period?

A. January to April, 1935.

Q. What relation does the amount paid and charged to Mr. Phipps bear to the total of the statement?

A. Except for one penny, it is exactly one-half.

Mr. Underwood:
I offer that.

Mr. Matteson:
No objection.

(Thereupon the check, voucher and statement above referred to were marked Respondents' Exhibits 5-G-1, 5-G-2 and 5-G-3.)

(By Mr. Underwood):

Q. I show you another check, duplicate voucher and statement. Will you tell me what that is?

A. Canceled check of Bessemer Investment Company drawn on Central Hanover Bank and Trust Company, dated May 27, 1935, to the order of Palm Beach Company in the sum of $1224.90.

Q. Can you tell me from the duplicate to whom that was charged?

A. It was charged to Mrs. Amy Guest.

Q. What does the statement cover?

A. The statement is a statement of Seminole Boat Company for the period of January to April, 1935.

Q. What is the total?

A. $2449.81.

Q. What relation does the amount charged to Mrs. Guest bear to the total of the statement?

A. Except for one penny it is one-half.

Mr. Underwood:

I offer that.

Mr. Botts:

That is the balance—

Mr. Underwood:

The statements are identical, I believe, and this is Mrs. Guests' half.

Mr. Botts:

That is what I thought. That is all right.

The Court:

Let it be admitted.

(Thereupon the documents above referred to were marked Respondents' Exhibits 5-H-1; 5-H-2 and 5-H-3.)

(By Mr. Underwood):

Q. I show you another check, duplicate voucher and statement. Can you tell me what they are?

A. Canceled checks of Bessemer Investment Company on the Central Hanover Bank and Trust Company, dated December 30, 1935, to the order of Palm Beach Company, in the sum of $2662.07.

Q. Can you tell me from the duplicate voucher how that sum was charged?

A. Mrs. Guest was charged $1331.03 and Mr. John S. Phipps $1331.04.

Q. Can you tell me what the statement attached to the duplicate is?

A. It is a statement of Seminole Boat Company in account with Palm Beach Company, May to November, 1935.

Q. How do the amounts charged to Mr. John S. Phipps and Mrs. Guest, respectively, compare with the total amount of that statement?

A. They are each one-half, except for the one penny difference.

Mr. Underwood:

If Your Honor please, I offer these, and I would like to offer only so much of the statement attached as relates to disbursements or charges incurred down through the date of the fire. They are inextricably bound up together here, and this includes some legal expenses and some other matters.

Mr. Botts:

I object on the same grounds as I stated relative to the ledger sheet, without stating the objection in detail, assuming that the Court will probably follow the same course.

Mr. Underwood.
I am afraid I will have to offer the whole thing.

The Court:
I do not see how you could limit your offer there.

Mr. Underwood:
I cannot phrase it without taking too much time, so I will offer the whole thing.

Mr. Botts:
No objection.

Mr. Matteson:
No objection.

(Thereupon the documents above referred to were marked Respondents' Exhibits 5-I-1; 5-I-2 and 5-I-3.)

(By Mr. Underwood):

Q. Now, Mr. Weiss, you have mentioned on more than one occasion charges to Mrs. Amy Guest and John S. Phipps on these vouchers. Tell me just what that indicates when you and I have spoken of "charge".

A. This is the same as a payment by these individuals. These individuals had accounts with Bessemer. Investment Company and Bessemer Investment Company would make payments of this nature for them and charge their accounts with that amount.

Q. So that their accounts would be diminished by the amounts stated?

A. Yes.

Q. Mr. Weiss, I show you Exhibit 4-K, which Mr. Phipps testified he okayed in the sum of $1384.47 covering expenses of the fishing trip to the Florida Keys in April, 1935. Can you tell us whether or not any part of

that is included in the books that you have referred to and illustrated by this summary, Exhibit 5-E?

A. No, sir.

Q. Will you illustrate the course of charging such expense as this included in Exhibit 4-K, the fishing trip, and the portion to Mr. H. C., Mr. J. S. and Mrs. Guest?

A. The books of Mr. John S. Phipps, Mr. Henry S. Phipps and Mrs. Guest are made up from reports and statements of the transactions at their origin; they are audited and classified and journalized in the records of these individuals. Disbursements for their account for the Seminole Boat Company, upkeep and maintenance, would be charged in the account that this tabulation is made from. Items for personal expenditures reported paid by them are charged on their books to a Miscellaneous Disbursements Account, into which other personal charges are posted.

Q. The document you first referred to in your answer is Exhibit 5-E, the yellow sheet, upkeep and maintenance charges, is that right?

A. Yes.

Q. And the second one you referred to is fishing trip expense, Exhibit 4-K.

A. That is right.

Q. So that, as I understand it, the books as represented by Exhibit 5-E do not include expenses of operation on a cruise, is that correct?

A. That is correct.

Mr. Underwood:

That is all.

Cross Examination.

By Mr. Botts:

Q. Mr. Weiss, I refer now to Respondents' Exhibit 4-S, the Seminole Boat Company account of John S.

Phipps. I see the first entry in this book under date of November 30, 1938 is $50.00. What does that mean?

A. The first entry in this account is dated November 30, 1928.

Q. I meant 1928. What does that mean?

A. That represents recording ownership of five shares of capital stock of Seminole Boat Company at $10.00 per share.

Q. Now the second entry is $1,050.00. Will you likewise indicate what that means—it is dated July 1, 1930.

A. The second entry of July 1, 1930, in the sum of $10,000.00 is for 15 shares of capital stock of the Seminole Boat Company, and that makes a total of $10,050.00 for 20 shares of capital stock. This "Balance Column" is the total.

Q. How do you explain that the first five shares amounted to $50.00 and the next fifteen shares recorded at $10,000.00. What is the reason for that?

A. That represents the difference in the cost of that stock to Mr. John S. Phipps.

Q. Now the last entry under date of July 31, 1933, seems to be an addition of $5,000.00 to the account. Does that mean that these 20 shares are carried at the date of that last entry at a valuation of $15,050.00, whereas previously they had been carried at $10,050.00; can you explain what the reason or basis for that increase in the amount at which you previously carried that stock as an asset?

A. That represents an additional payment by Mr. Phipps to the Seminole Boat Company.

Q. And that is reflected there as an additional capital investment?

A. That is right.

Q. That does not represent an arbitrary inflation of that stock, but it represents a payment that was made?

A. An actual payment.

Q. This yellow sheet, Exhibit 5-E—I understood you to say that this does not reflect any of the payments for operating expenses?

A. That is correct.

Q. Have you made any tabulation of operating expenses?

A. No, sir.

Q. Are these operating expenses reflected from the books of the various interested stockholders?

A. They are included in their miscellaneous disbursements accounts.

Q. Do you have the books here showing the amounts of these for the various years?

A. I have miscellaneous disbursements accounts for the years that these ledgers cover.

Q. Well, Mr. Weiss, I will ask you this: have you the miscellaneous disbursements accounts for the years from 1930 to 1935, inclusive?

A. I don't think so. No, I wouldn't have them because they are loose-leaf ledger pages, and I have none of those miscellaneous disbursements accounts.

Q. And you didn't bring them down?

A. No.

Q. How did you happen to not bring those portions of the accounts with reference to the Seminole down?

A. I wasn't asked to.

Q. Could you make up a similar tabulation to 5-E, referring from the miscellaneous disbursements accounts, showing operation expenses paid by each of the stockholders during the years, say from 1930 to 1935, inclusive?

A. It could be done, but it would be a very lengthy and detailed task. The miscellaneous disbursements of Messrs. Phipps and Mrs. Guest include many, many items —all of their personal expenditures, some household expenditures, purchase of an automobile, and probably literally hundreds of items would be included in that.

Q. I don't think you quite understand me. I say would it be possible from those to pick out the items which had reference to the boat Seminole from those miscellaneous disbursements accounts?

A. Not from the ledger; not without an analysis of some other accounting records.

Q. Then, as I understand it, supposing Mrs. J. S. Phipps or Mr. H. C. Phipps, or either of them, made a trip on the Seminole in August, 1932, that, as I understand it, the payments that were made with respect to that trip would appear in this miscellaneous record account and it would be an extremely difficult matter, would it, to segregate these?

A. Very, very difficult.

Q. The items represented by the summary shown in Exhibit 5-E for the years 1933 and 1934, do the individual items making up these amounts appear from these ledger pages that have been filed in evidence here?

A. No, they do not.

Q. Where would you be able to obtain those items?

A. I would be able to obtain those from the papers attached to the original journal voucher from which this entry was posted.

Q. Now, Mr. Weiss, for the year 1933 I notice that there is $851.08 posted against each one of the stockholders, making the total $1702.16, and for the year 1934 it is $1028.50 and $1028.49, making a total of $2056.99 for 1934. It would not be very much of a job to get up the individual detailed items with reference to these two relatively small accounts, would there?

A. I think it could be compiled.

Q. I wonder if you will do that and let us have it.

Mr. Underwood:

If your Honor please, I do not think the witness is the one to be asked to do that. I think the request should

come to me. It puts the witness on the spot, and I would like to have the purpose of that stated. It does not seem to me that the amounts of money spent cruising through these years have any bearing on this case.

Mr. Botts:

It is not cruising expense. The breakdown of these—

The Court:

You don't want this on the record?

Mr. Botts:

No; I don't think so.

(Legal discussion off the record.)

By Mr. Botts:

Q. I understand the Palm Beach Company has been merged into or absorbed by another company, and is not now actively functioning under that name, is that right?

A. That is right; that is what I understand.

Q. As I understand it, Mr. Weiss, Bessemer Properties has succeeded to the status formerly occupied by the Palm Beach Company.

A. Yes.

Q. Now then does the Bessemer Properties have any outstanding and unliquidated bills or claims against Palm Beach Company for advances made and not reimbursed by the Palm Beach Company?

A. Not that I know of.

Q. You don't know of any?

A. No.

Q. Well, does the Seminole Boat Company owe Bessemer Properties or Palm Beach Company any money on the books of those companies, or either of them?

A. I do not know that.

Q. You do not think the books here would show that?

A. I have never seen the books of the Seminole Boat Company.

Q. Well, doesn't Bessemer Properties have a ledger account on their books against Seminole Boat Company?

A. It does.

Q. You have seen that account?

A. I have seen statements—yes, I have seen that account; that is correct.

Q. That account is kept under your direction?

A. That is correct; it is kept in our office.

Q. You do not have that book with you?

A. I do not.

Mr. Botts:

Mr. Underwood, would you mind having the witness furnish us with a statement of the balances due the Bessemer Properties from Seminole Boat Company as shown by the books of Bessemer Properties.

Mr. Underwood:

Now?

Mr. Botts:

Yes; up to now.

Mr. Underwood:

I wouldn't mind. I object to going into the accounts following at least a year after the fire. What has transpired since then and what credit has been made following that time, has no bearing on the issues in this case. The question in this case—one of the questions in this case is whether this was a real corporation on the day of the fire.

Mr. Botts:

And that question may be largely affected by what has been done since. This corporation did not die as a corporation on that date, and how it functioned from that time on may be a very important question as to its corporate status, if any.

Mr. Matteson:

Of course Mr. Underwood has already put in the books of the Seminole Boat Company down to 1938, and they show an outstanding balance unpaid.

Mr. Underwood:

They were subpoenaed; you wanted them and I produced them. I do not intend to prove anything by them except that they are the books of the Seminole Boat Company. What has followed subsequent to the fire I think is wholly immaterial in this case.

Mr. Botts:

If counsel declines to furnish that information I see nothing to do but stand on the books of the Seminole Boat Company and the statement of Mr. John S. Phipps in that respect.

Mr. Underwood:

Pardon me. I didn't hear that.

(Thereupon the preceding statement of Mr. Botts was read by the reporter as above recorded.)

Mr. Underwood:

I will produce anything that the Court directs me to produce, if it is in existence and it is possible to get it, but I don't see the materiality of it.

Mr. Botts:

I have no other questions of this witness.

Mr. Matteson:

I have two or three.

By Mr. Matteson:

Q. Mr. Weis, we have here an exhibit that has been offered as the books of the Seminole Boat Company, and I notice that on one of the pages here,—I am referring to Phipps' Exhibit Z, there is a statement on the voucher number 95 that it is to record the purchase of Mr. H. C. Phipps' one half interest in the Seminole Boat Company by Mrs. F. E. Guest on March 23, 1935. (Consideration $5,000.00.) Now I think I noticed on Mrs. Guests' account here that the consideration was $2500.00. Can you tell me which is correct?

A. If you show me those accounts I think I can. The books of Mr. Henry C. Phipps record the receipt of $2500.00 for the sale of twenty shares of the Seminole Boat Company.

Q. Then $2500.00 is the correct consideration, rather than that which appears on voucher number 95, which is part of Phipps' Exhibit Z?

A. According to the books of Mrs. Guest and Mr. Henry C. Phipps.

Q. Mr. Weiss, your name has come into this record before, I think, as the author of certain statements coming down to Palm Beach, which were the basis on which the—at least part of the basis on which the books of the Seminole Boat Company were made up. I take it that you do send down such statements from time to time, approving the accounts that have been forwarded to you, and directing the proper entries on the books that are kept at Palm Beach?

A. I send statements and acknowledge statements from Palm Beach, and I advise them of transactions that have occurred in our office.

Q. And the auditing of those accounts which come to New York or which come to your office, are audited there before the transactions are complete?

Mr. Underwood:

I object to that, your Honor, unless "Those accounts" is made more clear. Accounts of the Seminole Boat Company, or Palm Beach Company or what accounts?

Q. Well, I am taking for instance,—there is an exhibit here that has a statement attached—I will pass that for the minute while we are trying to find it. I refer now to these exhibits which have been marked by 5-G-1, 5-H-1, 5-I-1 and 5-F-1, and this exhibit 5-I-1, two, and three: Three is a statement headed "Seminole Boat Company in account with Palm Beach Company, May to November, 1935. I take it that that records an indebtedness of the Seminole Boat Company to the Palm Beach Company. And that indebtedness was paid by a check, which is Phipps' Exhibit 5-I-1 of the Bessemer Investment Company to the Palm Beach Company.

A. That is correct.

Q. And that was a payment which was charged in equal shares to Mrs. Guest and Mr. John S. Phipps; is that correct?

A. That is correct.

Q. In other words, that represents a payment by those individuals, which is the equivalent to their having drawn their personal checks for their respective amounts?

A. Yes, sir.

Q. In other words, to put it simply, Mr. John S. Phipps and Mrs. Amy Guest paid this account of the Seminole Boat Company in account with Palm Beach Company?

A. They paid it to the Palm Beach Company.

Q. And that represented no cash transaction as far as the Seminole Boat Company was concerned; in other

words, the money did not pass through the hands of the Seminole Boat Company?

A. The actual money did not,—was not, from this evidence, paid to the Seminole Boat Company.

Q. It was a debt of the Seminole Boat Company, paid directly by John S. Phipps and Mrs. Guest?

A. That is correct.

Q. And that is true also of the statement and payment represented by exhibits 5-F-1, 5-F-2 and 5-F-3, is it not?

A. Well, these are payments to the Palm Beach Company for the account of the Seminole Boat Company, by Mrs. Guest and Mr. John S. Phipps.

Q. Well, that statement is a statement of an indebtedness of the Seminole Boat Company to Palm Beach Company?

A. That is correct.

Q. And it is paid directly to the Palm Beach Company by Mr. Phipps and Mrs. Guest?

A. That is correct.

Q. And I take it that after that transaction was completed, there would be some sort of a statement prepared for the books of the Seminole Boat Company to record the transaction?

A. Yes, sir.

Q. And that is true in respect to the transactions represented by 5-F-1, 2 and 3 as well as 5-I-1, 2 and 3?

A. Yes, sir.

Q. And it is also true of these transactions which are represented by 5-G-1, 2 and 3, and 5-H-1, 2 and 3, is it not?

A. Those payments also represents payments made to Palm Beach Company for the account of Mrs. Guest and Mr. John S. Phipps for the account of the Seminole Boat Company.

Q. Well, they were payments of an indebtedness of the Seminole Boat Company to the Palm Beach Company, by Mr. John S. Phipps and Mrs. Guest, were they not?

A. Well, they were actually payments making up deficits of the Seminole Boat Company.

Q. Yes. But the payments were made direct by the individuals to the Palm Beach Company?

A. That is correct.

Q. Then subsequently to the completion of those transactions, a memorandum would be made up from which the appropriate entries would be made on the books of the Seminole Boat Company?

A. I presume that would be done in the Florida office.

Q. Are you the successor of Mr. LeCount?

A. Mr. LeCount worked in our office at the same time that I did.

Q. Well, was he your subordinate or your superior, or was there any distinction?

A. We don't have those fine distinctions.

Q. Well, this exhibit, Respondent's Exhibit 4-H, I believe it was testified by Mr. Anderson of Palm Beach that he received this statement from your office, and used that as a basis, at least partially, of his information for making up the books of the Seminole Boat Company. Is it a fact that such statements do originate in your office and are used for that purpose?

A. They do; they are used for reporting to the Palm Beach Company, Seminole Boat Company or other corporations, the status of their various accounts with the books of the corporations whose records are kept in our office.

Q. Well, a statement like this indicates that you have received information from the Palm Beach Company supporting these items, and that they have been properly audited, and that the transaction has been completed in New York; is that right?

A. This statement indicates that we have charged against this account these items, which may have come from the Palm Beach Company, or they may have come

from some other original source and have been accumulated in this statement.

Q. And it shows that they have been audited and approved in your office, does it?

A. All accounts passing through our office are scrutinized and approved, and we are governed to a very large extent upon classifications made at the original source of the transaction.

Q. And the supporting vouchers come to you along with the record of those transactions, do they not?

A. They usually do.

Q. And they are scrutinized and approved in your office?

A. That is right.

Q. Well now, what is the office in which you work in New York?

A. We have an office, the office of Bessemer Investment Company is at 15 Exchange Place, Jersey City; the Phipps family also have an office at 465 East 57th Street. I spent about two days a week at the Jersey office, the rest of the time in our New York office.

Q. And it is from that office that these statements emanate?

A. This statement came from the New York office.

Mr. Botts:

That is all.

Re-Direct Examination.

By Mr. Underwood:

Q. Can you tell us, Mr. Weiss, why the reimbursements were made in that method?

A. What method is that, please?

Q. The one you have just referred to, from the Bessemer Investment Company to the Palm Beach Company.

A. They were made because the Bessemer Investment Company acts as a financing company for our other corporate organizations and for various members of the Phipps family.

Q. Let me put it this way: Does the Seminole Boat Company have a running account, or has it at any time had such an account, with the Bessemer Investment Company?

A. It has no account with the Bessemer Investment Company.

Q. Did the Palm Beach Company during these years have a running account with the Bessemer Investment Company?

A. No; the Palm Beach Company had a running account with Phipps Realty Company.

Q. With what company is the running account now?

A. Now the account is with Bessemer Investment Company, because Phipps Realty Company has been merged with Bessemer Investment Company.

Q. So that these payments were made in this method because the Seminole Boat Company had no running account with the company that in effect acted as banker?

A. That is correct.

Q. Now you were asked a question about what this $5,000.00 figure represents, on Exhibit 4-V; do you remember what you said as to that?

A. I think I said that that represented additional cost to Mr. John S. Phipps of that stock, or an additional payment by him on account of that stock.

Q. I show you Exhibit Y which contains journal voucher number 18, and ask you if that helps you to say what that $5,000.00 is.

A. That's an assessment on the capital stock of the Seminole Boat Company.

Q. It is recorded there as an increase in the capital stock?

A. That's right.

Q. Now you spoke a while ago of the expenses of that 1929 cruise, which appear as a difference in the year 1929, on Exhibit 5-E; do you see that?

A. Yes.

Q. Now I show you a letter dated November 4, 1929, in Exhibit Y. Does that tell, or can you recall, what that $3,000.00 figure is?

A. Yes, it represents the cost of a special trip of the Seminole Boat Company to New York and back, which was paid for by Mr. John S. Phipps.

Q. How do you account for that cost being in the books from which you took this data, 5-E, when you said the regular course was to put such expenses in the personal miscellaneous account?

A. I can't account for that.

Q It might be a bookkeeper's mistake?

A. I think so; posted in the wrong account.

Mr. Underwood:

That is all.

The Court:

Did the discrepancy between the amount paid by the sister, in 1935, as between the books of the—her individual ledger and what was shown on the books of the Seminole Boat Company—

Mr. Underwood:

No, sir, I know of no such discrepancy.

Mr. Matteson:

The discrepancy that I noted.

The Court:

Where is that debit and credit entry?

Mr. Underwood:

There is the journal voucher, which shows 1224.90, and 1224.91.

The Court:

There was a discrepancy between this amount and the $5,000.00 amount?

Mr. Matteson:

There was $5,000.00 here and the $2500.00 here; is that what you were referring to?

Mr. Underwood:

The discrepancy as to the price of the stock, was this; it was entered in journal voucher number 95 as $5,000.00 paid; whereas actually the amount paid, according to the personal books, was $2500.00, not $5,000.00.

The Court:

But this amount here is the purchase price of the half interest—that is for the stock that she bought; is that correct or not?

Mr. Underwood:

No, sir, that $12,000.00 figure represents the corporation's liability to Henry C. Phipps at the time he sold his stock to Mrs. Guest, and when Mrs. Guest paid $2500.00 for that stock, she acquired the corporation's liability to Henry C. Phipps, as well as the piece of paper,—the stock certificate. That is what that shows. And this is simply a mistake, the bookkeeper has written down the purchase as $5,000.00, and it was a half of $5,000.00.

Mr. Matteson:

The $12,000.00 as I understand it,—Mr. Underwood spoke of it as a debit, but every time the stockholders

made a payment to the corporation, to make up a deficit, it had to be placed somewhere in the books of the Seminole Boat Company as a credit to somebody, so they set up a page, crediting Henry C. Phipps,—crediting John S. Phipps, when those payments were made, they were credited on those pages; so that at the time of this transfer, as I gather from the records, there was that amount of a credit, in favor of H. C. Phipps on the books of the Seminole Boat Company, and that was simply transferred to a new page under the name of Mrs. Amy Guest; is that actually correct?

Mr. Underwood:

You and I don't see quite the same way, but almost. The books, at the time of the sale of the stock, showed that the corporation owed Henry C. Phipps $12,000 odd dollars, and when Mrs. Guest bought Mr. Phipps' stock, they changed the books to show that the corporation owed Mrs. Guest that amount, instead of Mr. H. C. Phipps.

Mr. Matteson:

I object to the word, owed. * * *

By Mr. Matteson:

Q. You spoke of this $5,000.00 as being an assessment on the stockholders of the Seminole Boat Company?

A. That is right.

Q. As a matter of fact you don't know yourself whether it was an assessment or a voluntary contribution, do you?

A. I would have to refer to the individual entry for that.

Q. The reason I say that, is that we have the minutes of the Seminole Boat Company, and there does not appear on them an assessment.

A. My recollection is that it was an assessment, and that each of the stockholders contributed $5,000.00 to the corporation.

Q. You know that they contributed the $5,000.00 to—

A. I do know that.

Q. But you don't know the circumstances?

A. No, I don't know that.

Mr. Matteson:

That is all.

(Thereupon the hearing was recessed until 9:30 o'clock a. m. of the following day, to-wit, Friday, May 19, 1939.)

May 19, 1939, 9:30 A. M.

Morning Session.

Reconvened pursuant to adjournment.

Appearances same as heretofore noted.

The Court:

You may proceed, gentlemen.

Mr. Underwood:

If your Honor please, there are some exhibits which were offered for identification while the libelants' case was going on, and which I have not yet offered, and I would like to do so now.

The Court:

All right.

Mr. Underwood:

Exhibit "I" doesn't show that it was for identification, but according to my notes it was offered for identification.

It is a letter from Captain Pilkington to Mr. Simmon and Captain Pilkington identified it at the time he was on the stand: I offer that letter.

Mr. Botts:
No objection.

Mr. Matteson:
No objection.

The Court:
Admitted.

(Thereupon letter above referred to and previously marked "I" for identification was marked Respondents' Exhibit I.)

Mr. Underwood:
I also offer in evidence the sketch by Mr. Thompson, previously marked Respondents' Exhibit "P" for identification.

Mr. Botts:
No objection.

Mr. Matteson:
No objection.

The Court:
Let it be admitted.

(Thereupon the sketch above referred to was marked Respondents' Exhibit P.)

Mr. Underwood:
I also offer respondents' Exhibit M for identification, the sketch made, as I recall it, by Captain Patten.

Mr. Botts:
No objection.

Mr. Matteson:
No objection.

The Court:
Admitted.

(Thereupon the sketch above referred to was marked Respondents' Exhibit M.)

Mr. Underwood:
I also offer in evidence this page from the catalog previously marked Respondents' Exhibit L for identification.

Mr. Matteson:
No objection.

Mr. Botts:
No objection.

The Court:
Admitted.

(Thereupon page of catalog above referred to was marked Respondents' Exhibit L.)

Mr. Underwood:
I also offer this copy of a letter from Seminole Boat Company to Captain Pilkington previously marked respondents' Exhibit O for identification. On this there appears certain pencil writing written after the fire apparently and which I do not offer.

Mr. Botts:
We have no objection.

The Court:
Admitted.

(Copy of letter above referred to was marked Respondents' Exhibit "O".)

Mr. Underwood:
I also offer this little pamphlet which was previously marked Exhibit R for identification.

Mr. Botts:
No objection.

Mr. Matteson:
No objection.

The Court:
Admitted.

(Pamphlet above referred to was marked Respondents' Exhibit R.)

Mr. Underwood:
If your Honor please, I should like to recall Mr. Riley for examination on one point.

2770 Thereupon JAMES F. RILEY, JR., a witness previously called in behalf of the Respondent Phipps, resumed the stand and was examined and testified further as follows:

Direct Examination.

By Mr. Underwood:
Q. Since you last testified, Mr. Riley, have you read over the transcript of your testimony?
A. Yes, sir.

Q. Have you called my attention to some mistakes that appear therein?

A. Yes, sir.

Q. Do you remember last night that we discussed the matter and the stenographer read his notes back to us; do you remember that?

A. Yes.

Q. Now do you have before you some of such typewritten pages?

A. Yes.

Q. Pages 1601 to 1607, inclusive?

A. Yes.

Q. Are there corrections you want to make in them?

A. Yes, sir. On page 1603.

Q. Tell us about that.

A. Under "Question" here is: "Now when you came to that sort of a slip, did you make any memorandum?" Another question under that same "Question" is: "You ordinarily made a memorandum on the slip as to who was to pay that, did you". And the answer is "Yes, sir". That answer "Yes, sir" is to the first question and not to the second question. And it goes on to say: "I either made the charges on the statement, just who the charges would be made to, or in some instances I *filled* (that word should be "*pulled*") and collected the money from the people that the gas should be charged to".

Q. When the original transcript was written that word was written "filled", wasn't it?

A. Yes.

Q. And you called my attention to that?

you would usually make a memorandum on the slip as to how it was to be charged", and the answer is, "Yes, sir". Well I must have misunderstood the question, because the answer would be "Yes, sir" if the phrase "on the slip" was left out of the question.

Q. Now what is the fact, Mr. Riley, did you ever on any of these gasoline tickets yourself make any note as to the person or account to which they were to be charged?

A. No, sir.

Mr. Underwood:

That is all.

Mr. Botts:

No cross examination.

Mr. Matteson:

No questions.

Mr. Underwood:

Now, if your Honor please, I offer in evidence a statement which Mr. Matteson gave to me in advance of the trial which contains the names of 13 vessels for the loss of which or damages to which this suit is brought, and the names of the insurance companies which insured these vessels. At my request Mr. Matteson had this statement prepared and gave it to me as a list of the vessels that were insured and the names of the companies that insured them. I have added to the list in pencil marks at the lefthand side the amounts claimed in the libel by way of damages for these boats.

Mr. Matteson:

If your Honor please, I did furnish to Mr. Underwood the list at his request, reserving at the same time the question of relevancy or materiality, and I do object to the introduction of the list in the record on the ground that it is irrelevant and immaterial.

Mr. Botts:

I join in that same objection.

The Court:

What is the relevancy of it?

Mr. Underwood:

In the first place, if Your Honor please, I think the record should show the name of the real party in interest in each case. This is a statement showing that the underwriters have paid claims on these boats and they of course have become subrogated to any rights the owners may have had, and they are therefore the real parties in interest, and we are entitled to know that and have that made a part of the record.

The Court:

I shall reserve ruling on that.

Mr. Underwood:

If your Honor please, I would like to state one further ground upon which I make this offer; that is, as a part of my evidence to show bias and prejudice on the part of certain witnesses in this case, two witnesses called by the other side, have admitted that a substantial part of their livelihood comes from fees received from under-

writers for making marine surveys, and I want to show that a very substantial part of the amount claimed in this case is on behalf of the underwriters.

Mr. Botts:

Can't you mark it for identification for the time being subject to the ruling of the Court as to whether it will be admitted in evidence or not?

The Court:

Yes; that will be all right.

(Thereupon the list above referred to was marked Respondents' Exhibit 5-J for Identification.)

2774 Thereupon E. GEORGE BERNARD was called as a witness in behalf of the Respondent Phipps, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Underwood:

Q. What is your full name?

A. E. George Bernard.

Q. Where do you live?

A. 6814 N. W. th Avenue; Miami.

Q. How long have you lived in Miami?

A. 14 years.

Q. What is your business?

A. Marine surveyor.

Q. How long have you been engaged in that business in Miami?

A. 14 years.

Q. You were Lloyd's sub-agent?

A. For a part of that time; for the last eight years; I don't know the exact date.

Q. What is Lloyd's whose sub-agent you are?

A. Lloyd's of London.

Q. What is it?

A. It is an organization for the classification of vessels and to take care of—Lloyd's agent proper takes care of Masters' or owners' interests or whatever may happen to come up in case of emergency or anything that you might happen to be detailed to by the Lloyd's Underwriters or board representative.

Q. That is an association of underwriters?

A. Yes, sir.

Q. You are a surveyor for the United States Salvage Association?

A. Yes, and their agent.

Q. What is the United States Salvage Association?

A. Representatives or surveyors for various bodies of underwriters.

Q. You are surveyor for the American Bureau of Shipping?

A. Yes, sir.

Q. You are correspondent of the Board of Underwriters of New York?

A. Yes, sir.

Q. What is the Board of Underwriters of New York?

A. They represent the—that is a board that represents the various underwriters that are members of that organization.

Q. All these underwriters we have talked about are underwriters on marine risks?

A. Yes, sir.

Q. Do you remember in March, 1935 when you went aboard the Houseboat Seminole and conducted a survey?

A. Yes, sir.

Q. Do you remember after the fire on the Seminole you had a conversation with Mr. Roy Hawkins?

A. Yes, sir.

Q. Isn't it a fact that on that occasion you refused employment by Mr. Hawkins because of your declaration or feeling that there was a conflict in interest between the parties Mr. Hawkins represented and the underwriters that you represent?

A. Yes, sir.

Mr. Botts:

Now, Mr. Witness, you saw me hold my hand up and you knew I was going to object to that question. You don't have to try to slip in an answer that way.

Mr. Underwood:

May I ask the Court to restrain Mr. Botts, and that he direct his statements to the Court and not give instructions to the witness. It is not for him to usurp the prerogative of the Court that way.

The Court:

I will instruct the witness. Mr. Witness, when any counsel indicate that they are going to object to a question, refrain from answering until after the Court rules on the objection.

Mr. Botts:

Now I move to strike the answer and I object to the question on two grounds; first, the question is entirely leading and, in the second place, the evidence is irrelevant and immaterial.

The Court:

The question is leading, but the damage is already done, and I don't think we can cure that. As to whether it is

material or relevant I cannot tell now. If it appears later on that it is immaterial or irrelevant, you may move to strike it, but I think that it possibly has materiality or relevancy, so I shall overrule the objection.

Mr. Botts:

Would you mind instructing counsel not to lead this witness?

Mr. Underwood:

If your Honor please, I have a right to lead this witness.

The Court:

Why?

Mr. Underwood:

I am laying the foundation to prove that he is hostile, and a witness who refused to work for us because of his interest on the other side.

The Court:

I think the leading questions should be confined until his hostility is established.

Mr. Underwood:

I think I have established it.

The Court:

I mean in the establishing of it (I am commenting on my ruling mainly); I will have to pass on that as a future question now. I see now that it is contended that he is at this time shown to be a hostile witness. I do not care to pass on that at this time, as to whether that has been established or not, but suppose we proceed without leading questions until you establish to the Court more satisfactorily that he is a hostile witness.

CLERK'S COPY.

Vol. IV

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 246

CHARLES CORYELL, ET AL., PETITIONERS,

vs.

JOHN S. PHIPPS AND GEORGE J. PILKINGTON

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 20, 1942.

CERTIORARI GRANTED OCTOBER 12, 1942.

VOLUME IV.

TRANSCRIPT OF RECORD

UNITED STATES
CIRCUIT COURT OF APPEALS

FIFTH CIRCUIT.

No. 10185

CHARLES CORYELL, ET AL.,

Appellants,

versus

JOHN S. PHIPPS and GEORGE J. PILKINGTON,

Appellees.

Appeal from the District Court of the United States for the Southern District of Florida.

U. S. CIRCUIT COURT OF APPEALS
FILED

(ORIGINAL RECORD RECEIVED DEC. 17/41.)

Mr. Botts:

If the Court please, I suggest that the facts elicited by this witness clearly do not show him to be a hostile witness.

The Court:

I will hear from both of you on that when the time comes.

(By Mr. Underwood):

Q. Mr. Bernard, what portion of your work is on behalf of marine underwriters? I mean by that, Mr. Bernard, what is the proportion between the amount of work you do for underwriters on the one hand and for owners on the other?

A. I judge 75% for underwriters and 25% for classification and owners.

Q. Can you break that 25% down and tell me how much of that is for owners and how much of that is for classification societies?

A. Probably 10% for owners and 15% for classification.

Q. What proportion of your livelihood comes from the fees you get from the work you have told us about?

A. About 80%.

Q. Now you have referred to or admitted a conversation with Mr. Hawkins following the fire on the Seminole, is that right?

A. Yes, sir.

Q. What did you know at that time as to the insurance on the boats that had been burned?

A. Is that as to amount, sir?

Q. I will rephrase my question so there can be no misunderstanding: did you or did you not know that some of those boats were insured by marine underwriters?

A. I knew that there were some.

Q. Did you have any information as to how many?
A. No, not at that time.
Q. Do you know?

Mr. Botts:
I object to that. It is immaterial what he knows now.

A. Not the exact number of boats, no.

Mr. Botts:
I move to strike the answer.

The Court:
Captain Bernard, you answered that before the Court ruled on the objection. I will ask you not to do that. I will overrule the objection and deny the motion to strike.

Q. What was your reason for refusing to accept employment by Mr. Hawkins when he spoke to you after the fire on the Seminole?

Mr. Botts:
I object to that as being immaterial.

The Court:
Overruled.

A. I was representative of the Board of Underwriters at that time and also agent for United States Salvage and other independent interests.
Q. Will you tell me whether or not you realized that there was a conflict of interest between the underwriters you represented and the parties Mr. Hawkins represented?
A. I think that was too early after the fire to sense anything like that.

Q. Isn't it a fact, Captain, that your appreciation of that conflict is the reason for your refusing employment when Mr. Hawkins sought to engage you?

A. Yes.

Q. Now you had surveyed the Seminole prior to 1935; had you not?

A. Yes.

Q. Do you remember when it was that you were aboard the Seminole in 1935?

A. March 27th and 28th.

Q. You were on board her two days?

A. Yes, and there may have been a third day but I don't want to make that point; but I was there two days I know.

Q. You inspected her when she was afloat as well as when she was dry, did you not?

A. Yes.

Q. And the purpose of your inspection was to ascertain her condition generally, was it not?

Mr. Matteson:

I object to that as leading, your Honor.

The Court:

I will sustain the objection.

Q. What was the purpose of your visit and survey of the Seminole?

A. To make an examination of the hull on drydock; she was on drydock when I first made an examination of her *hull* conditions and with the thought of sending the vessel out to make a short cruise as to her fitness.

Q. Her fitness in what respect?

A. Well, that just means that?

Q. In what respect were you interested in her fitness?

A. General condition as to the hull was more my interest.

Q. Are you telling me, Captain, that your only interest was in the tightness of the hull?

A. Well, that would refer to the general condition; I will say the "general condition" but primarily this first visit was to make an examination of the hull on drydock, outside and inside.

Q. How many visits did you make?

A. Two.

Q. What was the purpose of the next visit?

A. I made a verbal report and they asked for an outline to make application for insurance, and I went back and took another observation and examination.

Q. What was the purpose of the second examination?

A. It was to apply for insurance for a short trip around the Keys, I believe, and into the Gulf—

Q. Do you remember what work you thought it was necessary to do before you could pass her?

A. Outside of fire extinguishers I haven't memory of anything that I asked for; I asked for reconditioning of fire extinguishers; other than that I haven't any memory of making any recommendations.

Q. There has been some testimony in this case, Mr. Bernard, about some repairs—putting a cement patch around the stern. Do you remember anything about that?

A. Never heard of it.

Q. Do you deny that you recommended that?

A. No, sir.

Q. Do you deny that you recommended that?

A. When you say "stern" will you name the place. Do you mean the sternmost compartment? No, I didn't have anything to do with that, and I made no such recommendation.

Q. Did you make any recommendation about patching any plate?

A. No, sir; I made no recommendation about patching any plating.

Q. What your testimony be that the only thing that you recommended be done was to refill the fire extinguishers?

A. Yes, sir.

Q. Did you confine your examination to the outside of the boat?

A. I made a close internal examination of the hull and the parts.

Q. Did you go through the bilges?

A. I did.

Q. What condition did you find the bilges in?

A. I found them clean and free from gas and any element that might indicate there was any weakness or gases that might be detrimental in the use of the boat.

Q. Do you know whether there were backfire deflectors or arrestors on the carburetors on the main engines?

A. I can't certify that; I can't memorize that; I believe there were, though I am not sure.

Q. I show you a paper which has been marked Respondents' Exhibit DD, and call your attention to the first paragraph on the top of the second page. Does that refresh your recollection as to the—

Q. What is the fact; were there backfire deflectors there?

A. There were.

Q. You may keep that before you, if you like.

A. All right.

Q. Do you remember where the air tanks used for starting the motors were located?

A. I don't at this time.

Q. Will you look at the first paragraph on the second page of that exhibit and see if that refreshes your recollection?

A. Yes; it has outlined here the location of them.

Q. Is it a fact that they were located as I have suggested?

A. Yes, sir.

Q. Did you observe what sort of a generator she had?

A. Yes; she had two generators.

Q. What were they?

A. One was a six cylinder Winton and the other was a small engine, a four-cylinder Universal, I believe.

Q. Where were they located?

A. On the port side of the engineroom.

Q. In what kind of a space?

A. In an open space.

Q. Roomy space?

A. Yes; on shelving above the engineroom floor.

Q. That is the Universal you are talking about?

A. I believe they were both on the one side; if my memory serves me right they were both on the one side.

Q. Are you suggesting that the six-cylinder Winton engine was on a shelf?

A. On a base.

Q. Base and not a shelf?

A. Base.

Q. Did you observe how the carburetors received their supply of gasoline?

A. Yes.

Q. Did you observe what sort of bilge pumps she had?

A. She had motor-driven bilge pump—I am not certain whether there was one attached to the engine or not, but she had one independent motor-driven pump, rotary.

Q. Did you observe anything about her water pumps?

A. She had some general service pumps; there was a fresh water pump but I am not sure about the salt water pump, but I believe there were two units there.

Q. In what condition did you find these things we have discussed so far?

A. From my observation of the engineroom on that boat that day, without any engineer there, I judged them to be in order.

Q. Isn't it a fact that you reported that they were found in good operating condition?

A. That might have been my wording.

Q. Isn't that your wording?

A. Yes.

Q. Did you observe her electric batteries?

A. I did.

Q. What kind did she have?

A. I am not sure but I will say Edison.

Q. Do you remember how many trays?

A. No, I don't, sir, but I believe that is in the report.

Q. Can you refresh your recollection by referring to the middle of page 2?

A. 20 trays of 5 cells each.

Q. That would be 100 cells?

A. Yes, sir.

Q. Did you examine them to determine their condition?

A. They were apparently in good condition.

Q. Did you examine her gasoline spaces and gasoline tanks?

A. I don't believe you can get into the gasoline space to make much of an observation.

Q. Did you attempt to do it?

A. I did on the "entire side" because I tried to get in there and have a look.

Q. Were you looking at the tanks as far as you could?

A. I looked for any leaks that might exist in them.

Q. Did you find any?

A. No, sir.

Q. Do you remember how many tanks she had?

A. Yes.

Q. How many?

A. Four.

Q. What shape?

A. Cylindrical tanks, standing on ends.

Q. They were located in a separate space forward of the engineroom space; is that right?

A. Yes.

Q. What was the nature of their construction?

A. Cylindrical tanks with riveted seams, steel.

Q. Were they all heavily constructed?

A. They were for that service.

Q. Were they well bedded?

A. I couldn't certify to that, because I couldn't get to "it".

Q. Were they well bedded and screwed to place?

A. From what I could observe they were and I believe I wrote them up that way.

Q. In fact, you reported to that effect, did you not?

A. Yes, sir.

Q. Did you observe how those tanks were filled?

A. Yes.

Q. How were they filled?

A. They were filled from the top by a two-inch filler line.

Q. Did you ascertain whether these filling lines were tight?

A. I presumed them to be tight from their connections; they were all solid connections.

Q. Did you report that the banks filled through tight deck fittings?

A. I did.

Q. Did you observe that they were vented overboard?

A. I did.

Q. Did you observe what shut-off valves there were in the feed lines from the tanks to the carburetors?

A. I did.

Q. She was equipped with shut-off valves?

A. Yes, sir.

Q. In what condition did you find the tanks and the piping to be?

A. There were no leaks.

Q. Isn't it a fact that you reported the tanks and piping vented pipe and in order?

A. Yes, sir.

Q. Did you observe whether or not there was a glass gauge fitted to show tank readings?

A. Yes.

Q. Was there one?

A. Yes.

Q. You saw that?

A. Yes.

Q. Did you see the auxiliary gasoline tank for the windlass engine?

A. Yes, sir.

Q. Do you remember the shape of that?

A. I don't remember the shape of it but I think it was a cylindrical tank.

Q. Do you know where it was located?

A. Forward, adjacent to the engine machinery, by a window.

Q. What was it made of?

A. I can't remember.

Q. You may look at your report and refresh your recollection—the fourth paragraph from the bottom of the second page.

A. It is galvanized iron, capacity about 10 gallons.

Q. Did you examine that tank and fittings?

A. Yes.

Q. In what condition did you find them?

A. I found them tight.

Q. In order?

A. Yes.

Q. Did you examine the main switchboard of the Seminole?

A. Yes, sir.

Q. The wiring and light fixtures?

A. I noted the electrical wiring and part of the lights.

Q. Did you find them in good order?

A. Yes, they were in order.

Q. You knew they were knife switches of the open type?

A. Yes.

Q. And the switchboard was in the engineroom?

A. Yes.

Q. Did you report that all of the United States government requirements had been fully complied with?

A. Yes, sir.

Q. Did you report that from your examinations the general condition of hull, auxiliary machinery, deck and deckhouse equipment was found to be good, considering the age of the vessel?

A. I did.

Q. And you passed the vessel?

A. That report I believe was accepted by the Underwriters, and I understood she had some coverage on her for a short trip. What I certified by that remark there is nothing but an opinion, and I don't know whether it is worth anything or not.

Q. You knew that your report was going to be considered in the fixing of insurance on that vessel, did you not?

A. Yes, sir.

Q. And you had been making such reports for many years?

A. Yes.

Q. You were engaged in the same business before you came to Miami?

A. Yes, I was, and for the best firm in the United States.

Q. What firm is that?

A. Franklin A. Martin, 25 Broadway.

Q. How long have you engaged in this business altogether?

A. From the beginning of my career?

Q. Yes; from the beginning.

A. From the time I was 14 years old I have been connected with mechanical work and marine work, and I have held a Chief Engineer's license since 1900.

Q. How long have you been a surveyor?

A. Surveyor?

Q. Yes.

A. Directly surveying and general surveying—directly active 22 years.

Q. You had been familiar during all of that time with the rules National Fire Prevention Association, have you not?

A. Yes; I might be caught on some details of them, but I know their outline and their various formulaes and use them and am guided by them.

Q. I suppose you know now and knew in 1935 of the rules of the Bureau for the Prevention of Explosion and Fire on Motor Vessels?

A. Yes, sir.

Q. And you know about Lloyd's rules?

A. I would have to check up on some of them; it is too hard to remember them all.

Q. I didn't mean to suggest that you had memorized them. You are generally familiar with them?

A. Yes, sir.

Q. And you know the rules of those three organizations?

A. Yes.

Q. You examined the Seminole in 1935, in March?

A. Yes.

Q. For insurance purposes, and you passed her?

A. Yes, sir.

Cross Examination.

By Mr. Matteson:

Q. Mr. Bernard, you have been referred to as Lloyd's agent.

A. Yes, sir.

Q. Or sub-agent?

A. Umh, hmh.

Q. Will you tell us exactly what that amounts to?

A. Well, it is a person placed in a locality to attend to an emergency in the event of a vessel covered by Lloyd's, being in trouble, or any other vessel; or to serve a Master or an owner, in aiding or directing them in the time of marine trouble; also to report marine trouble and to keep in touch with the London office with regards to what might be going on; it might be a disaster; it might be some vessel that has come in here. I have had three vessels lately, one went to $32,000.00; one went up last week to $19,000.00. They like to know where that vessel is going, how it occurred, and when it occurred. That is given to them by cable through my office in this district.

Q. Do you receive any salary?

A. No, sir, there is no compensation.

Q. From time to time, when such disasters occur, you are employed by them in that connection?

A. I get a fee of some sort; it may be the underwriters will pay that fee, or it may be that they arrange with the owner to pay it, and they in turn collect from the underwriters.

Q. This Lloyd's organization that you speak of has representatives like you in many ports, does it?

A. Yes, sir, all ports are supposed to be covered by some agency or sub-agency.

Q. And you receive your compensation only when you are employed in connection with some particular disaster?

A. Yes, sir, or a loss. Suppose there is a foreign boat comes in with a loss, coming over, due to heavy weather, and I am engaged to take care of that loss and present it to the underwriters, I get a fee from that. That is how I get my compensation.

Q. But your compensation is in individual fees, in individual cases?

A. Yes, sir. Individual fees in individual cases.

Q. And this service that you perform in reporting accidents or losses or disasters, is part of the service that you render, so that you will receive employment in connection with those cases, is that true?

A. Well, I will get a fee for services for any small job that I might wish to submit, but I don't do it; that is in line; I can enter a fee but I don't do it, unless it is a major case.

Q. Does the position of Lloyd's sub-agent require any technical experience, or is it sometimes performed by people without such experience?

A. I think that is developed from knowing the character of the person that might be taking the position.

Q. The term, Lloyd's sub-agent, does not necessarily mean that a person is a surveyor, then?

A. No, sir.

Q. You speak of being the representative of the Board of Underwriters of New York,—or rather, correspondent. Is your relationship with that organization somewhat similar to what you have described with respect to Lloyd's?

A. Yes, sir.

Q. What is the American Bureau of Shipping?

A. Classification of American Vessels.

Q. Is that the official classification society in this country?

A. It is.

Q. And you are one of their list of surveyors?

A. Yes, sir.

Q. What is the U. S. Salvage Association?

A. That is a Board of Survey, representing I would say, a number of underwriters,—I don't know how many.

Q. It is an incorporated organization is it not?

A. I cannot say so; I don't know that technicality.

Q. It is an organization?

A. Yes, sir.

Q. And is employed by underwriters from time to time in connection with disasters?

A. I think it is established and maintained by underwriters; I don't believe it is employed. I think that is maintained, as I understand it.

Q. Renders services to underwriters and receives compensation for this service?

A. Yes.

Q. Is there a difference between Lloyd's as an insurance organization, and Lloyd's as a classification society?

A. I couldn't tell. I believe that would be governed by the policies issued by either one.

Q. Well, don't you know as a matter of fact that Lloyd's classification society is an independent organization similar to the American Bureau of shipping in this country?

A. Yes, sir.

Q. That is correct, is it not?

A. Yes, sir; I beg your pardon sir, you were referring to insurance, were you not—American insurance, when you first asked that question?

Q. I don't know; if there is anything that is not clear to you, we will try to straighten it out; but I don't understand what isn't clear. Is there some explanation you want to give?

A. I think I have made a long answer. I interpret you to say, or to try to ask me, the value, in words, the value of Lloyd's insurance as compared to an American company's insurance.

Q. Oh, no, we are not suggesting anything of that kind. You were employed by Mr. Hawkins to make this examination of the Seminole?

A. I believe the message came from his office. Yes, sir, Mr. Hawkins' office. I didn't get it direct, I was out at the time, and I got it when I arrived. But it came from Mr. Hawkins' office; listed that way in my office.

Q. What were your instructions with respect to this examination?

A. To make an inspection of the Seminole. She was on dry-dock and they wanted to have an inspection made.

Q. For what purpose?

A. At that particular time, it was to report on the general condition of hull, if she was all right and ready to be on dock, if there was any more work to be done on dock.

Q. So the first instruction you had was solely with respect to an examination of the hull?

A. Yes, sir.

Q. And you made that on the 26th of March, 1935, is that correct?

A. Yes, sir.

Q. And—

A. Yes.

Q. And that had nothing to do with any insurance?

A. No, sir.

Q. And did you understand at that time that you were acting for the owner of the vessel, or someone else?

A. It was an owner's call, sir.

Q. Now do I understand that you received some further instructions after you had completed that examination?

A. Yes, sir.

Q. From whom did you get the instructions that time?

A. Mr. Hawkins.

Q. Did you talk with him personally?

A. Yes, sir.

Q. And what instruction did you get with respect to that survey,—with respect to that examination?

A. He informed me that he wished to have the vessel covered to make a short trip down to the Keys, and he would like to have a report on her condition.

Q. Well, is that in substance what he said to you?

A. Yes, sir, about that, as near as I can remember.

Q. In making this examination that you made, after the first one, what did you have in mind?

A. Well, the vessel was afloat, and I wanted to see the interior of the hull, afloat. She was dry when I saw her. I wanted to see what the hull was like inside the boat. She has quite a pretty big bilge, you know, a good big bilge space; I wanted to get in there, there was a good chance; I said to myself "I am going in again and have a look around". Lots of times when vessels go on a dock why they usually check it up; they certify her when she comes off.

Q. So that is all that you had in mind when you went on board the second time?

A. Yes, I wanted to check up the machinery a little, and go around the decks and the fire extinguishers, I wanted to check them up.

Q. Did you understand at that time that you were expected to make a thorough examination of all the machinery and appurtenances?

A. I couldn't make a thorough examination on that type vessel, sir. I would have to open up machinery and open up spaces, and I could make a general examination, which would represent what I was doing; but I wouldn't make a thorough examination, no; it wouldn't be represented that way.

Q. Now you went on board the Seminole for that purpose, did you?

A. I don't know what I am answering now, sir.

Q. Well, perhaps that is not very clear. Anyway, you went on board the Seminole the second time?

A. Yes, sir.

Q. And did you go into the engineroom on that occasion?

A. I entered the engineroom, yes, sir, for a short interval.

Q. Were you alone in the engineroom, or was there anyone with you?

A. I was,—I was alone.

Q. Was there any engineer on board the vessel?

A. No, sir.

Q. Was there any Captain on board the vessel?

A. No, sir.

Q. Was there anybody on board the vessel?

A. Yes, sir; there was a young man that I saw working, doing odd jobs on the vessel; the same man was there each time that I appeared there.

Q. Was he the only one that was there?

A. Well, I couldn't vouch for that, I didn't ask him; there may have been others that I didn't happen to see.

Q. He is the only one that you saw?

A. He is the only one that I saw.

Q. Mr. Bernard, did you observe when you were in the engineroom, a drain valve connected with the gasoline piping system from which gasoline could be drawn in the engineroom?

A. I did not.

Q. If you had observed such an arrangement in the engineroom, would you have passed the vessel?

Mr. Underwood:

Wait a minute, I object to that, your Honor; it is speculative.

(Arguments by counsel.)

Mr. Botts:

If the Court please, I would like to make this observation; that if proving an examination for the purpose of some insurance, isn't calling for an expert opinion and expert examination, I don't know what its purpose was; and I think clearly he has presented that phase of it and purported to rely on it.

The Court:

No, I don't think so. I think the witness has not been introduced as an expert. He has been introduced,—he may be an expert, but he has been introduced to testify as to his employment, and what he did, and the report he made. This question I think calls for an expert opinion to be made at this time, so unless the Libelants care to make him their witness, why I shall sustain the objection.

(Argument by counsel.)

Mr. Matteson:

As I understand the question is objected to and the objection is sustained, is that the position?

The Court:

Yes, sir.

Q. How do you account for the fact that you did not observe that draw-off line in the engineroom, Mr. Bernard?

A. It is out of the ordinary lead from the main line; it went along from the port side—

Q. Well—

Mr. Underwood:

Let him finish, please; how did it go?

A. It is off the ordinary lead from such a line; it was a long lead, from the main line, run along the starboard side of the vessel, from the manifold of all four tanks. It was made into this main line. And this, as I saw it after the fire, led close athwartship over to the port side of the vessel, and probably led underneath some conditions such as batteries or something else, and was not observed. We looked for draw-off lines or draw-off connections in close proximity to the main line.. The main line and the feed line to motors. Another point was that that would probably be in the shadow; the ship was dead, and they hadn't anything in the way of lights in that engineroom, and I didn't go searching for something out of the ordinary, in the draw-off line.

Q. How long were you in the engineroom, Mr. Bernard?

A. Well, at that time I was in there probably about twenty minutes. But I had been previously in there, with regards to the motors, particularly the motors and the general lineup of a little generator and the bilge pumps; the bilge pump connections mostly; went in there to get all leads to see if they led to the different places.

Q. You were in the engineroom twice?

A. Yes, sir.

Q. And the first time you were interested only in bilge pumps, is that right?

A. No, I said, a combination,—the general condition of the engines and pipe lines, but not going into any detail. Primarily it was to see about the bilge pump and bilge pump conditions; that was when I was considering the hull.

Q. That was the bilge pump and the bilge pump connections and whatever machinery was connected with the bilge pumps, is that it?

A. Yes, sir; the motor to drive the bilge pumps; they wouldn't be any good if the motor wasn't fit to move them,—the generator.

Q. Let's see if I understand you correctly. The first time you went into the enginercom, you were—the only thing you examined was the bilge pumps and the bilge connections,—and the engines connected with the bilge pumps?

A. And the switchboard and connections that drove that motor, and the general conditions; and that involved a lot in that engineroom, to move that bilge pump; they have a lot of moving parts and connections.

Q. Did you move the bilge pump?

A. Oh no, I wouldn't start anything on a dead ship, not me.

Q. Why not?

A. Why it isn't my place, not my property. I would ask for or order it done, and go back and find out how it was operating after the official operator was on it.

Q. Was there anyone there that you could order to operate the machinery?

A. Not that I know of, that had—I wouldn't want to ask, only from the firm themselves,—to send their man there and start the motor.

Q. And did they send any man over to operate it?

A. I didn't ask for that and didn't require it. I convinced myself it was all right.

Q. And you are referring now to the pump?

A. I am referring to the pump and the parts that were required to operate the pump, which are many. It has to go through the switchboard, the generator has to be started, and there is a manifold of valves has to be operated; sea-suction to be opened up.

Q. Now tell us just exactly what you did to ascertain the operating condition of the bilge pump?

A. I went down to have a look at the motor, the generator. The generator apparently was in good condition. There was nothing wrong I could tell, from the ordinary standpoint of many, many vessels I have examined standing still. There is one way of examining it, but from what I could ascertain, that the generator, switchboard, and the connections, and the batteries necessary to maintain those, together with the pump itself, and its connections, were in order. I tried the valves and manifold.

Q. Did you try anything else?

A. No, just tried the valves and manifold; tried the valves and the bilge manifold.

Q. You tried the valves?

A. Yes, sir.

Q. And is that all that you tried?

A. That's all.

Q. What else did you try?

A. I didn't try anything else.

Q. Did you operate the generator?

A. No, sir.

Q. Did you operate any of the machinery?

A. No, sir; never have on any vessel that I ever approached as a surveyor or an owner's representative, or as a superintending engineer.

Q. I understand you to say that if there is an engineer present, you order them to do that?

A. If he offered to do so; if I said to him, "I am going to ask to have these turned over", if he said he would turn them over, they do it all right. I didn't ask him to do that.

Q. There was no one there at this time that you could ask to do that?

A. No, sir. I believe that was pretty early in the morning I went over there, very early that morning, I remember.

Q. Well, you can't really determine the operating condition of a piece of machinery without operating it, can you?

A. Well, I think so.

Q. Merely by observation?

A. I think the underwriters understand that. We don't try out every part.

Mr. Matteson:

I move to strike that out as not responsive.

The Court:

* * * I grant the motion.

Q. Just confine yourself to answering my questions, please.

A. Yes, sir.

Q. Did you operate any of the switches on the switchboard?

A. No, sir.

Q. Did you make any test of the gasoline tanks?

A. What kind of test, please? Hydraulic?

Q. I want to know what you did.

A. I made a search for odor or leak of gasoline; for the odor or leak of gasoline from the gas tanks.

Q. And that is all you did?

A. Yes.

Q. Did you put your head in under the gasoline compartment?

A. Well, I don't say I put my head in, or what I did; I can't remember what I did.

Q. Did you go into that compartment?

A. I couldn't go in there.

Q. Why not?

A. It was between bulkheads; between bulkheads.

Q. Could you see part of the tanks?

A. Might get a slight observation of the side of one or two; nothing—

Q. You couldn't make any general examination?

A. No, you could not; no.

Q. Was there any gasoline in the tanks at the time, do you know?

A. I didn't observe that, sir.

Q. Then do I understand that your observations in the engineroom were confined merely to visual observations?

A. Yes, sir.

Q. Where was the boat when this examination was made?

A. Coconut Grove; down at Coconut Grove, Florida.

Q. And where was she lying there, afloat?

A. She laid the first time on the marine ways there.

Q. And the second time?

A. At a pier adjacent there, one of the piers, I can't remember which one.

Q. A pier that projects out in the bay?

A. I couldn't say that, I don't remember that. As near as I remember, the second time she was in that yard.

Q. Did you have any light in the engineroom when you were there?

A. No, sir.

Q. The current was all off the switchboard, was it?

A. I couldn't say, sir, I don't know.

Q. You don't know whether any of the switches were connected on the switchboard at that time?

A. The switches may have been in there, but the current must have been cut out at the batteries. I didn't move the battery switch. There is a cutout on that battery.

Q. You can't tell us whether any of the switches on the switchboard were connected at that time?

A. There was no juice on the main switchboard, I know that. There may have been switches in on the board, but no juice from any main, through the board.

Q. How do you know there was no juice on the switchboard?

A. I didn't see any lights burning anywhere.

Q. Is that what you judged by?

A. Yes.

Q. Did you examine the switches on the switchboard?

A. Not closely. It was a good looking switchboard, that's all I memorized.

Q. That's all you noticed; it was a good looking switchboard?

A. Yes, and has an elevation from the floor, and that was essential.

Q. What was the condition of the windows in the engineroom when you were in there the second time, afloat?

A. The condition of them?

Q. Yes, were they open or closed?

A. I don't remember.

Q. Do you remember the location of those windows?

A. Yes, sir, I do.

Q. What windows were there?

A. There was a window through the top side on the port side, through the side of the hull, top side of the hull on the port side; that is a rectangular window. There was a similar window in a fore and aft bulkhead in the alleyway on the starboard side.

Q. Was that a steel bulkhead between the engineroom and the alleyway?

A. Yes, sir.

Q. What means of ventilation did you notice in the engineroom, besides the windows?

A. From a raised trunk they had two fourteen inch ventilators. They also had a ventilation through a hatch that entered the engineroom. That's about all that I can remember, I believe. There may have been another coam-

ing or a hatchway, I am not sure, but I believe there was, three sources from that raised trunk over the engineroom.

Q. That is these cowls—

A. There might have been windows in through the raised trunk, I can't remember; but there was a raised trunk over the engineroom on the boat deck.

Q. And extending upwards from that raised trunk, were these two cowl ventilators?

A. Yes, two cowl ventilators.

Q. And this hatch, was that in the raised trunk?

A. It extended above the raised trunk, it was what we call a coaming, a raised coaming.

Q. Is that all that you saw in the way of ventilation at that time?

A. All that I can remember.

Q. Did you observe any sort of ventilating device that led into the bilges?

A. There was none.

Q. Are you sure of that?

A. Not that I observed.

Q. Did you look for them?

A. I don't believe I did; I don't think I did.

Q. These ventilators that extended up from the deck, did you observe those on deck?

A. I can't remember that, whether I went up there to look at those cowls or not.

Q. How did you get into the engineroom?

A. I went down through a hatch from the upper deck.

Q. And that's this hatch that you have just spoken of in the trunk over the engineroom?

A. Yes, sir.

Q. What do you mean by trunk?

A. It is a raised structure over the level of the ordinary decks; steel structure; it happens to be a coaming,—raised coaming.

Q. Then as I understand it, over the engineroom there was part of the deck that was raised up a little higher than the rest of the deck?

A. Yes, here is the deck; I believe this is the boat deck; I am not certifying this correct. Over the engineroom was a raised trunk on which was these ventilators. In other words, the distance from the engineroom up to the deck would be one distance, and then you come up probably eighteen inches, when you get into the space, which gives more air from the engineroom; in other words, it helps to ventilate that engineroom space.

Q. What is it helps to ventilate the engineroom space?

A. This compartment, this rise, that extends the height of the engineroom.

Q. It extends the height of the engineroom?

A. Yes.

Q. In that particular spot, is that it?

A. Yes. Well, that is fitted over many cabins and many places; that is its purpose.

Q. How high did you say this trunk was?

A. I believe it was, as near as I can memorize or visualize, somewhere about fourteen to eighteen inches.

Q. And the hatchway and the cowl ventilators were on top of this trunk, is that it?

A. The hatchway was; now I am not certain about the cowls, the ventilators. I think it was a tube or a duct; but the duct that led into the engineroom come over the top of that raised deck.

Q. If the stenographer has it correctly, Captain, I don't understand it; would you read the question again to him.

(Preceding testimony was read.)

Q. Well now, you have a statement of a duct; what do you mean by that?

A. That is the extension, the tubing that goes from a ventilator, goes into small lines; that is after it leaves

the cowl section; an air duct or ventilator duct or ventilator tubing.

Q. Well, these cowl ventilators, as I understand it, came down to the top of the trunk?

A. Uhm, hmh.

Q. Have you any recollection of their coming any farther than that?

A. No, I have none.

Q. There has been some suggestions, Captain, of some two inch pipes with goosenecks at the top, fixed in the deck besides this trunk and extending down into the engineroom. Did you see anything like that—extended into the bilges?

A. I didn't notice them, sir; I didn't observe them.

Q. When you describe the means of ventilation in the engineroom, you did not mention any such thing, did you?

A. No, sir.

Q. And I understand you to say you did not observe any such thing?

A. No, sir.

(Informal recess was had.)

Mr. Matteson:

* * * I move to strike out the testimony of this witness on direct examination that he passed this vessel for insurance.

(Discussion and argument.)

Mr. Botts:

* * * I move to strike all the testimony whereby he was qualified by his experience as an expert. I refer to the testimony as to the length of time that he was acting as surveyor, for whom he has worked, and his

various qualifications. They asked him every question that would qualify him as an expert. * * *

Mr. Matteson:

If Mr. Underwood will agree in this case that he will not in this case for any purpose, at any time, rely upon the testimony of Mr. Bernard as an expert, or on his report as a qualified expert, the situation would be quite different. * * *

The Court:

I will have to adhere to my original ruling. The motion is denied. * * * .

(By Mr. Matteson):

Q. Mr. Bernard, do you draw a distinction between an insurance survey and a condition survey?

A. I do, certainly do.

Q. What is the difference?

A. I am carrying out a condition of survey now here on a yacht going to the west coast. I call for that yacht to be dry docked, her bottom cleaned, her plates drilled for thickness; both tail shafts out, thrusts opened up. Mind you, this is two lines of shaft,—inboard and outboard shaft; going on now, right here in Miami. The fuel tanks emptied, all fuel taken out, and entered and cleaned. That has been done on this yacht. The work on the port engine, I inspect every cylinder head; taken to the yard, treated to remove sand and hard scale. Removed every piston, wrist pin, connecting rod, and its bearings; laid them out and examined them. I have stripped the engine casing of that port engine, and had men go in there and clean it, and have a man who is responsible to me, to see that it is clean, all crevices. When that is completed I am going over on the port engine; when that is completed I will go into the pressure tanks

and put hydraulic pressure on them and test them out, also take the thickness of those tanks. I will go to the switchboard; I am not an expert electrician, but I will have a report from an electrician, as to the terminals, and as to the strength of what might be contained in the safety fuses of those particular switches. I have been in her bilges, every part of her and crawled through them. I have opened up where I could on her skin, and examined her internally. I have searched her masts, and searched her deck where the masts come, searched the metal stepping, and all coamings and decks, and all pie-plates on her deck, and the deck itself. I have raised her anchor chains, gone down into her chain locker; removed the protection boards in the bilges,—had them removed, to get into the bliges, to see the condition of the metal and the condition of the protective coating in all those bilge spaces. That is what you call condition surveys.

Q. And is that the kind of a survey you made with respect to the Seminole?

A. It was an inspection for insurance purposes.

Q. And not a condition survey?

A. No; not as known as a condition survey.

Q. What do you charge for a condition survey?

A. A condition survey? I am doing that for Lloyd's, Lloyd's Classification of Vessels, and I have nothing to do with the charge. They are paying me a charge that I might submit, as to the number of visits required and the energy I may have to spend there. It is in the book there. Mr. Thompson—that book he holds, he has got it there. I would have it if I had the books, but the property happens not to be mine.

Q. Well, it would be a good deal more than $17.50, wouldn't it?

A. Sir?

Q. That work would amount to a good deal more than $17.50?

A. Would you allow me to answer about the $17.50? Would you like to know about that?

Q. Just answer the question.

A. It would be more, yes, sir; it would go into probably $235.00 and might involve the owner,—you see, that is the fee, and may involve the owner in spending $2,000.00 or more. This owner will probably spend $2500.00.

Q. And for what purpose would that amount be expended?

A. Opening up, dry-docking the vessel, opening up, meeting the requirements of painting bottom—cleaning and painting bottom, pulling out all shafts, doing what is required to do to the bearings, to maintain her condition as being a-1, what might be involved in renewing parts of engines that might be required, to bring her to a-1 as to condition.

Q. That's what you do to bring her to an a-1 condition?

A. Bring her up; she is classed, mind you; and the Seminole was not a classed vessel. There are only a few rules and regulations that might guide you as far as the Seminole was concerned, being in condition,—or any such type of vessel. They are classed by different requirements from the ordinary—

Q. Do you think the standards of safety with respect to class jobs are any different than the standards of safety with respect to other yachts?

Mr. Underwood:

I object to that, on the ground it is the same type of question to which your Honor sustained objection before. * * *

(The question was read.)

The Court:

Do you mean, Mr. Matteson, to inquire—to make this question the basis for comparison of the different kinds of examination made?

Mr. Matteson:

Yes, sir. He has talked about two kinds of classifications, two kinds of surveys; and I am trying to draw out what the difference between them is.

The Court:

I think that goes to the question of the examination, the character of examination he made. I will overrule that objection.

(Argument by counsel.)

Let me ask the witness a question, and that will help me rule. That is a technical question, I think, Mr.—Captain Bernard.

A. Yes, sir.

The Court:

I will ask you, would that help the Court in determining the degree of thoroughness of your investigation of the Seminole?

A. I don't think it applies, sir.

The Court:

Well, I sustain the objection; reverse my ruling.

(By Mr. Matteson):

Q. You are familiar with the rules of Lloyd's Register of Shipping, with respect to composite and steel yachts, a copy of which has been marked Libelants' Exhibit 101, are you not?

A. No, sir, I am not, that's the first time I ever saw that.

Q. Well, does that also apply to this other book, construction and classification of wooden yachts, Libelants' Exhibit 101-A?

A. I might get a pamphlet from that particular volume, but I am not familiar with the volume. If I had work to do I might get a pamphlet that would be an extract from some rule there, or some necessary required examination.

Q. Well, are you, do I understand, now making a Lloyd's survey of a yacht here in Miami?

A. Yes, sir.

Q. And are you guided by Lloyd's rules in making that survey?

A. I am, from the office rules and the forms from the office covering that. I am not taking it—it is the result of a determined formula, or rules and regulations set up as required, to put that vessel in class.

Q. Well, do you mean that you have the rules of Lloyd's applicable to that yacht, in some other form than we have here?

A. Yes, sir, have it in a pamphlet form. I don't have to have it in that big book form.

Q. Have you a copy of that pamphlet with you?

A. I have, yes. I don't think anybody here has seen them before, but that's the way I am working on that job. That's a number-1 classed.

Q. Well, what are these rules that you have produced, Captain?

A. What are they?

Mr. Underwood:

I object to the witness being asked what papers are, unless the papers are in evidence.

A. I can't describe them, sir. They are a portion of the rules and regulations required by Lloyd's to guide a

man that they send out on a particular job; and some of that job may have been done by some other man that may come here, and I have a record of what the other man did, and I have a record of what I should pick up now; and when she goes to the west coast, the other man will have a record of what the last man didn't do. That doesn't apply to all of this.

Mr. Matteson:

I would like to have these marked for identification.

The Witness:

I can't take those; I have got to return them where I got them. I will type them out.

Q. Could we borrow them long enough to photostat them?

A. They have got two books that have the same thing in them. I don't need to give those up.

Q. I think they must be in here. See that red book over there? I guess you can get it, or the green book underneath there.

Mr. Botts:

That blue book, I think that is the one.

A. You will find them along here; special survey number 2, periodical surveys.

Q. Well, those don't seem to be like these that you have shown us.

A. This is a ship, see, steel vessel. That is pertaining particularly to the small type of yacht. They have eliminated, see, some of the rules that would not apply to that sized vessel, and they have made it up in a pamphlet to make it easy for the man, or the owner, on the job, or something for the man to stand by so the owner will know what he has to contend with.

Q. Well, would you have any objection to our borrowing this from you just long enough to have them photostated?

A. I borrowed them from someone else, I don't know what I am going to do about that. I can type them and give them to you, but I am not going to let them go out of my hands. I have got an office, I will go and type them. I am honorable that way, when I get anything I am going to hold onto it and return it.

Q. Will you do this for us, Captain; will you, when you get back to your office, call the Biscayne Engineering Company and ask them to make photostats of these and send the bill to me?

A. All right. I am going on the job when I get out of here.

Q. Now, Captain, you made the statement that these rules that we have just referred to, do not apply to the Seminole; what do you mean by that?

A. She is not a classed vessel.

Q. That's all you mean by that?

A. Yes.

Q. You are familiar with these regulations governing marine fire hazards?

A. I could refer to them. I should think that they contain what I am after. I am not familiar with them, I don't have them by heart, but I know they exist in there, the various rules. They might wish me to become familiar with them.

Q. I am referring now to Libelants' Exhibit 97. Do you use those rules in your business?

A. When they apply, yes, sir.

Q. And in making the examination of a yacht for insurance purposes, do you consider those regulations apply?

A. Yes, they apply; not compulsory, I don't think. They are established.

Q. Are they the rules that you follow?

A. No, sir, they are not; I don't always follow them to the detail, no, sir.

Q. Well, what are those rules, Captain?

A. Well, they are rules and regulations governing marine fire hazard, indorsed by the American Marine Standards Committee, National Board of Marine Underwriters.

Mr. Underwood:

Captain, when you made that answer you were reading from the cover of the pamphlet, were you not?

A. Yes, sure.

(By Mr. Matteson):

Q. Well, then do I understand you to say that when you make a survey that you understand is to be used for insurance purposes, you are or are not guided by those rules?

A. I am not guided by them; I try to follow them as best I can, as near as the book will allow or the job might support.

Q. And you also said, I think, that you are familiar with these rules which are entitled, Regulations for the Prevention of Explosion and Fire on Motor Boats, Approved by the National Board of Fire Underwriters, which has been marked in this case Libelants' Exhibit 24?

A. I am familiar with them.

Q. And do you apply those in your surveys that are to be used for insurance?

A. I have copies that I take with me most every survey, and try to comply with them; and those that are determined not to follow out, I will stipulate it in the end of my report, around "Something wanted".

Q. Then if you find something which does not comply with the rules here, I understand that you note it at the foot of your survey?

A. Yes, sir.

Q. Is that right?

A. I do as a rule, if there is anything, yes.

Q. You did not note in your survey of March 29, 1935, the presence of the drain valves, did you?

A. No, sir, I didn't know they were there.

Q. And drain valves are one thing that are prohibited by these rules of the National Fire Protection Association,—drain valves in the engineroom, is that not right?

A. Yes, sir, I think there is a paragraph there; draw-off—they mention them as draw-off; draw-off from the gasoline line. I think you will find it there on the second page, item 14, maybe.

Q. Yes, here it is, on page 4 of the exhibit 25, paragraph G; outlets on gas feed line for drawing loose gasoline for any purpose whatsoever, are prohibited in the engineroom compartment.—I would like to ask you this question; you say that you did not note this in your report, and you have given two possible reasons for not noting it in your report; one, that you didn't see them, didn't know they were there; and the other, that sometimes you don't note things when you regard them as extreme. Now which was the reason you didn't note that in this report?

A. I didn't see them?

Q. Did I understand you to say there was a shut-off on the storage batteries?

A. Shut-off?

Q. Or cut-off, or cut-out?

A. No, I didn't locate that. There must have been a cut-out by which to separate the batteries from the switchboard.

Q. You mean, on the switchboard, or somewheres?

A. I couldn't tell you where it was, I didn't locate that and I didn't memorize it.

Q. You didn't locate that?

A. I didn't try it out, but I presume I read the right way, see; it was in conjunction with the switchboard.

Q. You said something about your understanding that that vessel was to be used on a short voyage; did I understand you correctly on that?

A. That's what I understood, yes, sir.

Q. What did you understand by a short voyage?

A. Well, it was going to make a short run, a short trip somewhere.

Q. And—

A. Down to the Keys, in these waters, down to the Keys, as I remember it now. Someone said she was going to Cape Sable; as I remember it, she wished to go to Key Largo and return, with a party.

Q. And was it your understanding that it was simply for that short voyage that the insurance was required?

A. Well, it wasn't put to me that way, no, sir.

Q. Do I understand that you deny telling Mr. Hawkins that there was a plate that needed reinforcing?

A. I didn't report any bad plate, sir.

Q. You didn't mention any such thing to Mr. Hawkins?

A. No, siree.

Q. And if you had noted any such thing, it would have been important for you to have placed that in your report, would it not?

A. Oh yes, or keep away from the job until it was made good. I don't think I would have made any report; kept off the job.

(The last answer was read at the request of Mr. Underwood.)

Q. If you knew, and if you examined a vessel and you knew that she had a plate reinforced in concrete,—with concrete, would you report her in good condition without mentioning that fact?

A. I would have to mention it, yes, sir.

Mr. Matteson:

I think that is all at this time.

By Mr. Botts:

Q. I understand you went twice into the engineroom; correct?

A. I did.

Q. Were they both on the same day or did you go in the engineroom on each day?

A. I went in there on two visits.

Q. Probably on two separate days?

A. Yes.

Q. The first visit was for the purpose of examining the mechanism for the bilge pumps as I understand?

A. No, sir,—oh, yes, that is in connection with the bottom, yes, sir.

Q. And how long did you stay in there at that time, to your best recollection?

A. I might have been there fifteen minutes.

Q. And about the same length of time the second day?

A. About that, yes, sir.

Q. Now you stated that you examined her pipe lines and found them tight?

A. I don't think so, no, sir; I didn't examine the pipe lines. I might find that pipe line—

Q. You said that you found no leaks in the pipe lines?

A. I would like to know what pipe line you are referring to.

Q. I don't know, you used the expression. Well, did you examine her pipe lines?

A. If you name them I will tell you.

Q. Did you examine any of them?

A. I examined the gasoline line, yes.

Q. You examined the gasoline line. Now that included the lines from the intake on the deck, down to the carburetors, did it?

A. Well, they are not connected; they are related to one another only by distance between the tank extension or construction.

Q. Read the question.

(The question was read.)

A. I couldn't reach in and see the filling line, any more than to see the connection was tight on deck; to examine the filling line, any more than to see that there was a tight connection from the tanks to the deck.

Q. So you didn't examine it?

A. I didn't make any assertion that I had examined the fill line.

Q. You don't know whether that fill line leaked or not, do you?

A. It was intact to the deck, as required; and to search it as far as we could go.

Q. Was there any gas in the tanks when you examined her?

A. I didn't look for gas.

Q. You don't know whether there was any gas in the tanks or not. You made an examination to see whether there was a gas leak?

A. Umh, hmh.

Q. Didn't you?

A. Umh, hmh.

Q. Did it occur to you that it would be a good idea to find out whether there was gas in the tanks, before you examined to see whether there was gas leaking out of the tanks?

A. How would I do it?

Q. I am asking you.

A. I wouldn't attempt to find out whether there was gas, alone in the engineroom. I presume there was gas there.

Q. You presumed there was gas?

A. Yes.

Q. But you don't know?

A. No, I don't.

Q. Now then did you examine to know there were shut-off valves at the tanks, between the tanks and the carburetors?

A. Shut-off valves on the tank.

Q. Between the tanks and the carburetors?

A. There were shut-off valves at the tanks and at the carburetor.

Q. All right now, then, did you examine those valves to find out whether they were opened or closed?

A. No, sir, I did not handle them.

Q. They might have been wide open so far as you know?

A. And they could stay that way as far as I was concerned; I wouldn't touch them.

Q. I am just trying to find out what you did.

A. I would not manipulate them, see.

Q. I am not asking you what you would have, I am trying to find out what you actually did do; that is what I am trying to get at. Now then you didn't try manually, with your hand or otherwise, a single valve anywhere in that pipe line system, did you?

A. No, I didn't.

Q. And did you go into the tank compartment?

A. I couldn't get in there.

Q. There was no way that you could get in there, was there?

A. Might get a look in, get your eyes up in there and get a scant view of the side of a tank.

Q. But there was no way by which you could really make an examination of those tanks to determine whether or not they were tight, was there?

A. No, sir, there was not.

Q. And you didn't attempt to make such an examination, did you?

A. No.

Q. All right.

A. What I did, to prove those tanks were not leaking, was to see there was no evidence of gasoline odor or a drip or drain in the bilge; that's why I followed the bilge.

Q. So far as you could tell from the examination by the physical situation permitted, you found no leak, is that it?

A. No leak, no; the tanks were tight.

Q. Now since you don't know whether or not the gas if any in the tanks, was cut off at the tanks, you won't know whether or not there was any gas in the gas lines at the time you made the examination, do you?

Mr. Underwood:

I object to the question as speculative.

Mr. Botts:

Strike it off.

Q. Do you know whether there was gas in the gas lines from the tanks to the carburetors when you made the examination?

A. I believe there was, yes.

Q. Well now, what makes you think so, if you don't know whether there was gas in the tanks?

A. Well, we will presume there was gas in the tanks. I know there was gas in the tanks.

Q. Well, how do you know it?

A. I can't tell you what elevation there was, but you could tell whether a valve was started from its seat by its valve system,—to an engineer.

Q. But you didn't touch the valves, you say?

A. I didn't touch them.

Q. As a matter of fact you don't know whether there was any gas in those gas lines or not, do you?

A. I presume there was gas.

Q. You presume there was, but you don't know, do you?

A. No, I am not positive.

Q. All right. Then isn't this a fact; that all you can say is that you saw no gas leak? Isn't that about as far as you can go?

A. Yes, I can say this; that I saw no evidence of there having been a gas leak.

Q. All right. You didn't touch any of the valves to see whether they were opened or closed or their condition? Did you touch any of the pipe lines?

A. I went over the pipe line, yes.

Q. How?

A. Went along it, observed it by the light,—flashlight I had in my hand.

Q. Was the engineroom dark?

A. It wasn't any too light.

Q. This was in the daytime, wasn't it?

A. Yes, sir.

Q. The shades pulled on the windows, were they?

A. I don't know, I didn't observe any shades on any of the windows.

Q. Well, the engineroom was so dark that in order for you to make any sort of an examination you used a flashlight, is that right?

A. It is customary to carry a flashlight in a place like that.

Q. Did you use your flashlight?

A. I might have used it from habit, yes, sir.

Q. You don't know whether you used the flashlight or not?

A. I don't know whether I turned the button on at that particular time, or no; but I believe I did.

Q. Now isn't it true that your examination was very superficial?

A. No, sir.

Q. You didn't look around carefully to see what was in that engineroom, did you?

A. I did.

Q. I wonder if you saw the valve here that has been—I am referring now to Libelants' Exhibit 11, did you see that pair of valves in the engineroom anywhere?

A. I think—that is the overflow valve; I wouldn't recognize those valves, but I know from what I have heard that those are—

Q. Did you see those valves?

A. I can't remember whether I saw them or no. There may be others like them, I may have seen other valves, I couldn't tell; I don't have that in mind, five years.

Q. I call your attention to Libelants' Exhibit 13, the gasoline can; did you see that can in the engineroom?

A. No, sir.

Q. I call your attention to Libelants' Exhibit 14, the top part of a funnel; did you see a funnel—

A. I can't recognize it. I didn't see any funnel.

Q. You didn't see anything of the kind. If the three objects to which I have called your attention, namely, the pair of valves, the gasoline can and the funnel, or any one of them, were in the engineroom, it didn't sufficiently impress you that you have any recollection of it; is that right?

A. No, sir, I don't recollect them.

Q. You have no recollection of them. Now you have stated that you examined the switchboard, and that the switchboard was in good condition, is that right?

A. I didn't say the switchboard; I said the switches. But I said the switchboard and all the conditions were what would be considered a good switchboard. I didn't have time to examine the switches. That is just the switchboard in general.

Q. Well, I made a memorandum, I don't want to go back to the testimony, but didn't you say in your direct examination that you examined the switches and that they were in good condition?

A. Examined the switchboard and the connections.

Q. You didn't examine the switches then to find out whether they were in good condition?

A. I didn't see anything the matter with them.

Q. Wait a minute now. Did you examine the switches?

A. Yes, why I examined the switchboard, I didn't detail every switch; I made no observation of the condition of the other switches on that particular switchboard.

Q. You just walked up to the switchboard and took a glance around?

A. I went there in a hurry, yes.

Q. Glanced around hurriedly?

A. It doesn't take a man that knows, to know to read a switchboard if it is wrong.

Q. Well, you are not here as an expert, so I don't know whether you know or not. So far as you observed, the switches were in good condition?

A. Yes, sir.

Q. Now when you said that you observed the location of the switchboard and that it was well above the floor, which is essential,—to use your language. Why is it essential to have the switchboard well above the level of the floor?

A. Well, it is a precautionary measure, to keep knife action or spark conditions away from low places, and in the event of an accumulation of vapor or gases that might be hazardous.

Q. Now then where is that blueprint?—I understand that you examined the bilges very carefully and went through all parts of them, and made a particular examination as to the bilges; is that right?

A. I examined them. When I examined them why I examined them, that is all; I don't say, very carefully, very carefully.

(At 12:30 o'clock P. M. the hearing was recessed until 2:00 o'clock p. m. of the same day, May 19, 1939.)

May 19, 1939, 2:00 P. M.

Afternoon Session.

2832 Thereupon E. GEORGE BERNARD, a witness produced by the Respondent Phipps, resumed the stand and was examined and testified as follows:

Cross Examination (Cont'd.).

By Mr. Botts:

Q. Captain, you recall the little alleyway to the starboard of the engineroom, don't you?

A. Yes, sir.

Q. Now then do you recall the construction of the partition between the alleyway and the engineroom?

A. Do you mean the shape or—

Q. Do you recall the material of which it was constructed?

A. Steel, I believe.

Q. Now I want to ask you if there were four two-inch ventilators that passed up and went by that partition and up through the deck of the engineroom?

A. I didn't see that; they may have been but I don't know.

Mr. Underwood:

Wait a minute. Let him finish. If your Honor please, I will ask you to instruct Mr. Botts not to interrupt the witness. He has offended very seriously in that respect and I have been very patient about it.

The Court:

I think the witness ought to finish his answer.

Mr. Botts:

Certainly I will let him finish.

Mr. Underwood:

May we have the answer read?

(Thereupon the preceding answer was read by the Reporter as above recorded.)

The Court:

Did you finish your answer, Mr. Witness?

The Witness:

Yes.

The Court:

All right; proceed.

Mr. Botts:

Now, do you apologize?

Mr. Underwood:

No, I do not.

(By Mr. Botts):

Q. You went down into the bilge, did you?

A. I was in the bilges, yes.

Q. Now were there four ventilators, two inch ventilators, from down below the bilges, in the bilges and along about where that partition was and running from the bilges up into and through the deck of the engineroom?

A. In which bilge space are you referring to?

Q. Approximately underneath the engineroom?

A. That would be the engineroom bilge space?

Q. Yes.

A. I didn't see any pipe.

Q. Were there four more over on the port side?

A. I believe I have answered that question, sir.

Q. I asked you on the starboard side. Now I asked you if there were four more on the port side?

A. I didn't see any pipe.

Q. You examined all down there, didn't you?

A. I examined the bilges in regards to the condition of the hull but not as to the—

Q. Did you examine them with reference to ventilators?

A. I did.

Q. You say you did?

A. Yes.

Q. Then if there had been ventilators there you would have seen them?

A. They would have been pretty small ventilators if they were intended to ventilate the bilges—two inch ventilators.

Q. You saw nothing of that kind?

A. No.

Q. Now was there any ventilation in the tankroom space?

A. Will you name the tank space?

Q. The main tankroom space just forward of the engineroom?

A. I can't remember whether I checked that or not.

Q. As a matter of fact, Captain, an examination for insurance such as you were making is not a complete examination by any manner of means, is it?

A. In what view is it not complete, sir?

Q. In any respect is it a complete examination?

A. Complete examination? I don't know what you are drawing the line on as to complete examination. I thought we had that kind of an answer this morning.

Mr. Botts:

Read the question, please, Mr. Reporter.

(Preceding question read by the Reporter as above recorded.)

(By Mr. Botts):

Q. Would you mind answering that question and then make any explanation you desire?

A. Our purpose in making such examination is to try to fill out the application to direct the underwriters to the general condition of the vessel, particularly applications for insurance.

Q. Is that examination a complete examination or not?

A. It was in so far as that was concerned, that type of examination.

Q. That type of examination?

A. Yes.

Q. It is not a very thorough examination, however, is it, Captain?

A. Are you referring to me personally as to what I did or what is required on that application?

Q. What you did?

A. It was the best of my intention to fill that requirement.

Q. Did you make a thorough examination of that engineroom?

A. That was in my mind to do and I believe I did. I did the best I could under such an examination, such a form of examination; I didn't strip or open her up, and I wasn't required to do that. It was a dead-job and without an engineer; I did the best I could.

Q. Captain, I don't want you to misunderstand me: I am not criticising your examination, but I am trying to develop its character: when you examine for insurance you make a rather casual examination rather than a thorough examination, and isn't that the ordinary practice of every surveyor?

A. I am sure I cannot answer that; that is outside of my reach. I can't answer for anybody else, and I can't answer for the rules and regulations of the Underwriters.

Q. As to yourself, Captain, isn't your examination for insurance rather casual than thorough?

A. In my position I don't believe I can accept any form sent out by the Underwriters to be filled out. I do not criticise that but—

Q. You do not seem to understand my question.

(Preceding question read by the Reporter as above recorded.)

A. If you can give it to my direct I can answer it; if there is any man who can answer it I can.

Mr. Botts:

Would you mind repeating my question, Mr. Reporter?

(Question re-read by the Reporter as above recorded.)

A. If I could understand it I would be willing to answer it.

Q. Can't you answer that, Captain? You seemed to answer in detail on your survey.

A. I can't do it because I have no subject in front of me to work on. If you will put before me a definite subject to work on, I will try to answer you, but you haven't given me anything to work on. You have asked me a question and you don't seem to understand it yourself.

Q. That is what I am trying to get you to explain, so that I will understand it. I will ask you again, Captain: When you examine a vessel for insurance do you make a thorough and complete examination? You can answer that yes or no, and then you can explain it to your heart's content.

A. I make an examination to ascertain the facts, whether there is a claim or where the necessities require you to make it complete in one way or another. Every examination is not the same because each and every particular ship design is different and they have specific requirements. We are supplied with a book of rules and regulations and we try to comply with them.

Q. Did you make a complete examination of the Seminole for this insurance?

A. When you say "Did I make a complete examination", I would say that I didn't open up any machinery and parts of this ship, and I wouldn't consider it a complete examination without I did.

Q. When you were down in the bilges did you crawl down into that portion of the bilges below the engineroom?

A. Below the engineroom?

Q. Yes.

A. No; I am too big to go in there.

Q. So you don't know what was below the engineroom floor?

A. Yes; I can get my head and shoulders into these two compartments or spaces, and if they are clean I can

by such observation as required readily ascertain the conditions.

Q. When you were down in the bilges, then, as I understand it, you looked down under the engineroom floor but didn't crawl down underneath, is that right?

A. I would say that I would have if I could, but I couldn't.

Q. You looked but you didn't get down there, is that true?

A. Yes, that is true.

Q. Now when you were in the engineroom you didn't take up the sections of the floor that are said to be removable in order to look down underneath here?

A. I can't remember; I can't remember the type of floor it was; whether it was board or plating or whatnot, but I was able to remove them enough to convince myself that the conditions were right.

Q. Did you remove some portions of the—

A. I can't remember, but I know I convinced myself they were all right; I would say they were all right.

Q. What did it take to convince you that things were all right?

A. Existing conditions and what I could observe.

Q. Now then did you examine all of the gasoline pipes from the tanks to the engines and carburetors?

A. I believe I answered that question before, sir.

Q. Just humor me by answering it now, will you? I haven't asked it before.

The Court:

Even at the burden of repeating, you had better answer the question again, Captain.

A. I examined the gasoline line from the tanks to the engines and motors.

Q. Were any portions of those lines that you examined underneath the floor?

A. I can't remember that. I have been on a good many vessels since that was done.

Q. In order to know that you had examined these lines you had to trace them from the tanks to the various carburetors, didn't you?

A. You could see them, sir; you could follow them almost with your eye while standing in one place.

Q. If they were in the engineroom you couldn't?

A. No.

Q. I mean if they were under the engineroom floor you couldn't?

A. No.

Q. Did you take up the engineroom floor to examine those portions that were underneath the engineroom floor?

A. These movements or actions of mine I can't remember exactly but I know I convinced myself that they were all right.

Mr. Botts:

That is all.

(By Mr. Matteson):

Q. I think you said, Captain, that the Seminole was not a classified vessel?

A. She is classed but I would not say she was a classified vessel. I would not say she was not classified; I would say she is not a classed vessel.

Q. There is no reason why a vessel like the Seminole could not be classed if the owner asked to have her classed and was willing to undergo the expense of it?

A. That would have to be determined by the Committee through survey upon application being made by the owner to the Committee of Lloyd's; in other words, she might or might not be able to meet the requirements.

Q. I am not speaking so much as to whether the Seminole could pass such an examination or not, but I mean with respect to a vessel of the type of the Seminole there is nothing to prevent the owner making application, is there, and if she could pass the examination she would be classed, is that right?

A. I cannot tell you what would be required by Lloyd's to classify that type of vessel; I really cannot answer that in an intelligent manner.

Q. Any vessel can be classed if she can pass the examination, is that right?

A. They would always be classed if they could afford to meet the expense. It makes a difference whether a yacht was designed originally to be classed, to be a classed vessel; it makes a difference as to whether she was constructed with the intention of being classed, or whether they were just trying to make a vessel of her, without any thought of classing her. Sometimes it is a matter of little difference to the owner.

Q. If she is of such construction that she would not come up to Lloyd's specifications, then there would be no use of making application, is that right?

A. Well, they might be able to arrange it by compensating for the beams or girders or stringers or deck plates or bulkwark plate so as to allow it to come within the classification requirements of the vessel. That would be a lot of trouble and would entail an abnormal expense, and it might not warrant you in spending that much money to get the vessel into that classification.

Q. Any vessel can be classed if she is sufficiently well built to meet the requirements and can pass the usual examination, is that right?

A. That question is something like the situation that exists today with the United Fruit Company; they have three or four of the finest passenger vessels carrying freight, because the requirements of the United States

Steamship Inspection Bureau cannot be met with; it would cost $285,000.00 to meet the requirements of the United States Steamship Inspection Service to allow passengers to run on that vessel—

Q. Now, Captain, we seem to be talking at cross purposes here.

A. I am trying to explain to you, sir, that the cost is prohibitive; that is what I am trying to explain.

Q. The simple question that I am trying to ask you is just this: Any vessel can be classified if she can meet the requirements, whatever they are, by construction, alterations or whatever it may be—any vessel can be classed if she can meet the requirements; is that right? Just answer my question yes or

A. The structural features of the vessel would not warrant the opening and changing to make her meet the requirements.

Q. That is something else, Captain: Now I will ask you the same question again. I think it is very simple and you can answer it yes or not: Isn't it a fact that any vessel can be classed if she can meet the requirements, structurally or otherwise?

A. I don't know. I don't think that is right because Lloyd's require, when you make application, a detailed drawing of your keel, specifications as to the thickness of your plate and the frame of the vessel, and the position of your bulkheads and so forth, before they would be interested in classifying her.

Q. You keep telling me, Captain, about the things she would have to have in order to meet the test.

A. There are some other things involved, and I don't think the owner would want to pay for it.

Q. Anybody could make application if they wanted to go to the expense, is that right?

A. Yes, sir.

Q. Now, Captain, there has been quite a bit said here about insurance surveys and passenger vessels and passenger insurance. You were employed to make this survey by the owner or owners of the Seminole.

A. I believe the first word of that——I believe the first—

Mr. Matteson:

I just want to warn him to tell us what he knows of his own knowledge and not what somebody else told him.

Mr. Underwood:

I submit that the question asks for a conclusion. Ask him by whom he was employed.

The Court:

He said that he was told by Mr. Hawkins in both instances.

Q. You had no communication with any insurance company with respect to this survey, did you?

A. No.

Q. You had no authority from any insurance company to pass or not pass any vessel for insurance?

A. No, sir; that could not be.

Q. You never had that?

A. I never had such an order.

Q. So this survey, as I understand it, insofar as it is called an insurance survey, was a survey that you made for the owners which they could use in connection with their application for insurance, is that right?

A. I was going to tell you about that when you interrupted me. That is what I was bordering on when you interrupted me.

Q. I don't want to know anything that somebody told you. I want to know what you yourself know.

A. I understand the owners' representative made application for the insurance, and they had to get a survey report, and they asked me to make out a survey report, and that was made out and delivered; I don't know where it was delivered, whether it was delivered to the agency in Miami or whether it was delivered to Mr. Hawkins. I just couldn't tell you that, but they handled the insurance work on that through a local agency and since then I found out that it went to Chubb & Sons in New York.

Mr. Matteson:

I move to strike that out, if your Honor please.

The Court:

The motion is granted.

Q. You were paid by the owners of the vessel for your survey?

A. I am not sure of that, but I believe I was, sir; I was paid for it but I am not certain who it was from.

Q. Did you observe when you made a survey of the vessel that the feed line to the small generator on the port side of the engineroom was connected to the bottom to a trap or drain like this which has been marked a part of Exhibit 17?

A. What?

Q. I asked you did you observe that the gasoline feed line that led to the small generator on the port side of the engineroom was connected to the bottom of a trap or drain such as the one which is a part of Exhibit 17?

A. I can't remember that; I can't remember a detail like that.

Q. You are familiar with this kind of a drain?

A. It is a strainer body, I take it to be.

Q. You cannot tell us whether or not at the time you observed that feed line it was connected to the bottom of a trap like this?

A. No.

Q. If you had noticed that you would have put it in your report?

Mr. Underwood:

I object to that as speculative.

The Court:

Sustained.

Q. I show you this paper and ask you if that is your signature at the bottom?

A. Yes; sure that is my signature.

Q. Is that your handwriting on that page, too?

A. Yes.

Q. There are several questions on the page and the handwriting constitutes answers to the questions, is that right?

A. I don't remember anything about that, but if something is there as being said by me I would want it correct. That's an opinion there, isn't that an opinion?

Q. Yes, it is.

A. Well, I think it is right, and I haven't said anything different from that.

Q. I am not suggesting that you have, but these are your answers to these questions, is that right?

A. Yes, sir; I don't recall them but that is my signature there.

Mr. Matteson:

If your Honor please, I would like to make a formal offer of this paper. I realize that under the ruling you made sometime this morning that probably it will be excluded, but I would like to make the formal offer, and if it can-

not be admitted then I would like to have it marked for identification so that it will be a part of the record.

The Court:

All right; let it be identified now. Out of the regular order of procedure that has been announced, you wish to make the offer at this time?

Mr. Matteson:

Yes, your Honor.

Mr. Underwood:

I object to it on the ground that it calls for an opinion of an expert and is not proper cross examination, and I have not called him as such expert.

The Court:

I have permitted cross examination along the line indicated by question number 1 in this written sheet. Question number 3 calls for an answer which is contrary to the ruling I have previously made, therefore I exclude the instrument insofar as question 3 is concerned.

Mr. Matteson:

We appreciate that that is in accordance with your ruling this morning.

The Court:

It speaks for itself insofar as I think Question number 1 is pertinent, so I think the purport of the ruling will be carried into effect if I deny your application to admit that in evidence.

Mr. Matteson:

Yes.

The Court:

All right.

Mr. Matteson:

Then may we have it marked for identification at this time.

The Court:

Yes.

(Thereupon the document above referred to was marked Libelants' Exhibit 120 for Identification.)

Mr. Matteson:

Now, if your Honor please, there is one other thing, and I do not want to elaborate on or attempt to re-open the question that we argued this morning, but I would like it to appear on the record that there are a number of other questions exactly along the same line that I would like to have asked, but which I did not feel I could do under your Honor's ruling.

The Court:

All right.

Mr. Matteson:

And I would also like to make it clear that my position will be that, inasmuch as Mr. Underwood has objected to the examining of this witness as an expert on whom he relies, I shall argue that he is not entitled to rely on him as an expert for any purpose at all.

Re-Direct Examination.

By Mr. Underwood:

Q. Captain Bernard, you have told us about a survey that you are making on a boat now, which you described, I think, as a classification survey; is that correct?

A. Yes.

Q. You said that you didn't find any engineer on the Seminole when you made your examination?

A. That is correct.

Q. Did you send for one?

A. No, sir.

Q. Did you consider that necessary to your work at that time?

A. No, sir.

Q. As I understand your testimony, when you gave answers to Mr. Matteson's questions, you concluded that there was no electricity on the switchboard solely from the fact that you saw no light burning, is that right?

A. Yes.

Q. Do you remember telling me this morning that you saw all four of the gasoline tank valves where they led into the gasoline manifold?

A. Yes, I hand-reached them.

Q. Will you tell us what you mean by that?

A. By hand-reach I mean so you can reach with your hand. Sometimes they are put in a place like off to the side but you could put your hand in there and reach them all right.

Q. Did you say that each one of these valves was hand-reached?

A. Yes, sir.

Q. I show you Libelants' Exhibit 9 which, I think it is fair to say, is a picture taken after the fire on the Seminole, and I call your attention to the aperture in the bulkhead marked number 1, which is a hole through which the gasoline feed line came from number 1 tank; do you note that?

A. Yes.

Q. And the valve was stationed there (pointed)?

A. Yes.

Q. I call your attention to the fact that the hole through which number 2 tank feed line led is marked number 2?

A. Yes.

Q. Do you see that?

A. Yes.

Q. Do you see the shelf there indicated on this picture?

A. I see some kind of an obstruction there; I can't definitely say what it is, but I know you had to go under it.

Q. Do you remember a desk on the forward bulkhead?

The Court:

Let me suggest that you not lead him, Mr. Underwood. Just ask him does he remember a desk there.

Q. Do you remember a desk in the engineroom?

A. No.

Q. Do you remember what was to the right of this shelf which was on brackets shown in Exhibit 9?

A. Is this to port or the center line of the ship.

Q. It is to port. I think it is fair to tell you that.

A. You are asking me about something to starboard.

Q. Yes; what was next or starboard—.

A. There is something like a large obstruction there. If that is shelving it would really have to be for batteries.

Q. You see this in this corner (pointing)?

A. Yes, sir.

Q. Do you see in this photograph, Exhibit 9, a bracket which might be for a shelf?

A. Yes.

Q. Do you remember what that was for?

A. No, I don't.

Q. I think it is fair to tell you that the evidence shows that the batteries were on shelves that were in that corner.

A. All right.

Q. What I am trying to get at is whether you remember what was between the shelf that the batteries were on and the shelves on the brackets shown in Exhibit 9?

A. I don't remember.

Q. You did look at the valve which came to the manifold from number 2 tank, did you?

A. Yes.

Q. And you saw that?

A. Yes.

Q. Do you remember now whether there was anything between where you stood and that valve on number 2 tank when you saw that valve?

A. I can't visualize what it was; I don't know; it is too long ago to remember that.

Q. Captain, is your eye-sight good?

A. I can compete with anyone.

Q. And you were using your flashlight?

A. Yes.

Q. And your examination was conducted after sunrise?

A. Early A. M., yes.

Q. Was the Seminole under any shed?

A. No, sir.

Q. Was she along side any pier with a shed on it?

A. No, not that would obstruct any possible light—any light that could come in came in where it was possible to come through that side window or overhead.

Q. Nothing obstructed the light from the port window or through the skylight in the top of the engineroom?

A. I am not sure whether the skylight was opened.

Q. Light would come through it whether it was opened or not, would it not?

A. Light would come through the side window, I believe, but I don't know where else it would come in there.

Q. Did you see these two valves between you and the valve to number 2 tank when you looked at the valve to number 2 tank?

A. No.

Q. Don't you remember a desk immediately to the right of the valve to number 2 tank?

A. No.

Mr. Matteson:

These questions are leading, if your Honor please.

The Court:

I think they are and I think they are contrary to the ruling of the Court. This is re-direct examination and I think you are confined to non-leading questions, Mr. Underwood.

Q. Do you remember whether or not you followed the manifold to its end?

A. Gasoline manifold?

Q. Yes.

Mr. Matteson:

If your Honor please, I think that is leading, too.

The Court:

No, I don't think that is leading, but I think he has answered it, if I remember correctly.

A. I have answered it, sir.

Mr. Underwood:

I will withdraw the question.

Q. How far did you follow that manifold?

A. The manifold proper from the tanks is almost visible from one standing place, if you wanted to locate yourself on either side of the center line of the ship.

Q. What was at the starboard end of that manifold?

A. A line leading aft from the motors; main feed line.

Q. You remember just one line?

A. Yes; the feed line ran in that direction.

Q. What was at the port end of the manifold?

A. I believe a valve came out of the tank and turned in the end port tank and went in and form a manifold. Of course this is a long time back.

By Mr. Matteson:

Q. Did you see any trays under the tanks?

A. Trays?

Q. Yes.

A. There was some bedding or something there, but I just could not make out what it was, and I made an inquiry of a young fellow that was there, and I asked him if he thought there were trays under there. I asked him if he had been in the engineroom, and he said that he went in there sometimes, and I just referred to him like this, "I believe there are trays under those tanks or the tanks are sitting in some kind of a tray"; I can't remember whether I said it was a whole one or a divided one. I just didn't come to a decision as to that.

Q. Did you consult that boy who was there about anything else in the engineroom?

A. No. He was only a young man and I met him here the other day in the hall; that is the first time I met him since that occasion, and he introduced himself.

(By Mr. Botts):

Q. Well, Mr. Bernard, did you get any information with reference to this boat from anyone or from any source other than your own observation?

Mr. Underwood:

I object to that as immaterial, and it is improper cross examination.

The Court:

Do you mean by that did he base his report that he did make on information other than that which he himself obtained?

Mr. Botts:

That is correct.

The Court:

I think he can answer that. The objection is overruled.

A. No, sir; it is wholly and solely on my own findings, observation and writings.

Mr. Botts:

That is all.

Mr. Matteson:

This survey, as I recall it, was marked as an exhibit and received in evidence for the sole purpose of showing that the report was received. I think that is clear in the record, but if it was offered for any other purpose, then I would want to cross examine about it.

Mr. Underwood:

That is correct. There is no disagreement about that. It was received for the sole purpose of proving that there was a survey.

The Court:

All right.

Mr. Underwood:

Now, if your Honor please, I offer in evidence Exhibit 3-Q for identification, which Mr. Hawkins identified as a copy of the policy of insurance which was taken out following the survey by Mr. Bernard, and I offer it solely for the purpose of proving that the vessel was insured at that time. There is some writing up here that I will not read to you, and which I know my friends will object to, so I do not offer the typewritten "Seminole Boat Company" over to the left in the top of the document.

Mr. Matteson:

I object to it as incompetent, irrelevant and immaterial. I do not think that the fact that this vessel was insured

by any particular company or at any particular time is a relevant fact in this case.

Mr. Botts:

I join in that same objection. I think it is illustrative of no material issue in this case.

The Court:

Ruling reserved.

Mr. Matteson:

It remains marked for identification and ruling on it is reserved?

The Court:

That is correct.

Mr. Matteson:

Mr. Bernard had these pamphlets and he agreed to permit us to have photostats made of them, and I ask that they be marked for identification, and I would like to suggest that two numbers be left open on the record for them.

The Court:

All right; leave two numbers open there for them.

(Thereupon the Hearing was Adjourned to 10:00 A. M. October 9, 1939.)

Miami, Florida, October 10, 1939, 10:00 o'clock, A. M.

Morning Session.

2856 Thereupon: WIRTH MUNROE was called as a witness in behalf of the Respondent Phipps, and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Underwood:

Q. Your name is Wirth Munroe?

A. Yes, sir.

Q. W-i-r-t-h M-u-n-r-o-e?

A. Yes.

Q. Where do you live?

A. In Coconut Grove.

Q. How long have you live in Florida?

A. All my life.

Q. What is your business?

A. I am a yacht designer and marine surveyor.

Q. How long have you been in that business?

A. Since 1929 for myself.

Q. What was your experience with yachts prior to that?

A. Well, my father was a yacht designer and I spent—of course grew up with him—and worked for him, and have been in and around boats ever since I was old enough to handle it myself.

Q. What work did your father do that you participated in?

A. Well, he was a designee, and I participated in that with him, what work I could do at that age, and also in repairing. We had a small marine railway and did a lot of

rebuilding and installation of motors on both power and sail, and any kind of yacht repairing.

Q. Have you worked or did you work with anyone else prior to going into business for yourself?

A. Yes. I was—what you might call—an apprentice with Mr. N. G. Herreshoff, of Bristol, Rhode Island. He spent all of his winters here for about eight years around our place, and we did some of his designing here, and I was an apprentice to him.

Q. How long have you been familiar with power yachts and had to do with them,—over a period of how many years?

A. That is rather hard to say, because I have been with them all of my life; I don't know just when I started.

Q. About how many years?

A. Well, I would say twenty-five years.

Q. And where has that experience been?

A. Right here in Miami; a majority of it here in Miami.

Q. You said something about being a surveyor; have you been regularly employed by anybody as a surveyor?

A. Well, I have been on call for two insurance companies, and whenever they have a survey to be made I am notified to go out and make it.

Q. What type of survey is that?

A. That is for insurance, and the general condition of the boats; for fire and also for maintenance and operating.

Q. Are you familiar with gasoline motor installations on power boats and auxiliary boats in these waters?

A. I am.

Q. On what type of boats particularly?

A. Particularly on auxiliaries where there are gasoline motors; of course today we are installing Diesels mostly.

Q. Are you familiar with the standards of practice and care followed in the construction and maintenance of power vessels in these waters?

A. I am.

Q. You have spoken of being a designer; what type of boats do you design?

A. Primarily auxiliaries and power vessels, gasoline driven or Diesel driven.

Q. Does that include vessels that have gasoline motors and gasoline tanks?

A. An auxiliary, in my term, is a vessel that is driven both by sail and power, primarily by sail, but they have gasoline motors or Diesel motors installed for auxiliary power.

A. I have.

Q. Have you supervised the construction of any such vessels?

Q. About how many?

A. About seven.

Q. Does that include the installation of gasoline tanks and feed lines and electrical equipment?

A. That includes everything from the time the keel is laid until the trial trip; everything that goes aboard the boat I have to supervise; I supervise practically every bolt and nail which is driven.

Q. Apart from your experience in constructing and surveying vessels that are propelled by gasoline, have you been aboard other vessels propelled by gasoline; if so, in what number?

A. Yes. I have been aboard a great many vessels in this locality. I have made it a business to go aboard as many boats as I could, because from these boats I always learn something that I might use in my own construction later on; so it is always interesting to see what someone else does and the manner in which they do it. I have been aboard, I would say, a couple hundred boats of size, and I can't tell you how many small boats.

Q. By "boats of size" can you tell us what size you mean?

A. From 40 feet up.

Q. By "small boat" you have in mind something smaller?

A. More or less open boats and boat cruisers.

Q. Since the fire on the Seminole have you examined her?

A. Yes.

Q. Have you familiarized yourself with the layout of her motors and her gasoline tanks and feed lines, switchboard and so forth?

A. I have made a very close survey of her construction; I have been aboard her several times.

Q. Did you observe whether or not it was possible to drain all the gasoline from the tanks through the feed line?

A. No, it is not possible to drain every bit of the gasoline from these tanks.

Q. What is your opinion as to the propriety of that condition?

A. The amount of gasoline that will remain in those tanks—and if not gasoline, some fluid in the bottom there—would amount to a very small amount. I figure in the entire four tanks about sixteen gallons. We very seldom—practically never today—put a draw-off at the bottom of a tank. That is put there for preventing any refuse or any small amount of water that is condensed from getting into our feed line. In these particular tanks any small amount of water in the bottom of them would lay in that V section around the edge and form a seal against any gasoline going through there. Gasoline being lighter than water, naturally it will float on the surface of the water.

Q. In your opinion were these tanks so constructed as to be a proper installation for a vessel of that class?

A. I would say that they were quite proper.

Q. Have you calculated the capacity of these tanks?

A. Yes, sir.

Q. What did your calculation result in?

A. Each tank contained 491.79 gallons. That may very a little bit, but it is very close. The tanks are 42 inches in diameter and they are practically seven feet in height. Of course there is no seven feet capacity there.

Q. In reaching that figure have you made proper allowance for the concave shape of the bottom?

A. I have, and also for the set-in of the bottoms where it is set in the side.

Q. Did you observe the comparative size of the filling line and the vent line?

A. The filling line was a two-inch pipe; the vent was half inch pipe.

Q. What is the purpose of the vent?

A. The vent is to carry off the air from the tanks as the fuel is put in. It is also to prevent any sealing when the fuel runs in, and the air naturally has to come back into the tank as the fluid runs out.

Q. Is there any reason why the filling pipe should not be four times as large as the vent pipe?

A. Yes. The filler pipe naturally has to be large to accommodate the flow of fuel or liquid as it goes into the tank, to prevent any flowing back or any dripping in the line, and especially over the filler pipe; and the vent doesn't necessarily have to be as large as the filler pipe because there is only air passing out of the vent line.

Q. Assuming that you are filling the tanks with a full stream of gasoline through the filling line, is there any reason why the half-inch vent line cannot discharge the air as fast as the gasoline comes in?

A. Air can be compressed and will naturally pass through a smaller pipe at the same rate that fluid will run down a two-inch pipe. There is another reason for having a small vent.

Q. What is that?

A. That is that when a tank is partly full it will—what we say—breathe, due to the change in pressure in the outside of the vessel or the difference in temperature

between day-time and night-time. The air is forced in or sucked back through this vent, and by keeping it as small as possible it prevents any heavy air or moisture-laden air from being sucked back into the tanks at night and condensing on the inside of the tank and getting water in with your gasoline.

Q. Do you mean to say that the smaller the vent the less condensation?

A. The less chance of getting condensation in the tank.

Q. In your opinion was this installation proper insofar as the size of the filling pipe and the vent pipe were concerned?

A. Yes, sir; it was perfectly proper.

Q. Did you observe any drip pans under the gasoline tanks?

A. Yes; there are drip pans under all four tanks.

Q. Will you describe how many pans there were and their general characteristics?

A. There are two pans under the four tanks. There are two tanks in each pan.

Q. What are the pans made of?

A. The pans are made of iron sheet steel, the exact thickness I don't know, but it is about three-sixteenths, I believe, or at least that weight. They are about four inches deep and naturally the width of the tanks; they are square on the upper or outer ends of the compartment, and they have a round end in the center; in other words, the number one and number two tanks are sitting in one pan and number three and number four tanks are sitting in another pan.

Q. Numbering them from the port—

A. Numbering from the port side.

Q. In your opinion were they of proper design and properly installed?

A. They were quite proper in design and they were properly installed.

Q. Have you been able to ascertain whether or not these pans had an overboard discharge?

A. No, I haven't been able to determine where the drain went to. There were drains in both pans but the pipes leading from that vent were destroyed due to the fire and wrecking, and I cannot determine where they went to.

Q. What did you see of the pans that causes you to say that there was something leading from them?

A. There is a pipe connection with a piece of broken pipe in it, or was in the rounded end of each pan.

Q. That is the inverted—

A. That would be near the center.

Q. The inverted end of each tank?

A. Yes.

Q. Where were these fittings with respect to the square opening in the engineroom bulkhead?

A. They were directly behind that square opening.

Q. From your examination could you ascertain what was attached to these openings prior to the fire?

A. You mean the openings in the pans?

Q. Yes.

A. No, I couldn't say, except that there was a pipe screwed into it.

Q. Were overboard drains in your opinion necessary from these pans?

A. Well, as long as there was no leak in the tanks there was no necessity for any drain to drain off any condensation or water that might possibly come from the outside of the tanks, gasoline having a tendency to keep the tanks cooler than the atmosphere at times.

Q. Did you observe how the tanks themselves were secured or held in place in the tank compartment?

A. Yes. These tanks sat on a framework of four by fours in the pans. There is a four by four going all the way around the outside edge of the pans, fitting snug into it, and there is a center-piece running athwartships or the

length of the pan or the length of the pans, running all through the middle, and in this was cut a groove for the lower edge or bottom edge of the tank to sit in.

Q. How deep was the groove?

A. Oh, about half an inch.

Q. How did the groove conform in shape to the tanks?

A. Well, it is circular, so that the entire lower edge of the tanks set right into the groove. Of course this framework wasn't circular so that the groove ran across the four by fours.

Q. You mean the tank sat on a square base and the groove was only made in that part of the square base where the bottom of the tank came in contact; is that right?

A. That is what I am trying to imply.

Q. How about any other supports that you observed?

A. There were vertical supports between the tanks; there were three of them, with a spreader running fore and aft, which was notched out to fit the size of the tank; the lower spreader is about one foot above the pan and the upper one—I can only assume—was maybe a foot below the top, but that upper one has fallen down, and it was badly charred, so I couldn't examine it; it was badly charred and had fallen down on the lower one.

Q. Have you had some photographs made to show the conditions of which you have been speaking?

A. Yes, I had some photographs made.

Q. You went there with the photographer?

A. Yes.

Q. That was last May?

A. I believe it was at the last session; yes, it was in May.

Q. Now I show you a photograph and ask you whether or not that is one that was taken of the Seminole tank compartment, or a portion of it, at that time?

A. Yes, that is a photograph which I had the photographer make of the port end of the tank compartment.

Q. Will you describe to us from what point it was taken and in general orient us so we can understand it?

A. That photograph was taken looking directly down into the compartment.

Q. And what is this white substance at the bottom of the photograph?

A. That is a part of number one tank; that is the side of number one tank.

Q. Just mark on there "number one tank".

A. (Witness complies.)

Q. Now what bulkhead is this on the right where the rivets appear?

A. That is the forward bulkhead of the tank compartment.

Q. Will you please write on there "forward bulkhead"?

A. (Witness complies.)

Q. Then what is this bulkhead at the top of the photograph?

A. That is the port side of the vessel.

Q. Will you please write "port side" on that?

A. (Witness complies.)

Q. Then this, of course, at the left margin of the photograph is the bulkhead between the tank compartment and the engineroom?

A. Yes.

Q. This we see at the bottom is the bottom of the tank's compartment?

A. That is the bottom of the tank compartment. There was still water there; it wasn't pumped out at the time this photograph was taken.

Q. So there is water at the central portion of the photograph?

A. Yes.

Q. Now I call your attention to apparently a beam of some kind; will you tell us what that is?

A. This beam running through the lower center part of the photograph is the framework inside of the pan on which the number one tank sat.

Q. Will you write the word "beam" on there, please?

A. (Witness complies.)

Q. Now what is this article that is in the photograph below the beam and actually to starboard of the beam, between the beam that you have marked and the number one tank?

A. That is a center stringer that runs athwartships through the middle of the pan.

Q. That is also a beam?

A. Yes.

Q. Will you write the word "beam" on that?

A. (Witness complies.)

Q. You have spoken of a groove in which the tank sat. Can you indicate that on the photograph?

A. Yes. You can see it finely outlined in there (pointing); this is the outside of the groove (pointing), and there (pointing) is the inside of the groove. This was all full of ash and stuff.

Q. Suppose you draw an arrow at one end of the groove and at the end of the arrow mark the word "groove".

A. (Witness complies.)

Mr. Underwood:

I offer this in evidence.

Mr. Matteson:

No objection.

The Court:

It will be admitted.

(Thereupon the photograph above referred to was marked Respondent Phipps' Exhibit 5-J.)

(By Mr. Underwood):

Q. I show you another photograph. Was that also taken of the general part of the tank compartment, with the camera pointing approximately straight down?

A. This was taken in practically the same position as the other one, of the same part of the vessel.

Q. This is the number one tank?

A. Yes.

Q. Is this the forward bulkhead?

A. That is the forward bulkhead at the right-hand end of the photograph.

Q. Does the groove appear also?

A. That groove here is very pronounced, because I had it cleaned out; it is shown there coming clear around under the forward side of the pan.

Q. Will you just draw a line with a pen all the way through the groove, starting over here at the right and then going to the left, and then mark it "groove"?

A. (Witness complies.)

Mr. Underwood:

I offer that.

The Court:

Let it be admitted.

(Thereupon the photograph above referred to was marked Respondent Phipps' Exhibit 5-K.)

(By Mr. Underwood):

Q. I show you still another photograph. Was that taken at the same time?

A. Yes, this photograph was taken at the same time as the others.

Q. Will you tell us where or about what portion of the boat?

A. This is of the tank compartment, showing the space between the number one and number two tanks and the after bulkhead.

Q. Indicating number one tank and number two tank?

A. Yes.

Q. And this bulkhead which appears in the upper left-hand corner of the photograph is the bulkhead between the tanks and the engine-room?

A. Yes.

Q. You have spoken of wooden members. Do you see any in that photograph?

A. This here in the center, running diagonally across the photograph, is the remains of one of the upright columns.

Q. Was that upright in the Seminole?

A. Yes.

Q. I will draw an arrow to it and mark it—what is the proper name for it?

A. It is a stanchion. You can also see in this photograph the remains of the lower piece or spreader that went between these two stanchions running fore and aft between the two tanks, to separate the tanks.

Q. As that installation was made, will you tell me whether or not number one tank and number two tank were both in contact with that thing that you call the spreader?

A. Both number one and number two tanks were touching that.

Q. Was that spreader shaped in any way to conform to the tank shape?

A. Yes.

Q. I will draw an arrow to that under which you have indicated as a spreader and write on it "spreader".

A. All right.

Mr. Underwood:

I offer that photograph in evidence.

Mr. Matteson:

No objection.

The Court:

It will be admitted.

(Thereupon the photograph above referred to was marked Respondent Phipps' Exhibit 5-L.)

Q. Now, bearing in mind that construction, Mr. Munroe, in your opinion were these tanks properly tight and secure?

A. They were perfectly secure. I know of no better way of holding them in there. These stanchions or uprights were fastened to the base that sat in the pan and the tanks were entirely tied together, so they couldn't upset without all of them upsetting.

Q. In your opinion could they move at all with the normal vibration of such a vessel?

A. No. The tanks had a very large base and the lower end of the tank was set in a groove, and they couldn't shift, so there would be no vibration at all. These tanks could have very easily sat there without any vibration whatsoever, with the amount of offshore work that she did.

Q. Was there any means of access for a man into the tank compartment that you could observe?

A. No; only by removing the center plate in that bulkhead between the compartment and the engine room.

Q. Do you know what type of construction was above the tank compartment prior to the fire?

A. I haven't any way of telling what was above the tank construction. There might have been hatches above there, and there may have been space where a man could have gotten in.

Q. Is there any way of positively telling now?

A. There is no way of telling now what form of construction was over the top of these tanks.

Q. Assuming that a man could not get into that tank compartment to inspect these tanks without taking out that plate with force, in that part of the engineroom bulkhead, tell us whether or not in your opinion that was a proper construction.

A. That was a proper construction.

Q. Was there any need for access to the tank compartment to test the tanks?

A. No, because these tanks could have been tested in other ways without having to see the actual tanks themselves.

Q. How, for example, could you test these tanks without getting into the compartment?

A. You can put a hydrostatic test on them.

Q. How laborious or troublesome a job would be?

A. No job at all. All you have got to do is to put a riser on the filler pipe and plug the vent pipe; put a riser on both of them and fill this riser. The riser can be the height of whichever test you want to put on, according to the maximum pressure that you want to put on.

Q. Would such a test be an adequate test?

A. Yes.

Q. Is it customarily or frequently used?

A. It is very commonly used.

Q. Could you tell by such test whether a tank leaked or whether or not it had a margin of safety?

The Court:

What is a riser?

The Witness:

A vertical pipe.

(By Mr. Underwood):

Q. By putting a riser on the filling pipe you have in mind another piece of pipe connecting to that and going up straight in the air?

A. Yes. That riser would give added pressure to the bottoms of the tanks, whatever distance you want it. You can get any pressure at the bottom of your tank that you desire by merely increasing the height of the pipe, and you could determine just what factor of safety you want

to use. You know what the normal pressure would be on the tank without any riser, and with a riser you can either double or triple [illegible] at distance from the top of the tank to the bottom; you [illegible]uld either double or triple the pressure.

Q. Have you calculated the pressure at the bottoms of these tanks, assuming that they are filled with gasoline?

A. Yes, sir. The normal pressure at the bottom of these tanks filled with gasoline would be 2.22 pounds per square inch.

Q. Assuming that they were filled with water, what would the pressure be?

Approximately three and one-half pounds.

Q. What is the formula for calculating pounds of pressure per square inch; with water, first?

A. We used half pound to the foot of rise, or depth.

Q. In other words, a vessel filled with water a foot high will have a pressure at the bottom of one-half a pound to the square inch?

A. Yes.

Q. And a vessel filled with water two feet high will have one pound?

A. Yes.

Q. And so on?

A. Yes.

Q. The pressure at the bottom varies according to the—

A. The pressure on the bottom varies according to the density of the liquid contained in the tank. If you put mercury in there you would have a great deal more pressure on the bottom than would be the case with gasoline.

Q. These tanks were seven feet high?

A. Yes, and forty-two inches in diameter.

Q. In order to subject them to a hydrostatic test, giving them twice the pressure at the bottom of the tanks as they would normally have when full, how high a riser would you have to have?

A. Another seven feet.

Q. By adding seven feet—

A. You double the pressure at the bottom of the tank, irrespective of the diameter of the pipe.

Q. Just so that we may have some idea of this 2.22 pounds per square inch pressure, can you tell us what the ordinary pressure on a garden hose in Miami is approximately?

Mr. Botts:

I object to that—

A. In other words, from 40 to 50 pounds.

Mr. Botts:

I don't think that is material, if your Honor please.

The Court:

I am frank to state that I do not know whether it is or not at this time.

Mr. Matteson:

I don't know how the witness could know unless—

The Court:

I will let it remain and will determine later whether I should strike it.

(By Mr. Underwood):

Q. Did you observe the concave and convex ends of these tanks?

A. I did.

Q. Which is properly the bottom of such a tank?

A. The concaved end.

Q. In these tanks was the concave end up or down?

A. Down.

Q. Why is that properly the bottom of such a tank?

A. Because a grooved surface as that was, with a head on it towards the pressure, is the strongest form of support, the same as a bridge.

Q. Does the stability of the tank in place form a part of the consideration in determining which should be the bottom?

A. Yes. You couldn't very well put a convex end of the tank down and expect the tank to stay there without considerably more bracing. With a convex end you have a rim, which is square and forms a perfect brace.

Q. You said, "convex end down"; did you mean convex or concave?

A. Concave end down.

Mr. Matteson:

I don't think his testimony is very clear on that.

The Witness:

I am just a little bit mixed up in the use of these two words. I know the difference, but it is hard to put the right one in the right place. It depends on whether you are looking on the inside or the outside of the tank too. You might use the words "ends of the tank", I suppose.

Q. As the tanks were installed the bottom was the concave end?

A. That is right.

Q. I think that is the phrase that was used by the Libelants' witnesses. Now with the concave end down it is quite obvious that you have a flat bottom?

A. You have a rim; a rim that is perfectly square, and you could set it on most any flat surface and it would set upright without any support whatsoever.

Q. Have you ever seen in any boat a gasoline tank of that type installed with the other end up?

A. I never have; I have seen them on their sides too, but I have never seen them with the convex end down.

Q. Did you observe the rivets at the bottoms of these tanks?

A. I did.

Q. Can you tell me whether or not they were welded?

A. They are apparently not welded.

Q. Can you tell me whether or not they were soldered?

A. Around the bottom they were soldered. I assume from what little bit you can see—there were places all the way up to the top where a small amount of solder is still visible.

Q. Where?

A. On the seams and around the rivets of the side seams.

Q. Vertical seams?

A. Vertical seams.

Q. What would be the effect of fire on the solder?

A. Fire would melt the solder; solder has a very low melting point.

Q. How do you account for the fact that you found solder around the bottom seams and not towards the upper end of the vertical seams?

A. There was ash and stuff around the bottom of the tank for approximately 20 inches to two feet, and the solder wasn't melted in that section, and up above the heat got to it and the solder was burned off and ran down.

Q. As you examined these tanks, will you tell us whether the rivets in the bottom were soldered?

A. The rivets in the bottom seam showed an indication on the inside of being soldered, that is, inside of the bottom rim.

Q. How about the rivets on the outside of the bottom; could you tell?

A. There were small pieces of solder there; some of it has flaked off with rust. When I first examined the tank it was quite plain.

Q. In your opinion are the rivets soldered on the outside of the bottom?

A. Yes.

Q. How about the vertical seams?

A. They were soldered too. Of course, as I explained, most of that solder on the outside of the tank has been flaked off by rust, but when that tank was first removed there was no flaking and there was still signs of the original paint; there were still signs of the red lead paint around these tanks where the fire had not burned off, but since then the tank has flaked and the "air" has removed any indication of the paint or the solder.

Q. In your opinion was welding necessary on such tanks?

A. Not necessary for that use.

Q. What is the purpose of welding?

A. For strength.

Q. In your opinion were these tanks strong enough for their purposes, bearing in mind the pressures involved, without welding?

A. They were plenty heavy enough for the use that they were used for, put to; they were strong enough for a great deal higher pressures than ever applied to them.

Q. As a matter of fact, was soldering necessary in your opinion for tightness?

A. It wasn't necessary, absolutely necessary, but it was a good safety factor; it eliminated any possible chance in future of any leaking in the tank.

Q. Did you observe the relation between the bottom edges of the cylindrical sides of the tanks and the bottom edges of the bottom of the tanks?

A. Yes. The side plates of the tank projected down below or beyond a flange at the bottom.

Q. By about how much?

A. I would say roughly one-eighth to three-sixteenths.

Q. That left approximately a rectangular space?

A. That left a small space in between the two, so that the two didn't come flush.

Q. Was that space filled with anything?

A. That space was filled entirely with solder; there were a few places that were not quite filled; there was some solder that might have come on during the fire or heat.

Q. In your opinion was that space filled with solder prior to the time of the fire?

A. It was.

Q. In your opinion was it necessary to caulk the seams of these tanks?

A. Well, it is customary in the building of such tanks to caulk them if they are going to be put under any pressure, but if they were soldered afterwards and they knew they were going to be soldered or going to be galvanized afterwards, there was no absolutely necessity of caulking.

Q. What is the purpose of caulking; tightness?

A. To make the seams tight.

Q. How far apart were these rivets?

A. These rivets all over the tank, both the vertical seams and the bottom, were practically one inch apart; one inch to one and one-sixteenth of an inch.

Q. Approximately what was the diameter of the rivet hole?

A. That is pretty hard to tell. I assume that it was approximately half inch or a little less. They normally would be between three-eighths of an inch to half an inch rivets.

Q. In other words, in your opinion is that proper spacing for rivets for tanks of that type?

A. That is plenty close enough for a tank of that type.

Q. In your opinion would riveting at that distance apart make a gasoline-tight tank?

A. I see no reason why it should not; I believe it would.

Q. Considering of course the pressures involved and tanks of that size?

A. The pressure is so little in tanks of that size, tanks of that use.

Q. As to their strength, were the tanks proper in your opinion?

A. They were quite proper; more than proper and more than necessary.

Q. What can you say about the cylindrical shape of the tanks as bearing upon their strength?

A. A cylindrical object is about the strongest form of tank you can make; a sphere would be stronger, and next to that is the cylindrical tank.

Q. What is the thickness of the material?

A. Approximately three-sixteenths of an inch.

Q. And what material is it?

A. Steel.

Q. Was it galvanized?

A. It was originally galvanized steel.

Q. In your opinion is that a proper type of material and proper thickness of material for tanks to be used for gasoline in such a vessel?

A. In my experience that is plenty sufficient, quite sufficient.

Q. Did you observe that the bottom seams of these tanks were singly riveted?

A. They were singly riveted.

Q. Have you ever seen such a tank for gasoline double riveted at the bottom seam?

A. Never; I have never seen a gasoline tank or water tank double riveted.

Q. What is the purpose of double riveting?

A. Double riveting is applied where extreme pressure are going to be used on a tank.

Q. Is double riveting for strength or tightness?

A. Double riveting is put in to get more shearing, rivet shearing surface.

Q. Is that another way of saying it is for strength?

A. It is for strength, yes.

Q. In your opinion was any additional strength necessary for such tanks with such pressures?

A. There was no need for any additional strengthening.

Q. Could you tell whether the rivet holes were punched or drilled?

A. That I could not do; it doesn't matter. A rivet hole that is punched and then reamed is just as good as a drilled hole. We specify in punching holes that they be punched smaller than the diameter of the rivet and then reamed; also reduced to remove any distorted material in punching. Either a drilled or punched hole could be uneven, in pitch or in alignment.

Q. Can you tell anything about the way these rivets line up or don't line up, whether they were punched or drilled?

A. No. As I just stated, either a drilled or punched hole could be out of line.

Q. Considering the small pressures involved in these tanks, in your opinion does it make any difference whether the rivet holes were punched and reamed or drilled?

A. No, it doesn't make any difference in a tank of that kind.

Q. Now as to the size of the tanks, what can you say about the propriety of having tanks of that size?

A. For a vessel of her size a five hundred gallon tank—we will call it five hundred—is not too large in my estimation.

Q. You have already expressed the opinion, I believe, that they were amply strong for this use?

A. Yes, they were amply strong.

Q. Have you made any test of one of these tanks?

A. I have.

Q. Which tank was it?

A. Number 4.

Q. When did you make it?

A. I made it the later part of May.

Q. Where was the tank when you tested it?

A. The tank was removed from the compartment by a derrick.

Q. Were you there?

A. I was there.

Q. Was it done under your supervision?

A. It was.

Q. Where was it placed?

A. The tank was taken out and placed on a derrick barge.

Q. What did it rest on?

A. I had the tank set on two four by fours for the purpose of getting the bottom edge up above the deck of the barge so that the inspection could be made of the bottom while the test was being made.

Q. Did the tank stand upright?

A. Yes, on its own bottom without any bracing.

Q. Then what did you do?

A. I proceeded to put a water connection, hose connection, in the drain-off, which is in the bottom of the tank, or the bottom of the seat.—

Q. You mean at the place where the feed line came out of the tank?

A. Yes.

Q. What did you put there?

A. I put a hose connection there, screwed a hose connection into that bushing that was already there, and then in the filler hole at the top I inserted a pipe plug in the two-inch opening. I screwed a pipe plug into that and connected the hose from the city line pressure to the tank and proceeded to fill it with water.

Q. How did you fill it with water?

A. The tank was filled up to the very top; I had it filled so that the water was just even with the vent hole in the top. I watched that while the thing was being filled, to see that the tank was absolutely full.

Q. When you filled it with water, what did you do?

A. While this tank was full of water at that level I thoroughly examined the bottom edge, the side seams and underneath it, using a flashlight—by using a flashlight I could get around all sides of it. I also rapped the sides of the tank with a hammer to jar any possible corrosion loose; in other words, I tried my very best to make it leak, but it did not leak.

Q. Did you find any leaks?

A. I found only two leaks.

Q. Where were they?

A. One was in the cast iron bushing in the drain on the feed line.

Q. Where the feed line valve was?

A. Yes. And that crack was put in there when we screwed in the bushing.

Q. How do you know that?

A. Because as I screwed the thing in I heard it crack.

Q. Who was screwing it in?

A. My helper.

Q. Where were you?

A. I was standing right alongside of him, watching him to see exactly what he did, and I heard the thing crack when he tightened up on the fitting; and the other leak was in the plug that was applied to the filler hole in the upper end of the tank, and that was due to the rusty condition of the threads.

Q. Could you get a tight fitting in?

A. No, we couldn't without using some shellac, which we didn't have at the time. We didn't bother with it because we knew we could check that.

Q. Did you find any leaks in any seams or at any rivets anywhere?

A. There were no leaks whatsoever in any seam or any rivet in that part of that tank.

Q. Then what did you do after that?

A. After testing it with a normal supply or quantity of water in it, I screwed in a half-inch length—a ten-foot

length of half-inch pipe—screwed that into the vent hole in the very center of the top, upper end, and then filled this to the top with water.

Q. Did you find any leaks?

A. At this point there were still no leaks. I went over it the same as I did in the first place; I used a hammer and checked every seam and every rivet and there were still no leaks.

Q. About what pressure was there at the bottoms of these tanks with that ten-foot riser coming above the vent filled with water?

A. That ten-foot riser would give you eight and one-half pounds.

Q. At the bottoms of the tanks?

A. Yes.

Q. After that riser test, what did you do?

A. After that test I removed the riser and inserted a half-inch plug in place of it, so that there was no air in the tank whatsoever. The water was right about flush with the very outside tank, and in this hole I inserted a half-inch pipe plug and then I turned on the complete city pressure.

Q. Approximately what was that?

A. The city pressure out there is approximately 45 to 50 pounds.

Q. Did you find any leaks?

A. I went over the tank in the same manner as before and there were still no leaks. After that I got up on top of the tank and exerted considerable pressure with my heels, practically kicked the tank with both heels which gave the same effect as a hydraulic ram.

Q. And you jumped on top of the tank and—

A. I did more than jumped; as I came down I kicked with both heels.

Q. What effect, if any, did that have on the tank?

A. The effect was the same as a hydraulic ram.

Q. After that did you find any leaks?

A. I then examined the entire tank and I could still find no leaks, but one-half of the tank had been bulged due to that excessive pressure.

Q. Before you made that test was the concave shape of the bottom of the tank a fair curve or not?

A. Yes.

Q. After you jumped on the tank what did you find had happened to the bottom?

A. That half of the bottom of the tank was bulged out.

Q. Did you examine the rivets and seams thereafter to see if they leaked then?

A. I examined every part of that tank, including the seams and the rivets, and I could find absolutely no evidence of a leak in that tank anywhere.

Q. Excepting of course the two leaks that you have already mentioned?

A. Yes, which I already knew about before I even started.

Q. You say that the one near the feed line outlet was in the bushing?

A. That was a reducer bushing. You see, the hole in the tank had a two-inch fitting which was put in there when the tank was originally built, and that was reduced, I believe, to three-quarters. The hole was two inches, but it had a three-quarter inch reducing bushing on it; it was made of cast iron.

Q. You said something about hearing that crack when it was being set up.

A. As we screwed the new fitting, or this hose connection into the bushing, that pipe threading is not tapered down, and if you exert enough pressure in turning these things up, you can split one of these cast iron bushings.

Q. Did you observe whether or not that is what happened?

A. That is exactly what happened; because when they get old, as that one was—they are made of cast iron, and

we know and knew at that time, that we had to set the thing up much tighter than we ordinarily would have.

Q. For what reason?

A. Because of the improper threads that were in there due to rust.

Q. What do you mean by "improper" threads"?

A. The threads having been used for some time, the threads were naturally pitted and rusted, and they wouldn't make as perfect a connection as a new fitting.

Q. Is that the same condition that you found at the filler line opening in the tank?

A. Yes. That was exposed ever since the fire, and that was even in worse shape before the—

Q. Have you examined this valve on exhibit 2?

A. Yes, I have seen that several times.

Q. Will you tell us whether or not that valve is a proper type of valve for such an installation?

A. That is a perfectly proper type of valve; it is a standard Globe valve.

Q. Can you tell whether or not that valve is tight now?

A. That valve is tight at the present time.

Q. How do you tell?

A. By trying to suck through it.

Q. Have you done that?

A. I have.

Q. Have you been able to suck anything through it?

A. No, sir.

Q. What does that indicate to you?

A. It indicates that the plug and the seat in here (indicating) are still in usable condition.

Q. Tight even today?

A. Tight even today.

Q. Now there has been some suggestion of an expansion of the union on this fitting; are you able to detect any expansion of that union?

A. That is pretty hard to say. I could put a pair of calipers on it, but even at that it would not be correct,

because this fitting has been cut; it shows teeth marks of a Stilson wrench on it, which would naturally increase the diameter and it would have a tendency to swell the outside.

Q. Now assume that it has been expanded; can you tell whether or not it was tight?

A. I could tell if I could get it apart; you can tell whether the thread is tight, whether the pipe is all the way up to the shoulder on the inside.

Q. Now there are two parts to that, a male part and a female part; is that correct?

A. That is right. This is the male end here and this is the female end here. You see, there is no shoulder on the inside of that at all. You can see in this end of it here, the female end; you can see the threads on the inside of the fitting, indicating that all of the threads were not used up in setting up the pipe.

Q. What does that indicate?

A. It is possible to set this thing up further and naturally make it tight. The same thing applies to this one on the male end, but not as much as on this other one.

Q. Are these tapered threads or not?

A. All pipe threads are tapered slightly; it is done for the purpose of making a tight joint; as you screw the thing in its naturally increases in diameter and forces the pipe against the other threads.

Q. Does that have a widening effect?

A. Yes, and that could in time have a tendency to spread these (indicating).

Q. What is indicated to you by the fact that the male end is not all the way up to the shoulder of the female?

A. That the pipe was tight; that the joint was tight, that all above the threads was entirely used up.

Q. In your opinion was that a tight joint on the Seminole before the fire?

A. A perfectly tight joint, if it was made up in that manner; if it was made up in that manner, naturally it was tight.

Q. You have seen Libelant's Exhibit 11, these two valves, which we call drain valves or draw-off valves—you have seen these and examined them, have you not?

A. Yes, sir.

Q. Do you understand that there was a line from the feed manifold that led athwartships and ended up in these two valves which were sometimes used for drawing off gasoline from tanks into a can?

A. Yes; that is what I gathered from testimony given here.

Q. From your experience with vessels in these waters, will you tell me whether or not that is a proper condition on such a vessel as this?

A. It is very common; it is a very common practice on boats of her type; it is quite proper; it is a necessary part of the vessel.

Q. Are there any reasons why that fitting should be in the engine-room rather than some place else?

A. Well, the drawing off of any quantity of gasoline should be naturally under the supervision of the engineer, who is the man who is experienced in the handling of gasoline, and it should be his duty to know how much gasoline has been removed from his main tanks or from any other tanks on the vessel, so that it would naturally be a prudent place to put it in the engineroom where he had supervision of it. Also, in that type of vessel it was necessary to prime your motor with raw gasoline, and the best place to get that raw gasoline was from some place in the engineroom.

Q. Are there other considerations besides the fire hazard that must be taken into account in determining such matters?

A. Certainly, yes.

Q. Tell us about that; what are they?

A. As I explained, this motor had to be primed to start; even when it was hot it had to be primed.

Mr. Matteson:

If the Court please, I object to this because this witness, as I understand it, has never had any experience with the engines of the Seminole, in attempting to operate them. He cannot possibly speak of his own knowledge with respect to them; he is only drawing some conclusions here, and I move to strike them out.

The Court:

Well, it is an assumption on his part. I think that the testimony ought to be withheld until he is qualified.

(By Mr. Underwood):

Q. On what, Mr. Munroe, do you base your thought that these engines had to be primed even when hot?

A. Because of the experience that I have had with—not necessarily a Winton motor—but with motors of that same period and—

Q. Same size and type, you mean?

A. Not necessarily the same horsepower, but motors of nearly the same size but of different makes, 20th Century and the old Buffalo—

Q. At that time was it customary to have chokes on motors?

A. When that motor was built of that size they didn't use a choke.

Q. Do they use chokes on motors of that size today?

A. No.

Q. In your opinion, from your experience, was it necessary to prime that motor to start it even when it was hot?

Mr. Matteson:

I object to that, if your Honor please; I don't think the witness is qualified to speak with respect to the motors of the Seminole under the circumstances.

The Court:

I think this goes to the quality of his testimony. You may cross examine on this.

A. Yes.

(By Mr. Underwood):

Q. Will you tell us whether or not in your opinion the possibility of having to prime these motors to start them, even when they are hot, is something that should be properly considered in determining whether these draw-off valves for gasoline should be in the engineroom or somewhere else?

A. In order to prime the motors, I believe it took in the vicinity of a pint—I think that was the testimony that was given, or a quart to prime both motors, and that is considerable gas to be used, and naturally it took a quart priming can that you had about that size, which has been described in the testimony—it only held about one quart or less, and naturally it had to be refilled as soon as the motors were primed.

Q. Why is it necessary to have a ready supply of gasoline for priming motors; what are the other considerations that touch upon it besides fire hazards?

A. Other hazards due to the failure of the motor, stalling of the motor, where the motor might have to be started in a hurry in approaching a dock or going through or under a bridge, or approaching a bridge; you have your hazards on the external part of the vessel; you might strike a dock or run into a shoal or go on a lee shore, and might have to start your motor hurriedly, and naturally a motor will start much quicker when primed than it would start ordinarily.

The Court:

Mr. Munroe, you spoke of what the testimony was. Did you hear all of the testimony or did you read the testimony?

The Witness:

I heard all of the technical testimony.

The Court:

If you take any testimony as the basis for any of your testimony, I wish you would refer to it. If you take any part of the testimony as a basis for your answers, I wish you would state just what it is.

The Witness:

I will if I can remember it; if I can remember who said it.

The Court:

You don't have to state who said it; just state the factors you take into consideration as a basis for any expert opinion that you may render. I am not asking you to do that now, but I am merely making this observation for your guidance in the future.

The Witness:

Very well.

(By Mr. Underwood):

Q. All things considered, can you tell us whether or not in your opinion it was proper to have such an arrangement as this in the Seminole?

A. If there was going to be any free gas used in the boat, it was better to have it right where it could be easily obtained and under the supervision of an experienced man.

Q. How many of these valves had to be opened in order to draw off gasoline?

A. Two besides the ones on the tank.

Q. In such installation as you have seen before, have you seen one or two?

A. I have never seen but one.

Q. Have you examined these two valves that form Exhibit 11?

A. Yes, I have looked at them.

Q. In your opinion are they proper valves for such use?

A. They are perfectly good Globe valves; it is Crane 150; that is the water or steam pressure it can be used for.

Q. Is there any similar marking on the other valve?

A. On the other valve is 125; that is the maximum amount of pressure for steam.

Q. Do I understand that these figures, 150 and 125 indicate the pressures that these valves are supposed to withstand under normal conditions of steam?

A. That is correct, of steam.

Q. What pressure would they be subjected to when closed on the Seminole, assuming that the tanks were full?

A. Not over two and one-half pounds.

Q. I haven't asked you to calculate the margin of safety, and I won't. What type of valves are these; let's take first Crane 150?

A. This is a metal to metal Globe valve.

Q. Is that what is called a ground-seat valve?

A. This is a ground-seat valve on this. No, I will take that back. I have examined it now. That is a composition seat valve, the Crane 150.

Q. The 150 valve is a composition seat valve?

A. That is correct.

Q. Have you been able to tell from your examination what kind of composition the seat is made of?

A. No.

Q. Do you remember opening that valve with Captain Patten?

A. Yes.

Q. Did you observe the residue of the stuff that came out?

A. I did, but I am not a chemist and I couldn't tell what the ingredients was that that stuff was made of, that that seat was made of.

Q. In your opinion is a composition seat valve a proper valve for a gasoline line?

A. Providing the composition is proper—providing the composition is a proper one for resisting gasoline.

Q. Is there such a composition seat?

A. There is.

Q. Is it made by a reputable maker who makes them?

A. It is made by Crane and also by Jenkins.

Q. Is it used for gasoline customarily?

A. This is the valve that they recommend for the use of gasoline.

Q. There is a special seat made for gasoline?

A. Yes, there is a special composition seat made for handling gasoline?

Q. We have had some discussion as to the relative merits of metal ground seat and composition seat valves; what is your opinion?

A. Either one in my opinion is good. I think that the composition seat, if the proper composition is used, makes about as tight a joint as it is possible to use. I notice that Crane always uses the composition seat in his heavier pressure valve. This one is marked 150, and it is a composition valve. The ground seat is plenty good enough for the low pressure. It will take care of any sand or grit that gets in there. It would easily pulverize most anything that gets in there except possibly a diamond; and will naturally break that grit down until it will make a perfect seat instead of moving up in the joint, in the compound of the composition seat.

Q. In your opinion, were these valves proper valves?

A. They were perfectly proper.

Q. Assuming, Mr. Munroe, that the line which led from the feed manifold to these drain valves led back athwartships from the starboard end of the manifold, through the

sides of a tank which was situated above the square opening in the forward engineroom bulkhead, and was supported by these sides, in your opinion was that adequate support for such a line made up as this line was?

A. I would say that it was perfectly adequate; it was a three-quarter inch line, and the spacing of these supports was quite sufficiently close.

The Court:

We will take a five minute recess.

(Recess.)

(By Mr. Underwood):

Q. Now, Mr. Munroe, before the recess we were talking about supports for the drain line that led to these valves. I want to get it clear. In your opinion was that support from the sides of the tank adequate suport for a line of that size and length to insure it against leakage due to vibration?

A. Yes. The supports were plenty close enough together. Of course, I couldn't tell what the size of the hole was through there; I assume that it was a neat fit.

Q. I will ask you to assume that it was, Mr. Munroe.

A. All right.

Q. Something has been said about the union between these two drain valves that form Exhibit 11, and I think there has been some testimony that it was installed the wrong way. What have you to say about that?

A. I really can't say that there is any wrong way; the customary manner of setting up a union of this type is to make it up against the line; in other words, as the nut is turned it is turned to the right to set the nut up to the thread behind it.

Q. Against the line that is already in place?

A. Yes.

Q. And that has a tendency to tighten up the joints that are already in the line to which it is being added?

A. That are already in the line, and that is the way it is made up; the metal end of this thing is on the main line.

Q. Assuming that there is a column of gasoline in the pipe, does it make any difference which way the union is made up, whether in one direction or the other?

A. After it is tight the pressure on both sides is equal, so that it wouldn't make any difference if the nut is set up tight.

Q. Have you examined the plug of the ground-seat valve, the valve marked Crane 125?

A. Yes, I have examined this.

Q. In your opinion is that a proper plug?

A. This is a proper type of plug and seat.

Q. Some attention has been called to the condition of the contact rim or surface of the plug; what have you to say about that?

A. There is a small flaw in this plug; whether it was present prior to the fire or not cannot be determined; that could easily have occurred due to corrosion since the fire, due to the heat, and even if it was there prior to the fire it is on the upper end of the plug, above where the plug seats.

Q. Do I understand that you say that the crack in the contact surface is above the point where the plug comes in contact with the seat?

A. That is correct.

Q. That being so, could there be any leak or is it physically possible to have had any leak in that flaw?

A. No possibility.

Q. Have you tested that valve to see whether it is tight now?

A. No, I haven't. It could easily be loose now due to the extreme temperature that was applied to it, the heat of the fire warping the metal.

Q. Some comment has been made about the angle between the plug and the seat of that valve. What is your opinion as to that?

A. Well, this is quite a sharp angle. I would say offhand, without measuring it, that it is sharper than a 45-degree angle. This is not a straight faced angle; it is rounded. You can get anywheres from 45 to more of an angle.

Q. I think the suggestion has been made that the needle type valve is the preferable type. What is your opinion as to that?

A. A needle type valve is not a proper valve for a cut-off valve, due to its increased area of contact between the plug and the seat, there being more chance of grit or foreign matter lodging in there and keeping the valve from seating properly. A needle type valve is used only for throttling purposes, where you want to graduate the flow of fluid through the valve.

Q. In your opinion is the angle on that valve a proper angle for this use?

A. It is quite a sufficient angle.

Q. Assuming that there was a glass gauge in the engineroom and that it ran from a T-connection in a manifold which was packed with asbestos packing, will you tell us whether or not that is a proper fitting for an engineroom of that type of boat?

Mr. Botts:

I object on the ground that there is no evidence that there was any asbestos packing.

The Court:

I don't think so. Does the evidence establish that?

Mr. Underwood:

My recollection is that the witness Schlappi so testified.

The Court:

I will overrule the objection and let the assumption remain in, and if the assumption is not well-founded, of course the opinion goes out.

Mr. Underwood:

Does Mr. Botts have any contrary recollection?

Mr. Botts:

I think he said it was wicking.

A. The use of a glass type gauge in such an installation is quite proper; it is the only correct manner of measuring his fuel consumption or the fuel remaining in his tanks. A gauge of that type is used on all steam boilers where greater pressures are used, and it is in common use on a great many vessels, even in gasoline today. On several boats that I have been on I have seen them in use, and I have installed them myself. There is one boat here in town right now that has, I believe, four sight gauges in her fuel line, right in her engineroom.

Q. Some question has been raised as to the accuracy of my recollection as to the nature of the packing in the fitting, so I will ask you the same question again, and ask you not to assume anything about the packing, and will ask you whether or not such a device as a glass gauge is a proper device to have in an engineroom of a vessel of this type?

A. A glass gauge is perfectly proper.

Q. I believe you have already given your reasons in an answer to a previous question?

A. Yes.

Q. Is wicking a proper type of packing?

A. That depends on what you are speaking about. If you are speaking about cotton wicking, that is one thing. Wicking is made up in several forms. There is asbestos

wicking, cotton wicking and graphite wicking; also flax wicking. Wicking is anything that is made up with fibre or threads.

Q. I take it that your opinion is that some wicking is all right and some wicking is not?

A. That is correct.

Q. What is the particular hazard, if there is one, of a glass gauge for gasoline?

A. The only hazard of a glass gauge is that it is easier to break, but where this particular gauge was installed I can't say, because there is no indication as to where it was. If it was up against the wall in back of a panel and protected on either side by rods or strips of wood or anything which would prevent the accidental striking of it by a wrench or anything in the engineroom, either by a human element or something swinging—a gauge of that type is usually installed with a cut-off valve at both top and bottom.

Q. Do you know whether this one was?

A. This one had a cut-off valve at the bottom I am sure, because I found a part of the lower end of it; I don't know what was on the upper end.

Q. You have not seen the upper end?

A. No. That is a standard valve manufactured for that sole purpose.

Q. In practice is gasoline ordinarily in the gauge?

A. No. You open your valve and allow a column of fluid to rise in your tube, and you measure it, and then after you are through with that you can drain it back into the line and remove all gasoline or fluid from your gauge.

Q. In your opinion is it necessary and proper equipment to have cut-off valves in gasoline feed lines near the carburetors?

A. That depends a great deal on the head in the line; it is not absolutely necessary.

Q. What is the ordinary purpose of having cut-off valves in a gas line near the carburetor?

A. Only when working on the carburetor and disconnecting the gasoline from the carburetor, to disconnect the gasoline from the carburetor.

Q. Now in this installation I will ask you to assume that there were cut-off valves in the gas line at a point below the manifold and at a point below the strainers where the feed lines led from the manifold down toward the bilge; that would be very close to the forward bulkhead of the engine room—assuming that there were shut-off valves in each gasoline line so situated, in your opinion was that sufficient for that line?

A. It was.

Q. Assuming that these valves were shut, would there be any head of gasoline on the carburetor?

A. There would be no head whatsoever.

Q. Why is that?

A. If the valves were tight and allowed no pressure to come through from the tank, in order for fluid to run out of the pipe below the valve, it would be necessary for air to rise in the pipe, and in this particular case the fuel lines ran down under the floor and floor timbers and then came up again to the carburetors. So that the rise of pressure on that line from the cut-off valve—which I assume the position of—was very low.

Q. Now is there any common experiment by which you can illustrate your testimony that there would be no head of gasoline on the carburetor with the valve shut tight?

A. Yes. You can take an ordinary garden hose or tube, or anything of that nature, and submerge it in water, or in any fluid, and put your thumb over the upper end of it and nothing will drop out of it except one or two drops at the lower end, and the smaller the tube or pipe the less chance of that.

Q. Did you find any drip pans under the carburetors?

A. No, sir, there were not.

Q. In your opinion were they necessary on an installation of this type?

A. They were unnecessary in a carburetor of that type; the carburetor wasn't chocked; it had no choke on it.

Q. Before we go any further, suppose you explain to us the function of a choke in a carburetor that is—

A. The purpose of a choke in a carburetor is to close off the air intake considerably and force or suck more raw gas through the jet of the carburetor; in other words, it breaks the flow through the tube rather than through the air intake and sucks raw gas up into the manifold.

Q. Where you have a carburetor with a choke, and you use the choke, Mr. Munroe, will you tell us whether or not it increases the flow of gas into the carburetor?

A. Yes, because you pick up a heavier flow of raw gas, and that hangs on the side of the manifold, the upright side of the manifold, and afterwards that will fall down and run back down the manifold into the outlet pipe of the carburetor.

Q. Is there any distinction between the two types of carburetors, those with chokes and those without chokes, as to the nature of—

A. Yes, there is.

Q. What is that?

A. Well, in a carburetor that has no choke you never get raw gas into the manifold.

Q. What is your conclusion from that as to the need for a drip pan?

A. There is no heavy fluid to run back and flood the carburetor. Even if there was a drip pan under there it only holds a certain amount, and when it is full it runs over and goes into the bilge.

Q. I believe you stated that these carburetors on the Seminole was of the type that didn't have a choke on them; is that correct?

A. That is correct.

Q. Now, there is some evidence in this case of a drip pan arrangement, that is, an attachment back of the in-

take of the carburetor to drain any dripping back into the carburetor or into the cylinders of the motor; are you familiar with such a thing?

A. There is such a drip pan on the market, and I have used them.

Q. How recent a development is that?

A. The last five or six years only.

Q. Is it in common use?

A. It is not in common use now. It is not very satisfactory, because unless you open the valve in your suction line to allow the gas to be sucked back into the manifold—it would only work the time you leave that open after the gas is out, and it allows too much air to go through the carburetor and it causes a poor mixture in your motor.

Q. Does it work when the motors are not in operation?

A. No, it doesn't.

Q. Were there backfire arrestors on the motors of the Seminole?

A. There were?

Q. Did you examine them?

A. I did.

Q. In your opinion were they proper?

A. Quite proper. Of course they are not entirely there; part of them has been destroyed, but what was left of them indicates that they were quite satisfactory.

Q. Of course they serve no purpose when the motors are not running, do they?

A. No, sir; they serve no purpose when the motors are not running.

Q. Now, Mr. Muhroe, the feed line from the tanks to the carburetors of the Seminole was made up of brass pipe and fittings, as I think you observed. In your opinion is that the proper material and type of material to use for an installation of this kind?

A. That is perfectly satisfactory material to put on an installation of this size.

Q. Does copper tubing in your opinion have any superior advantages?

A. No; it has no superior advantages; it has only the advantage of being quicker to install, which in modern days prevents labor expense.

Q. In your opinion where copper tubing has been used, what has been the actuating reason.

A. Simplicity of construction is the principal reason and the saving of labor costs.

Q. Is copper tubing cheaper?

A. Considerably cheaper.

Q. In material as well as labor?

A. In material as well as labor. Of course it does reduce the number of joints, and that is what cuts down the labor charge.

Q. Is it possible to make a satisfactory and a tight installation with brass tubing and fittings such as was used on the Seminole?

A. It is perfectly possible to make a tight fitting in a brass pipe, to make a tight joint in a brass pipe.

Q. How does that compare with copper tubing as to strength and stability?

A. Brass pipe is really stronger; it has less chance of being crushed by someone striking it or by being pinched under a floor beam. You are apt to get a hole in copper tubing, and copper tubing is quite a little softer, and it is more subject to wear and chafing.

Q. In your opinion is either one more subject to injury from vibration than the other?

A. No; neither one. Either copper tubing or brass pipe can be distorted or broken by vibration. Copper tubing is softer, and of course has to set up a different vibration to that of a harder substance, and naturally the difference in size of the harder substance changes the vibration.

Q. Considering for the moment solely the question of vibration, in your opinion was the gasoline feed line

system on the Seminole a proper installation, properly protected against vibration?

A. Where I could see it, where it still remains, I would say that it was.

Q. In your opinion when does the effect of vibration show up?

A. During operation of the boat.

Q. Assuming that the Seminole had been laid up for 60 days when this fire occurred, and that she didn't show any leaks up to the time she was laid up—would you expect to find any effect of vibration coming into evidence while she was laid up?

A. There would be no effect of vibration while she was laid up, and if there were no leaks at the time she was laid up there, then certainly no leaks would start from vibration afterwards.

Q. In your experience is it customary to solder joints in brass pipes for gasoline feed lines?

A. I would never recommend it.

Q. Why not?

A. There comes times when a line has to be taken down. I will admit that a soldered joint is tighter; maybe it is about as tight as any as you could possibly put in there, but in order to disconnect these threads it is necessary to use a blow torch on the joints, and one doesn't want to use a blow torch on a gasoline line.

Q. What is the customary method in your experience of making up joints in such a feed line?

A. You mean what would be applied?

Q. What, if anything, do you apply?

A. I would apply principally orange shellac.

Q. Do you always use that?

A. Well, under some conditions we don't, depending a great deal on the pressures; sometimes it is necessary to use litharge and glycerine mixed with shellac.

Q. Will you tell us whether or not some such preparation is commonly used in making up such joints?

A. All gasoline joints that I have ever seen shellac has been used on them.

Q. Can you tell from your examination of the joints in this line what, if anything, was used?

A. No, I cannot tell from these exhibits here; these exhibits have been burned and the shellac was destroyed under fire.

Q. Can you tell whether or not anything was used?

A. No, I couldn't tell whether anything was used.

Q. Assuming that the proper compound of shellac and whatever substance you have in mind was used in the making up of these joints, is its absence from the joins today any evidence that it was not used?

A. No.

Q. What would happen to it in a fire?

A. It would burn up; it would be burned up and destroyed.

Q. In your opinion was there any need for coils in this feed line?

A. No, there was no necessity for a complete coil in this feed line.

Q. What kind of feed lines do you put coils in sometimes?

A. Only in copper tubing. In this line, wherever there was an angle it acted the same as a coil; a coil is put in there to relieve the strain on the connection.

Q. In view of the distance which I take it you have observed from the feed manifold to the carburetor, would you anticipate any effect of vibration on the feed line?

A. No; they seemed to be properly installed under the engineroom floor.

Q. Now, as to the ventilation of the tank compartment, we will assume that it was ventilated by only the holes in the top of the bulkhead through which the filler line ran and the holes at the bottom of the bulkhead thhrough which the feed line ran, and the spaces which you have observed under the tank compartment, and the

spaces between the edges of the pans and the bulkhead —you have observed these spaces?

A. I have.

Q. In your opinion was that adequate ventilation for this compartment?

A. It was. There was a chance for complete circulation of air around these tanks, especially the space between the pan and the bulkhead, which was a matter of about two inches; you could stick your hand up through there, and there was quite sufficient space below the pan to the floor.

Q. I will ask you to assume that the engineroom was ventilated by two cowl ventilators, which I think you have seen on the boat—is that right?

A. I have.

Q. And that they didn't extend into the bilges but only a short distance below the deckhead, also by a skylight and by an engineroom hatch, which I think you have also seen; is that right?

A. I have seen the opening.

Q. You have seen the openings in the steel top of the engineroom, have you?

A. I have.

Q. Also by two windows, one on the starboard side leading into the alleyway and one on the port side. I will ask you to say whether or not ventilation from these sources was adequate ventilation for an engineroom of the size of that on the Seminole, containing the gasoline installation which he had?

A. These openings would supply a great deal of air to that engineroom, in fact, a great deal more, due to those windows, than in the average engineroom or engineroom compartment of any other boat. I would say that there was quite a sufficient circulation of air. Any wind passing in the windows, although the floor was below the ceiling of the windows, it would have a tendency to curl and go

down around the floor and circulate across the floor in through the bilges.

Q. How does that ventilation compare with the ventilation on other gasoline propelled vessels?

A. This is a great deal more ventilation than on the average boat. Of course boats of her type, where you have large square ports opening directly to the outside of the vessel, you have considerably more ventilation than you will find in the average engine space or compartment of any boats.

Q. Now from your experience, Mr. Munroe, will you tell us whether knife switches are proper for use on a switchboard in an engineroom on a vessel like the Seminole?

A. Knife switches are absolutely correct; I have never seen any other kind of switch used.

Q. Is any other type of switch in common use?

A. No; every switch today, whether it is enclosed or open, is a knife switch.

Q. What is the customary type of switch used on gasoline propelled vessels?

A. Knife switches.

Q. Any boxes around them?

A. No box around them. You will find today, which is a very modern improvement, so-called improvement,—you will find what is known as a dead-throw switch panel.

Q. What is the purpose of that?

A. Merely to protect the engineer or man in the engineroom from coming into contact with a live switch or live contact which is perfectly open behind the panel.

Q. In your opinion do you get a spark from opening or closing a knife switch with an installation of 110 volts, or approximately?

A. In my experience I have never seen a spark occur on the closing of a knife-type switch; sometimes a very small spark occurs when it is opened.

Q. When you say "small spark", how big a spark do you mean?

A. Something that you would have to look for twice to see, unless you were looking directly at the contact.

Q. When that spark occurs on the opening of a knife switch how long does it last; what is your experience?

A. Only just a flash.

Q. Does it go anywhere; does it drop or rise or stay at the poles of the switch?

A. No, no; it only occurs between the blade of the switch and the pole.

Q. How about the location of the switchboard; it was in the engineroom, and I think you have seen the bolts—is that right?

A. Yes.

Q. The bolts that held it in place?

A. Yes. And from these bolts I would say that that was in the proper position in the engineroom.

Q. Assuming that it was where the bolts were in the center of the after engineroom bulkhead,—is that a proper location for the main switchboard with open switches?

A. That was as good a location as they could get in that boat. It was perfectly proper, no matter where it was.

Q. From your experience are switchboards customarily so located?

A. I have never seen a switchboard anywheres but in the engineroom; in fact, it has to be in the engineroom; for instance, you can't run out of your engineroom to open a closed switch when you are starting your generator.

Q. In laying up vessels of the gasoline propelled type, in your opinion is it customary down here to empty gasoline tanks?

A. On small vessels or open boats, where there is no necessity for gasoline to be present, they usually remove the gasoline, but not because it is a hazard so much, but from the fact, due to the small fuel line—in other words, gasoline leaves a sludge, which fills these gasoline lines.

so we remove the gasoline from them for that purpose. In the larger vessels that have a generator, and where batteries are left on the boat, in order to keep these batteries in condition it is necessary to run your generator.

Q. Is it the practice to leave the gasoline in the tanks of the larger vessels?

A. Yes, so that the man who looks after the generator and batteries can operate.

Q. What in your opinion is the proper thing to do in the laying up of a boat of this kind; is it proper or not to leave the gasoline in the tanks?

A. So long as the tanks don't leak and there is no leak in the line, there is no chance for gasoline to leak into the bilges, and a full tank of gas is much safer than an empty tank.

Q. Have you heard of or are you familiar with Lloyd's rules for the construction of yachts?

A. Yes, I am familiar with them.

Q. Have you ever used them in the construction or design of a vessel?

A. I have never used any of them in any of my construction, no.

Q. Is it customary in this locality to build vessels or keep vessels up to the requirements of Lloyd's rules?

A. It is not necessary in this locality to build or equip a vessel according to Lloyd's rules. They are applied primarily to vessels of the offshore type.

Q. You mean seagoing vessels?

A. Yes.

Q. Was the Seminole of that type?

A. No, she was not.

Q. Is it customary down here for inland vessels, not of the seagoing type, to live up to Lloyd's rules?

A. No, it is not.

Q. Have you any familiarity with the rules of the National Fire Prevention Association?

A. Yes, I am familiar with them.

Q. I show you this book, Libelants' Exhibit 25; is that what you are talking about?

A. Yes, that is the book that I am familiar with.

Q. Also Libelants' Exhibit 97, which contains as an appendix Libelants' Exhibit 25?

A. I have seen these and read them.

Q. Is it customary for vessels down here around Miami or in Florida waters in your experience to live up to the requirements of these rules?

A. No, it is not customary to live up to these rules.

Mr. Botts:

I object to that and move to strike the answer.

Mr. Matteson:

I join in the objection, if your Honor please; I understand that it is a well established principle that no custom can justify a negligent practice.

(By Mr. Underwood):

Q. Do people generally use these rules as a standard by which to equip their vessels?

Mr. Matteson:

If your Honor please, that doesn't seem to be the question here. It is a question of whether competent people dealing with such problems recognized these as standards. Whether this gentleman was familiar with the rules doesn't seem to make any difference.

The Court:

I understand that the witness is testifying from the standpoint of an expert. I think it is proper for him to answer the question as to whether or not these rules are observed in the architectural construction of vessels in this community as a standard of good construction. I

think that is the intent of the question, so I will overrule the objection.

Mr. Underwood:
Read the question.

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. I don't know of these rules being in the hands of any of the builders around here, with the exception of the large yards.

Q. Do you regard them as the proper standards for vessels of this type?

A. I consider them as a standard of practice where it will apply best in the case that I am using.

Q. What do you use as your standard—

Mr. Botts:
I object to that as being immaterial.

The Court:
I will sustain that objection.

(By Mr. Underwood):

Q. Mr. Munroe, I show you Libelants' Exhibit 24, which is entitled: "E. D. Wright, Bureau For The Prevention of Explosion and Fire on Motor Boats", and so forth. Did you ever hear of these rules before I asked you about them in connection with this case?

A. No, sir. I had never seen them prior to the time that you called my attention to them.

Q. Are they in your judgment proper standards by which to test a gasoline propelled vessel?

A. I don't say that they are proper standards; this is only one man's opinion. My opinion is—

Q. Are these rules commonly used down here?

A. I have never seen them before, so I don't know.

Q. Do you recall what was the nature of the construction beneath the drain pans that were under the gasoline tanks?

A. You mean the supports?

Q. No. Was there any wood in there?

A. There was a wood cushion or something of that nature under these pans.

Q. Have you examined that?

A. I have.

Q. Was it destroyed by the fire?

A. It has been slightly burned but wasn't entirely consumed by the fire.

Q. How about the members that form the cushion on which the tanks sat; were they affected by the fire?

A. These cushions, or four by four frames that were under the pans on which the tanks sat are as new or as in good condition as they were when installed; there hasn't been any fire touching them, there has been no heat applied to them, and when I first opened that compartment there was still red lead paint on those members.

Q. Did you draw from that condition any connection as to the presence of fire or the existence of fire under the gasoline tanks?

A. I would draw from that conclusion that the fire in the engineroom and under the tanks wasn't of any severe nature, because none of these things have been burned to any extent. The floor timbers under the engineroom floor and motor bearers are not badly charred.

Q. By "bearers" you mean these athwartships wooden beams?

A. The four by four pieces on which the main motors sat are not badly charred, to show any indication of there having been a severe fire in the bilge or in the engineroom.

Q. If there were no gasoline vapors in any quantity

in the bilge of this boat would you expect or would you not expect a severe fire at this place?

A. I would certainly expect it. I have seen it in other cases. I know of one case in which the entire bilge of the boat was practically consumed. The frames and the inside of the inside planking and the floor timbers under the floor, above the floor, and way up in the sides of the vessel, between the ceiling and the planking, was badly charred, yet there were very few places above the floor where it showed any signs of fire, so that in going below in her, before opening the floor boards, you never would have suspected that she had been afire.

Q. From the condition of these members are you able to form an opinion as to whether or not there was any severe fire in the bilge of that boat?

Mr. Botts:

I think it is improper to ask a person as an expert a hypothetical question upon subjects as to which there has been no direct testimony.

The Court:

You mean direct testimony to the contrary?

Mr. Botts:

There has been no direct testimony as to this fire, therefore my understanding is that a hypothetical question on that subject is not proper.

The Court:

Read the question.

(Thereupon the preceding question was read by the Reporter as above recorded.)

The Court:

The objection is overruled.

A. From the condition of them I would say that there had never been any severe fire in the bilge of the engineroom or under the tank compartment of that boat.

Q. From your examination of the remains of the Seminole did you observe any evidence of a violent explosion?

A. That is rather hard to determine, because the fire had warped the plates, the bulkheads, and the hatch above the engineroom has been removed; so I really cannot see any place or evidence of an explosion. There are places where the plates have buckled. That could have been done during the fire itself, considering the extreme heat.

Q. Now, Mr. Monroe, bearing in mind all the details that we have referred to about the Seminole, will you tell us whether or not in your opinion in her construction and equipment she complied with the standards for such things accepted and employed by reasonable, prudent men in this locality for similar vessels?

A. From the examination I have made of that vessel, she seems to have complied with all of the necessary safety factors. The installation was proper, and I can find no place in her where there was any flaw or any chance for the leaking of gasoline. The pipe lines are tight and made up properly. Of course there was very little we could see of them. Certainly the tanks were proper. The trays that they sat in were proper and the ventilation seemed to be proper in that boat.

Q. Now assuming that the Seminole had been laid up for two months under a shed at Pilkington's Boatyard, and that on June 24, 1935, when Abel went over and into the engineroom there was no odor of gasoline, was there in your opinion any reason why he should hesitate to close from three to five open knife switches on the switchboard to get lights?

A. There was no reason why he should not close these switches, if he smelt no odor of gasoline, and he struck a match, as I believe the testimony has stated—Mr. Thomas, I believe mentioned that—had there been any gas in her

that match would have ignited it before the closing of any switches. The boat was laid up only two months prior to that in good condition; she wasn't in service—

Mr. Matteson:
It strikes me that the witness is summarizing the testimony here.

The Court:
I think so.

Mr. Underwood:
He is just giving his assumption, your Hoonr.

The Court:
Mr. Witness, if there are other facts developed in the testimony, on which you base a part of your answer, you should state the facts on which you make the answer.

Mr. Underwood:
I think he was doing precisely that, your Honor.

Mr. Matteson:
Do I understand that the question is to be answered over again?

The Court:
Yes, I think he should answer the question again. Strike that answer.

Mr. Underwood:
Read the question.

(Thereupon the preceding question was read by the Reporter as above recorded.)

The Court:
Now answer that question.

A. The answer there is "no".

Q. Why not?

A. Smelling no odor of gasoline, it is perfectly logical that—

Mr. Botts:

Just a minute; he is arguing again, Judge.

The Court:

Let him continue the answer.

A. Well, I personally would not hesitate to close them.

Q. Why wouldn't you hesitate to close them?

A. Because I smelled no odor of gasoline, and knowing that there isn't much spark made by the closing of a switch, or any spark at all by the closing of a switch, there would be nothing to ignite any gas fumes.

The Court:

We will recess now until two o'clock.

(Recess taken to two o'clock, P. M. October 10, 1939—the same day.)

2:00 o'clock, P. M., October 10, 1939.

Afternoon Session.

Mr. Underwood:

Just for the purpose of the record, I suggest that it be recorded that on Friday last the Court, accompanied by counsel for the three parties, who in turn were supported by experts, visited the wreck of the Seminole at Nutta's Yacht Basin and made a general examination. Is that satisfactory and adequate?

Mr. Matteson:

Yes, as far as it goes.

Mr. Underwood:

I don't know whether you want anything further or not.

Mr. Matteson:

I would like it also to appear on the record that it was my understanding that the arrangement which we entered into last March for this examination, was that the boat would be in the same condition when we went there in October as it was at the time we adjourned Court in May. It appears that there was a great deal done in the interim. Since the last session at least one of the tanks was taken out of the boat. I don't know what was done with the others, and tests were made not in my presence, and I want to register on the record my formal objection to that procedure.

Mr. Underwood:

Mr. Matteson expressed that view in a letter which he wrote to me during the summer sometime, and I examined the record to see if there had been an agreement as to that. I found no express agreement as to that. I will say that all that was done was to remove one tank, which the Court and counsel saw on Friday last. The purpose of that was to put the tank in a position where it could be more thoroughly and completely examined, particularly where the bottom of it could be examined, inasmuch as some issue has been raised as to the construction at the bottom of the tank and underneath the tank, and also the test that the witness now on the stand has testified to.

The Court:

Well, any statement that counsel wants to make on the record I think should be made. I do not see any action of the Court called for on it.

Mr. Underwood:

First, we all know that the tank was not permanently removed from the boat, but was put back on the boat, and was there on Friday last for such examination as anybody cared to make. Mr. Matteson used the expression "a good deal was done", and in that connection I will say that nothing was done except the removal of the tank and a test made thereon.

Mr. Botts:

I might state in that connection that my recollection was so clear that it was understood that the tank was not to be moved out of there, that we were to look at the tank and the tank would be removed in our presence, if necessary, but in the meantime the tank was to remain in its status,—my understanding was so clear as to that, that I seriously debated registering my protest to what had been done there by refusing to go to the boat, and I do feel that it would have been better if the boat had remained in its exact status, particularly in view of an issue having been raised here as to the condition of these tanks. I may have a misrecollection of the understanding, but I seriously doubt it. It certainly seems to me that it was hardly the thing to do for the other side to go out there months in advance and take that tank out and learn what the situation apparently was, learning the situation long in advance of any equal opportunity on the part of the fellow I represent. In other words, I felt it so strongly that I discussed or debated very seriously whether it would be proper for me to register my protest by refusing to participate in that examination.

Mr. Underwood:

The record will show and the Court will remember whether there was any such agreement.

Mr. Botts:

I checked it with the Court Reporter. The Court Reporter definitely remembers it, but he didn't take it down.

Mr. Underwood:

I don't know what the Court reporter remembers, but I think it is not unfair, in view of this comment to call attention to the fact that a person, impliedly in the employ of the widow of the deceased Abel but apparently actually in the employ of one or both of my adversaries here, took occasion, while the boat was still hot from the fire, to remove, without permission form anyone, and in effect steal certain equipment from the boat, which remained in possession of my adversaries in this case for many months, as the record shows, refusing to deliver it over to the original owner, the Seminole Boat Company. If there is any criticism in this case along that line, I think it does not lie in the morals of the gentlemen on the other side of the table.

Mr. Botts:

Had we not preserved them, this equipment would have never been before the Court. This equipment is now before the Court in just exactly the condition it was in.

Mr. Underwood:

I don't know whether Mr. Botts is testifying about the exact condition or not. I dispute that statement.

Mr. Botts:

Yes, I am; because they were in my possession from the day after the fire until they were delivered to the Court, and I say they are in the exact condition they were in, and I am willing to be sworn and so testify.

Mr. Matteson:

It appears from the testimony of the witness on the stand that there have been changes in the condition of the tank due to corrosion and the weather.

Mr. Underwood:
Since the fire?

Mr. Botts:
I would like to say now to counsel that I challenge him and I dare him to produce evidence to show that these articles were not in the exact condition when presented in Court as they were at the time we took possession of them. I dare him to try to prove otherwise.

Mr. Underwood:
Of course Mr. Botts has a complete advantage because his representative took them in his custody without our observing them or having any opportunity to determine in what condition they were. I can tell in some measure the difference between the way they now are and the way they were before the fire in April, or the last time anybody on our side of the case saw them.

The Court:
Let's proceed with the testimony. I do not understand that the Court is called upon to rule on anything in this connection at this time.

2929 Thereupon: WIRTH MONROE a witness in behalf of the Respondent Phipps, resumed the stand and was examined and testified further as follows:

Direct Examination (Cont'd.)

By Mr. Underwood:
Q. Mr. Monroe, there are two little details that I want to clear up. You mentioned a crack in the tank fitting which you heard when you connected up the hose for this test that you made in May. Did you examine the crack as well as hear it?

A. Yes, I examined it after hearing the break; I then examined it before I proceeded with my test, and it showed a bright small crack which wasn't there prior to the fitting of the hose connection, because I examined it prior to putting any connection into it.

Q. Will you describe for us the kind of leak that there was in that tank during the test?

A. In the first test, when the tank was just normally filled with water, there was just a slight leakage out of it, a matter of really no consequence; it was enough so that when we wiped it off with a rag it immediately came back again, and you would more or less call it a leakage, but under the high pressure that particular crack did show a stream projecting out from the—

Q. How big a stream?

A. About the size of a needle or common pin point; of course that was only when the extreme pressure was on it.

Q. How about the volume of leakage at the filling connection?

A. At the filler hole it was about the same; of course there wasn't any pressure created on that as there was on the lower one, but you could see it running down the edges of the tank, and it could be wiped off and kept from going all the way to the bottom.

Q. Was there any stream on that?

A. There was no stream at all on that.

Mr. Underwood:

You may cross examine.

Cross Examination.

By Mr. Matteson:

Q. Mr. Monroe, you have described yourself as a yacht designer.

A. Yes.

Q. What educational qualifications have you as a yacht designer?

A. You are speaking of education?

Q. Yes.

A. Well, my education has been along a practical line. My instructions were from my father and as the result of an apprenticeship with Mr. Herreshoff. I do not hold any college degree. It has been a school of practical experience.

Q. You never have studied marine architecture?

A. I have studied it at my own home but not in a school.

Q. What was your father's name?

A. Ralph M.

Q. Is he living now?

A. No, sir.

Q. How long ago did he die?

A. In 1933.

Q. Did he maintain a construction yard or repair yard or anything of that kind?

A. We maintained a small yard.

Q. What do you mean by a small yard?

A. Well, we couldn't handle vessels much over 40 feet in length, or drawing over four feet in draft.

Q. In that yard you say you handled vessels up to 40 feet?

A. We hauled them longer than that.

Q. You say you hauled them; do you mean that you maintained a marine railway there?

A. Yes, that is right.

Q. And the capacity of that marine railway was for vessels of yacht construction of about 40 feet in length?

A. I have hauled vessels on the marine railway up to 47 feet, but of low displacement.

Q. Where was that yard located?

A. On the east of Biscayne Boulevard in Coconut Grove.

Q. Is that yard still there?

A. It has been moved from the original location to another location.

Q. You have the same marine railway?

A. No, it is a new marine railway.

Q. The same size?

A. Yes.

Q. Do I understand you continued your father's business since that time?

A. I have.

Q. Are you engaged in the business of construction and repair at the present time?

A. I am.

Q. Is that with respect to the same class of vessels that you have described, up to 40 to 45 feet?

A. At that particular yard, yes, although I discontinued hauling large vessels, because I don't have the equipment now.

Q. What do you mean by "larger vessels"?

A. Up to 47 feet.

Q. How large vessels do you take care of there now?

A. I am only handling up to about 35 or 38 feet.

Q. Are these wooden vessels?

A. Yes, sir.

Q. Most of them are auxiliary sail vessels?

A. Not all of them; a majority of them are power, entirely power vessels.

Q. How many vessels did you handle there in the past year?

A. In the past year I don't recall—I haven't been at it—I haven't done any of that in the past year; I haven't been in contact with the yard as much as in the years previous. My business has taken me away from Miami.

Q. Is someone else operating the yard now?

A. I have a man there that takes care of it and I only permit him to haul the smaller vessels.

Q. Have you engaged in the manufacture or sailing vessels?

A. The design and construction of them.

Q. What type were they?

A. Auxiliary cruising vessels.

Q. Were some of them not auxiliary?

A. Small launches.

Q. I mean some of them are purely sailing vessels?

A. Some of them are purely sailing vessels, but the majority of the larger vessels were all auxiliaries.

Q. You only handle wooden vessels there, do you not?

A. You will find very few steel vessels in this vicinity.

Q. And none as small as that, I take it?

A. No.

Q. Now, take an average vessel of 40 feet, such as you handled there, with auxiliary equipment; what sort of a motor would she have; how large?

A. You mean the vessels that I would haul at that yard?

Q. Yes; vessels that you worked on there.

A. That depends on the type of boat, whether she is a straight cruising boat or whether she is an express cruiser.

Q. These vessels don't ordinarily have a separate engineroom, do they?

A. In some of them, yes.

Q. What sort of engineroom would they have, where would the engine be placed in an auxiliary vessel such as you handled down there?

A. Such as I handled there they wouldn't. The auxiliary wouldn't have a separate engineroom, no; I thought you were speaking of power vessels.

Q. Where, on these auxiliary types, would the engines be placed?

A. Well, in some they are placed amidships or slightly aft that.

Q. Or in the cockpit?

A. In other cases under the flush-deck aft.

Q. Usually in the cockpit?

A. In the smaller auxiliaries, yes.

Q. You say sometimes in a separate compartment?

A. Merely separated from the balance of the hull.

Q. What sort of a compartment would that be?

A. A compartment large enough to take the motor but not large enough for a man to walk around on; you couldn't do if on a 40-foot boat.

Q. In that type of vessel where would the gasoline tanks be placed?

A. Usually in the wings.

Q. By "wings" you mean either side of the motor?

A. Yes, or under the main deck.

Q. What sort of gasoline tanks do you use in vessels of that type?

A. Usually they are constructed of tin-lined copper or leaded steel, and occasionally tanks similar to these as in the Seminole, but not as large, of course.

Q. How large a tank capacity does the ordinary 40-ft. auxiliary cruiser have?

A. Fifty to sixty gallon, depending on what the boat is to be used for.

Q. In other words, that would be about a little over ten per cent. of capacity of one of the tanks of the Seminole, is that right?

A. Yes; that entirely depends on whether the boat is to be used for coastal work, inland navigation or whether she intends to go on long cruises where she is unable to get gasoline; in that case we put in larger tanks.

Q. The conditions with respect to piping and ventilation would be quite different in that 40-foot auxiliary cruiser from what they were in the Seminole?

A. It would be considerably harder to ventilate such compartment, which is just as important—

Q. You recognize that ventilation of a gasoline boat is highly important, do you?

A. I consider it is one of the important factors in installations of the motors.

Q. May I ask your age, Mr. Munroe?

A. I am thirty-six; I will be thirty-seven next month.

Q. When you say that you worked with your father in his yard, will you tell us just what you did?

A. I did everything that I was asked to do, from carpenter work to rigging, piping and plumbing, and tinsmith work; anything that had to be done, I had to do it.

Q. How many employees did you have in that yard?

A. The maximum at times was six to eight men.

Q. You were one of them?

A. I was one of them, but I never got paid for it.

Q. You spoke of your connection with Mr. Herreshoff; will you tell us just what the nature of that was?

A. I was with Mr. Herreshoff as what would be termed an apprentice. Mr. Herreshoff and my father were very old friends, and Mr. Herreshoff lived with us here in Miami for a matter of eight or ten years.

Q. That is the winters?

A. He spent his winters here, and in the summer I used to spend a month to six weeks with him at the yard in Bristol, Rhode Island.

Q. What would you do up there?

A. I wasn't working or doing any of the actual labor, but I was with him on all of his inspection tours and conversed with him about the type of construction or whatever was being done in the yard; I was offered a job with him, with the yard, as a draftsman that could go from the drafting room to the actual construction. They had no one there that could do that, and I was asked to stay there, but due to my father's health I was unable to accept the offer.

Q. How many summers were you there?

A. I don't recall.

Q. More than one?

A. Yes, I was there five or six summers at least.

Q. You say you had an offer to go into the drafting room?

A. I was asked to go into the drafting room, yes.

Q. You had no experience in drawing, I take it?

A. Only on the work that I had done for my father and for Mr. Herreshoff down here.

Q. You would have had to go into the drafting room and work your way up?

A. I presume that was the intention; they wanted someone who had some structural knowledge, who had a knowledge of drawing as well as construction, and that is more than you find in the ordinary draftsman.

Q. Mr. Herreshoff was a constructor of sail vessels, wasn't he?

A. Not entirely.

Q. That principally was what he did, wasn't it?

A. In the later years, yes.

Q. What do you mean by "later years"?

A. The last ten or fifteen years of his life. He constructed both power and sail; in the early years he was in steam.

Q. It was during the last years that you had experience with him, I take it?

A. That is right.

Q. What sort of vessels have you designed?

A. Principally auxiliary sailing vessels or cruising vessels.

Q. What types?

A. Just what do you mean by "type"?

Q. You say you designed auxiliary sailing vessels; I want to know what they are like.

A. Some were centerboard boats, and some were keel boats, some ketch rigs and some schooner rigs.

Q. How big were they?

A. 60 and 65 feet.

Q. You have no qualifications for designing other than practical experience, the experience that you testified about?

A. I consider that quite a big asset.

Q. You say you didn't go into the drafting room at Herreshoffs; did you ever serve time in a drafting room anywhere?

A. I have never served time in any drafting room except my own.

Q. You say that you are called on for insurance surveys by two other companies which have interests here in Miami, is that right?

A. Yes.

Q. How many such surveys did you make in the past year?

A. I am not sure just how many, about a dozen maybe.

Q. For what period of time have you been averaging as many surveys as that?

A. Well, I have been surveying for one company for three years and for another one about two years, or more. I have forgotten just when I did start. The first survey I did I know was in 1929 or 1930.

Q. Were these surveys that you made for them principally damage surveys?

A. No, they were new policies.

Q. What rules do you recognize as standard practice in making a survey of a vessel for insurance purposes?

A. I don't know that I observe any particular rules.

Q. I didn't ask you what you observed; I asked you what rules you regarded as standard?

A. I don't consider any of them standard.

Q. Then you make your own rules?

A. I apply my observations to the conditions of the vessel and the type of vessel; I don't think you can apply a rigid set of rules to all vessels under all conditions.

Q. You know that there are many sets of rules that have been made up to deal with such conditions, do you not?

A. Yes, I know of the existence of them.

Q. Do you consider that all these insurance companies expect of you, when you examine a vessel, that you should use your own experience?

A. They must, because all I send to the insurance company office is a detailed report of what I find on a boat, and with recommendations as to any change in the ventilation, and if they don't care to accept the boat as she is, then they write me and ask that certain changes be made before the policy will be written. I have recommended in several cases that policies be not written on certain boats, and they accepted.

Q. You say that you are familiar with these rules of the National Fire Prevention Association?

A. I know of their existence, yes.

Q. Referring now to Libelants' Exhibits 25 and 97.

A. I know of their existence, but I don't know them word by word.

Q. Are you generally familiar with the contents of them?

A. I can't say that I am generally familiar with the entire contents of them.

Q. Do you refer to them from time to time in examining vessels?

A. I have no copy of them.

Q. You have no copy of them?

A. I have no copy of them, so I don't refer to them.

Q. You refer to no rules whatever when you examine a boat?

A. That is right. I will say one thing: that no vessel that I surveyed has had any accident aboard her.

Mr. Matteson:

I move to strike that out; it is not responsive to any question.

The Court:

I think it is subject to being stricken. The motion is granted.

Q. Isn't it a fact, Mr. Monroe, that these rules or other rules represent standards which you at least attempt to approximate?

A. I probably do approximate them, yes. Probably my ideas coincide with the rules set apart there, but I can't say that these rules can apply to all conditions, especially here in this climate.

Q. What is there different about the climate of Florida and the climate anywhere else with respect to the safety of gasoline vessels?

A. These rules are set down to accommodate vessels in a cool climate, where your enginerooms are usually closed up, with the exception of your cowl ventilator; with no ports on the side of the vessel at all. Here we have a warmer climate and gasoline vapors will evaporize much easier, and you can leave your ports open on the side of the vessel.

Q. It is true, I take it, that because of the warmer climate you do get a greater evaporation of gasoline here, is that right?

A. That is right.

Q. And evaporation of gasoline is a source of explosion on auxiliary vessels; is that correct?

A. That is correct. The more it is diluted the less chance of explosion.

Q. And the only reason you think that there is any difference is because you think there is greater opportunity to keep the windows open down here than in other places, is that right?

A. It is possible. It is possible to ventilate down here easier than in the north.

Q. Of course it is true that gasoline vapor is considerably heavier than air?

A. Yes.

Q. It is true that it tends to collect in low places of a vessel, is it not?

A. That is correct.

Q. Then if it were necessary to have bilge ventilation in one part of the country, it would be just as necessary to have bilge ventilation in another, would it not?

A. I think you could get ventilation into the bilge without necessarily having a cowl ventilator going all the way to the bilge.

Q. Do you happen to know where the Seminole was built?

A. No.

Q. Isn't it a fact that she was built in the north?

A. She may have been. I didn't examine the records to see where she was constructed. I presume she was built in the north, as she was of steel construction.

Q. If gasoline vapor tends to accumulate in low parts of a vessel, that would certainly be just as true in Florida as anywhere else, wouldn't it?

A. It would settle here just as well as it would in the north, yes.

Q. The warmer the climate the more quickly it would settle?

A. Yes.

Q. There would be a greater discrepancy between the density of gasoline vapor in warm air than gasoline vapor in cold air?

A. You are getting into testimony out of my line; I am not a chemist.

Q. It is equally true that the air that you do get into the windows, with such ventilation here, would likewise be warm air?

A. Yes, it would be warm air.

Q. It is also true, is it not, that a very small percentage of gasoline fumes mixed with air would create an explosive mixture, wouldn't it?

A. I don't know.

Q. You don't know anything about that?

A. I don't know anything about the combustibility of gasoline; I am not an expert on combustion.

Q. I find here in one of the exhibits, Exhibit 24, a statement that only three per cent. of gasoline fumes mixed with air, makes a mixture that might be explosive. Do you agree or disagree with that statement?

A. I am not in a position to make any statement concerning that at all.

Q. You do not question the accuracy of that?

A. I don't question the accuracy of it; he probably studied it; I haven't.

Q. Now you agree that it would have been possible to drain all the gasoline from the tanks of the Seminole, do you not?

A. That is correct.

Q. You agree that there was a V-shape angle in the bottom of these tanks around the concave bottoms, all around, where whatever liquid was in the tank would remain continuously?

A. That is correct.

Q. You agree that in any gasoline tank you get a certain amount of water due to condensation or other causes?

A. That all depends on the size of your vent pipes.

Q. Now, Mr. Monroe, you were explaining to us this morning how the size of vent pipes affect the amount of condensation in the gasoline tank. I didn't quite follow you on that. You say that there is expansion or contraction of the liquid in the tank due to change in temperature?

A. No, not in the liquid.

Q. What is the expansion?

A. It is the air that is in the tank; a full tank will not breathe, so to speak; it will not breathe through a vent pipe, though an empty tank will.

Q. You say that if you have a smaller pipe for a vent you won't get as much condensation?

A. No, because she don't get the volume of air. It would be a slower process and you will have more chance for the air to condense on the way as it goes in and runs back out again.

Q. The area of a small pipe is less than the area of a big pipe?

A. That is correct.

Q. So you really have more condensation surface in the larger pipe?

A. You would.

Q. As far as the amount of air that goes in or out of a tank, due to contraction or expansion, the amount of air would be exactly the same, whether you had a large pipe or a small pipe, wouldn't it?

A. It depends on how long a period, and the difference between pressure between the outside and inside of the tank.

Q. You don't have any idea that a vent pipe half inch in size would restrict the ingress or egress of air from a tank such as a five-hundred gallon tank on the Seminole, do you?

A. These were two thousand—

Q. I am talking about one tank.

A. It would restrict it to a certain extent; it would slow up the flow.

Q. You think a half-inch pipe would slow up the flow?

A. It would slow up the flow of air going in and out of that tank.

Q. A half inch hole is a big hole?

A. Yes.

Q. For air; is that true?

A. It is sufficiently large enough for some uses, for that vent pipe.

Q. Is this contraction or expansion a slow or quick process?

A. Well, it is a slow process.

Q. It would be very, very gradually slow, wouldn't it?

A. It might occur over a matter of several hours, yes.

Q. So that the movement of air in or out of a vent pipe to accommodate contraction or expansion would be very slow at best, wouldn't it?

A. Yes.

Q. Do you really think that under these circumstances it would be slowed up to any extent by the diameter of a half-inch pipe?

A. Yes, indeed; a little more than a two-inch pipe.

Q. Whatever air went in would be the same air, whether it was a small pipe or a big pipe, wouldn't it?

A. Yes, it would be the same air after it got in there.

Q. If it was moist air in one pipe it would be moist air in another pipe?

A. I still don't believe that the same amount of moist air will go through a small pipe as will go through a large one, even in the same length of time.

Q. How much flow of air per minute do you think would be necessary to accommodate a half-inch vent pipe on the Seminole to take care of the contraction on expansion which might take place there?

A. I don't know; I haven't attempted to figure it up.

Q. Don't you think that a half-inch pipe would take care of a complete change of air in a tank such as on the Seminole gas tank, in five minutes?

A. No, sir.

Q. Now with respect to the drip pans under the four tanks; I think you called them drip pans, did you not?

A. I think that is correct.

Q. What did these drip pans rest on?

A. They rested on angle supports and also the walls primarily, and the walls of the bulkheads.

Q. The angle iron supports were attached to what?

A. Partly to the bulkhead and partly to the stanchion underneath.

Q. You say that the angle supports were fastened to the bulkhead?

A. I believe they were partly to the bulkhead and partly to these longitudinal angles running at the bottom of the bulkhead.

Q. How were they fastened to the bulkheads?

A. I didn't observe close enough to see whether they were riveted or bolted.

Q. Do you see any fastenings in this picture—I show you Exhibit 9—between the angle supports and the gas tanks and the bulkhead?

A. I can't determine any in that photograph, no; there are several rivet heads and bolt heads showing there, but I don't know where they go.

Q. Can you say positively whether or not these angle iron supports to the tanks were fastened in any way to the bulkheads?

A. They were indirectly fastened to the bulkhead, but apparently were fastened to the angle that runs horizontally along the bulkhead, and the bulkhead was also fastened.

Q. I don't understand what you mean.

A. I mean that the supports were fastened to the angle iron.

Q. You mean at the bottom of the—

A. No, the longitudinal stringer across the bulkhead at the bottom of the tank.

Q. You mean they were riveted to the bulkhead; you mean to the bulkhead itself?

A. The bulkhead was also fastened to that angle.

Q. Now, you are talking about the foundation?

A. I am talking about the foundation of the tanks; the trays.

Q. Right down at the bottom of the ship.

A. Below the bottom of the ship.

Q. Close to the bottom?

A. The trays that the tanks sat in.

Q. I am talking about the angle supports.

A. Angle iron supports to what? I guess I am talking about one thing and you are talking about another thing.

Q. I will try to clear it up. The trays rested on angle irons which ran fore and aft?

A. That is correct.

Q. What spacing was there between them; have you any idea?

A. I don't know; I didn't measure it.

Q. About a foot?

A. It might have been.

Q. Those fore and aft pieces that were directly under the trays were supported by something to keep them off the bottom of the ship?

A. That is correct.

Q. What were they supported by?

A. They were supported by the framework that held the bulkhead on the after side.

Q. They were supported by vertical angles, were they not?

A. Vertical angles, and also the longitudinal angles that ran athwartships of the vessel to the back, and the bulkhead which was the forward end of the engine-room; the forward end of the tank compartment didn't go down to the floor; it only went as far as the main floor.

Q. These vertical angles went down to the bottom of the ship?

A. Yes.

Q. How did they fasten there?

A. I didn't examine them close enough to find out; I assume they fastened to the frame.

Q. You say they also fastened to another angle; is that what you say?

A. There was another angle crossing the bulkhead.

Q. Is that on the interior of the tank compartment?

A. Directly under the tank compartment, on the compartment side; it doesn't show in the engine-room.

Q. Was that angle fastened to the engine-room bulkhead?

A. I believe it was.

Q. I show you this exhibit, Libelants' Exhibit 9, and ask you to show me where these fastenings come there on the engineroom side.

A. I can't say just where; I don't know whether I can show you or not. I see here a row of rivets running horizontally across there, and here is a row of rivets here (indicating).

Q. These (pointing) are below the bottom of the opening that went under the tank compartment?

A. I see the hole now, but I didn't see it at first. The rivets are up in here (indicating), and there may have been rivets in back of this thing before this stiffner was put in here.

Q. Can you show us that angle in any of the photographs which are exhibits in this case?

A. I haven't looked for it; I don't know whether it would be possible to find it or not.

Q. Can you show us that angle in any of these three exhibits introduced this morning, referring to exhibits 5-J, 5-K and 5-L; just look down in the tank compartment there (pointing).

A. Yes, they are all above the trays—I can't see under the trays.

Q. I take it that you did not actually observe that they were so fastened?

A. I know that the trays were fastened to the framework there in places, but I didn't measure them.

Q. I am not speaking of the trays fastened to the framework; I am speaking of the structure under the trays.

A. I didn't examine it closely.

Q. So you can't tell us definitely whether they were attached to any angle on the forward and after bulkheads or not?

A. No, I couldn't say.

Q. Now, getting to the trays; did I understand you to say that they were fastened or simply laid in?

A. They appear to have a fastening; the vertical side of the tray appears to be fastened to the bulkhead; I don't know whether it is fastened to the bulkhead or whether it is just put in there to keep the tray in position in the compartment; I couldn't tell you.

Q. You can't call our attention to any of this spacing in these exhibits here?

A. No, because—well, in this photograph here, Exhibit number 9, this is on the outside of the engineroom side of the bulkhead, and underneath you couldn't see that one.

Q. Naturally that fastening didn't come over?

A. I don't know whether that came through the frame or one of these angles down here (pointing).

Q. Such frames as there are on the engine-room side?

A. That is correct, the vertical frame.

Q. So any fastenings to these frames should appear on the engineroom side?

A. They might have used the same hole of the bolt, right through the bolt, and then into the frame, the vertical frame, and not be shown as a separate rivet.

Q. The bolts are riveted together?

A. They are in that place (pointing).

Q. Where do you see any bolts in the removable plate?

A. Of course the removable plate had bolts in it.

Q. Of course that was in the center of the bulkhead?

A. Yes. There are a few bolts in them; not all rivets. As I recall, there were occasional bolts along there (indicating); and there were bolts over here (indicating), I think; I wouldn't be sure about that. I remember seeing bolts there.

Q. What was the size of these angles that form the supporting forms for the tanks?

A. I didn't measure them; I didn't think it was necessary to note those.

Q. Would it be about an inch and a half on this side of the angle (indicating)?

A. Roughly, I will say they were an inch and a half or an inch and three-quarters; those that I remember seeing underneath there.

Q. So that this platform that was built up with these angles was supported simply where the bottom of the vertical angles were made fast to the stringers of the ship's walls, is that right?

A. Yes.

Q. And possibly with a few fastenings to the bulkhead itself; is that correct?

A. That is my impression of it.

Q. As far as fastening to the bulkhead, that is only possible?

A. I didn't examine the supports of these trays; I didn't think it was necessary, so I didn't examine them carefully.

Q. In other words, the tanks were not supported on any part of the frames of the vessel itself; the platform was a separate structure built in there for that purpose, is that right?

A. As I gather it, that point was supported from the frames underneath the main frames of the vessel, or stringers, and what was down underneath that mud I don't know.

Q. I mean of course at the bottom where they were fastened to the stringers; that was the only place they were fastened; in other words, they were not resting on any part of the original structure of the ship; it was a specially built platform in there for that, is that right?

A. That is the way I see it, without a detailed examination.

Q. This one that appears in the doorway here has been bent over and closed; do you recall that?

A. I recall that, yes.

Q. How do you account for that?

A. I don't account for it; I don't know how it happened; I have no theory on that at all.

Q. Now this photograph here, exhibit 5-J; is that just the way it looked when you first saw it?

A. That is just the way it looked when I first saw it; there was nothing disturbed.

Q. Nothing removed from that space?

A. Nothing removed or disturbed.

Q. Now this photograph, exhibit 5-L, shows the vertical stanchion—I believe that is what you called it—between No. 1 and No. 2 tanks.

A. That is correct.

Q. And there was a stanchion such as that between No. 1 and No. 2 tanks also between number 2 and 3 tanks and between No. 3 and 4 tanks; is that right?

A. I assume that, because this one is the only one that was projecting above the ash at all; after we cleaned out the ash between tanks 3 and 4, a piece of such stanchion was still visible; the top of it had been burned off; I didn't clean out between No. 2 and 3 tanks.

Q. As I understand it, these braces were inserted between number 1 and number 2 and between No. 2 and No. 3 and between No. 3 and No. 4 tanks?

A. That is right.

Q. In this photograph, exhibit 5-J, there was no similar stanchion on the port side of No. 1 tank.

A. There was no remains showing there, if there was one in there; if there was one there I didn't see any signs of the remains of any; it might have been there; that was all open and could have been easily consumed in the fire.

Q. Then these stanchions and the bases between them were largely separators for these three sets of tanks; is that right?

A. They were separators.

Q. And the ones that were braced on the port side of the ship could move in unionism between or toward the port side, if there was any?

A. Yes, it could be done, but I don't know how they were tied at the top; if they were tied together at the top as they were at the bottom I believe the three stanchions would hold the four tanks.

Q. Was there any spreader between the number 4 tank and the starboard side of the compartment?

A. I found no remains of any.

Q. You called our attention here to the remains of one of these upright stanchions in this Exhibit 5-L. Did you observe how that stanchion was fastened in place?

A. You mean at the bottom?

Q. Anywhere.

A. I didn't examine the bottom of that stanchion at all. I didn't check into the edges.

Q. Did you on any other stanchion?

A. No, sir.

Q. Where the number 4 tank was removed, the upright stanchions were clearly visible?

A. The heels of them were, yes.

Q. Isn't it true that they were mortised into the four by four frames that were under the trays?

A. They may have been; I don't know.

Q. You observed no other means of the fastening of these stanchions in place?

A. No. There is an indication of a beam being gone from the top of the tank compartment, but that is only a theory—an indication of a beam having been there.

Q. What kind of a beam?

A. Judging from the size of the opening, the starboard end, I would say it was a V-beam or a T-beam—a metal beam.

Q. Do you refer to this opening shown in Libelants' Exhibit 6?

A. That is correct; that is the opening I am speaking of.

Mr. Matteson:

I think we called attention to that at the examination, your Honor.

Q. Shall we mark this "opening for beam"?

A. Yes, opening for beam.

Q. That apparently is an opening in the side of the compartment that was used for gasoline tanks; that was an area intended to accommodate a beam?

A. That is my assumption.

Q. Did you observe whether or not there was any place where such a beam could have been fastened in place at its ends?

A. On the forward end I think the main frame of the vessel, the intermediate frame of the vessel, was slightly bent; there was one about that position where the bottom of the angle occurs.

Q. That is on the port side?

A. On the port side, and a like one on the starboard side.

Q. Do you think it would have fastened to one of the uprights along the side of the ship?

A. The intermediate frames, yes.

Q. If that was the case, how would it have been fastened to such a frame?

A. Either bolted or riveted, either one; the beam has been torn loose and the end of the frame is all distorted—the holes in the end of the frame.

Q. Would there be a bracket to support a beam at that point?

A. You mean a gusset?

Q. Gusset or bracket.

A. There might have and there might not have, depending on whether it was structurally necessary. We don't put gussets on every beam.

Q. You mean you don't put a gusset on every beam on a steel vessel?

A. It is not absolutely necessary, depending on what the above is above it.

Q. Such gussets are put there for rigidity or strength?

A. That is correct; you might put them on every other one but not every one.

Q. There is no evidence of there having been any other beam than this beam that you speak of at that height of the vessel?

A. I don't recall seeing any gussets on the frame that you are speaking of.

Q. Or any other beam?

A. That is right.

Q. Referring to Libelants' Exhibit 6 again, what was in the top of the bulkheads of the tank compartment; can you tell us; what was there to stiffen it at the top?

A. I couldn't tell you; I never saw it before the fire.

Q. There certainly wasn't any steel angle across the top?

A. There might have been.

Q. If there had been such an angle it would have been riveted there in part of the structure?

A. The plates would have been fastened to it probably.

Q. How do you account for such an angle not being here at the time this picture was taken, or at the present time, if it was there at the time of the fire?

A. When that entire steel hatch was taken off the engineroom it was probably moved out; I don't know how that was taken off.

Q. Did you observe the end of the steel hatch to see whether there was any evidence of a fastening here (pointing)?

A. It is impossible to see the inside of that steel hatch in its present position.

Q. There is no angle in the top of the forward bulkhead there, is there?

A. No.

Q. And that opening was attached to the steel hatch?

A. I don't know; it may have been.

Q. As a matter of fact you see no evidence that there ever was a steel angle bracer at the top of these bulkheads?

A. There were bolts or rivet holes in the top of these plates or bulkheads, indicating that something was up there; that something "steel" was up there.

Q. As a matter of fact isn't there just as much indication that there was a wooden beam across there as there is that it was a steel beam?

A. There might have been wood across there; there are remains of wood screws in places.

Q. At the top of the—

A. Yes.

Q. And a number of holes?

A. Yes. There could have been wood pushed in there instead of a metal beam.

Q. How about the after bulkhead of the engineroom?

A. Similar condition.

Q. There was no angle across the top of that, was there?

A. Not as it is now.

Q. And the holes that were found at the top of the bulkhead contained wood screws?

A. I saw some in there, yes. There may have been a wood filler in there with a steel beam behind it. She had a wooden deck.

Q. Now what was there then about the bulkheads on the tank compartment to give horizontal rigidity; I mean fore and aft?

A. I don't know; there was nothing left to determine that from; certainly there must have been something there, as it didn't hang there by itself.

Q. Of course it would stand in place with its vertical stiffness, wouldn't it?

A. To a certain extent.

Q. It would stay in place?

A. Yes, it would stay in place.

Q. If it had no horizontal stiffening there would be nothing to prevent its weaving if there was any pressure turned against it?

A. It is logical that a beam was there, so—

Q. I am just assuming from the testimony that there wasn't. If there wasn't, there would be nothing to prevent it from weaving in that manner, would there?

Mr. Underwood:

Prevent what from weaving?

Mr. Matteson:

The forward and after bulkheads.

A. No, nothing as far as we can tell now.

Q. A wooden beam across there would certainly not be as satisfactory for the purpose of insuring rigidity as a steel angle, would it?

A. Maybe not quite but if it was heavy enough it would answer the same purpose.

Q. If there was any tendency for these bulkheads to weave fore and aft by the vibration of the movement of the vessel, that of course would put a strain on all of the fittings attached to the tanks?

A. Not if the tanks didn't move.

Q. If the bulkheads moved the tanks would be likely to move?

A. Not necessarily; they could move quite a little bit without touching the tanks.

Q. Did you measure the width of the tank compartment from forward to aft?

A. I believe I did.

Q. In doing that did you allow for the distortion caused by the explosion and fire?

A. I took it to the ends where the bulkheads were not distorted.

Q. You agree that that was 43 inches?

A. I believe that that is right; it was about 43 or 44 inches. I don't recall my exact measurement right now.

Q. If the tanks themselves were 42 inches in diameter, as I think you measured them, there would be a space between the side of the tanks and the forward and aft bulkheads not over one-half to one inch?

A. There was more space than that.

Q. I am only asking you as a matter of mathematics?

A. I know, but there is something wrong with that measurement, with your measurement. I do know that there is more space than that between the bulkheads, because there is space enough between the side of the tanks and the bulkheads to put my hands down between them.

Q. Just where was that space; I mean was it in the bulkheads?

A. In the bulkheads, the forward and top bulkhead and the next one. The number 4 tank compartment is the only one I dumped the ashes out through that space.

Q. As a matter of fact, in the space left after you removed the number 4 tank, where the tray underneath it was visible, there was a space of not over one to two inches between the end of the tray and the starboard bulkhead; is that the way you observed it?

A. Yes.

Q. Isn't it a fact that forward and aft the tray came up practically to the bulkheads and there was hardly no space?

A. There was space enough there for me to put my hand down there; it was one to one and a half inches.

Q. Are you sure that wasn't due to distortion?

A. It couldn't be distorted; it was all too rigid there.

Q. What was too rigid?

A. The tray and the framework around the bulkhead.

Q. Of course the bulkhead might have been distorted?

A. It showed no signs of distortion; the sides of the trays and the bulkheads were parallel.

Q. You say now that there was space enough for you to get your hand between the tray and the bulkhead. How much space did you say that was?

A. Full inch to an inch and a half.

Q. Did you also say that the trays were fastened to the bulkheads?

A. I believe the trays were fastened to the bulkhead plating; just how I don't know, but there was a spacer in there.

Q. At least they were not fastened close against it?

A. They may have been fastened, and there may have been only a spacer to keep the tray from moving around in the compartment.

Q. How about on the forward bulkhead?

A. The same thing.

Q. Any spacers there that you saw?

A. There were spacers in there.

Q. Did you see them or—

A. I saw them there.

Q. Now referring to the tanks themselves; you observed that the tanks were steel tanks and that there was no evidence of caulking them, did you not?

A. There was no evidence on the outside that I could see of caulking.

Q. Of course at least on the bottom of the tank, the only place that the tank could have been caulked would have been on the outside; is that correct?

A. I think that was covered with solder.

Q. And there was no caulking along the sides?

A. Not that I could determine.

Q. Do you know any rule about the spacing of rivets, as to how closely they may be spaced, as a minimum with respect to the diameters of the holes?

A. There is a rule, yes, but I don't have it memorized.

Q. How many diameters of your holes do you have to leave between holes in order to leave sufficient metal to have the proper strength?

A. I don't carry that in my mind; I refer to a manual when I need that; I very seldom use such a thing.

Q. Isn't it a fact that the holes must be spaced not nearer than four diameters?

A. I don't know.

Q. I take it that you do not have much call for information with respect to riveting in your angle of the profession, is that right?

A. Very seldom, yes.

Q. You spoke this morning of the rivets being spaced one-inch to one-and one-sixteenth apart, and you estimated the holes to be a half inch or so in diameter; is that right?

A. They are not over half inch; they are a little under.

Q. That would be spacing, if that were true, of approximately two diameters?

A. That would be two diameters, yes; center to center.

Q. Center to center is what I am talking about.

A. All right.

Q. As a matter of fact you are not sure what the size of the shanks of the rivets or the holes they pass through might have been?

A. You can tell that by drilling one of them out.

Q. As a matter of fact, Mr. Munroe, one familiar with riveting could determine that from an inspection of the heads?

A. There is a standard size head for the shank of certain rivets, yes.

Q. You don't know what that is?

A. No; when I need that I refer to a manual.

Q. Have you had any experience in the making of cylindrical tanks?

A. Not of that size, nor of riveted tanks.

Q. You have had no experience in that?

A. No, I never made one.

Q. As a matter of fact you would not, even with your experience, rely on a tank that was merely riveted to retain gasoline or any other liquid, would you?

A. If that tank was made for it I would rely on it, yes.

Q. Did you ever hear of a tank that was made for such a purpose without being either caulked or welded?

A. I know that there have been numerous occasions where tanks of that type, although smaller, have been used for gasoline, but whether they were caulked or not, if they were galvanized by a manufacturer, I rely on them.

Q. As a matter of fact you would not trust a plate on the side of a ship that was riveted unless it was caulked, would you?

A. No.

Q. And so much less would you trust a tank for the retention of gasoline that had been riveted but not caulked?

A. The side of a vessel gets a great deal more strain on it than these gasoline tanks ever get on them, more constant jarring and straining.

Q. Caulking is not a matter of strength, but caulking is a matter of tightness, is it not?

A. That is true, but you have to rely on the caulking where you have a variable strain on your plating.

Q. Would you recommend under any circumstances a cylindrical tank that had been riveted but not caulked or welded for gasoline?

A. I would test it first before I would put it in there, but I would rely on it without it being soldered or knowing whether it was caulked or not.

Q. What sort of a test would you make?

A. I would put a hydrostatic test on it, or even an air test. I would test any tank before I put it in a boat; and it is easier done by air pressure.

Q. Is there any difference between gasoline and water as to permeability or penetrating quality?

A. Yes.

Q. What is the difference?

A. I don't know the exact difference, but there is a difference in the viscosity of liquids.

Q. In other words, it is a well known fact, isn't it, that gasoline has a considerable greater penetrating quality than water?

A. That is right.

Q. It also has a cutting quality; in other words, it will cut through rust or other materials that might accumulate?

A. It might on certain materials.

Q. As a matter of fact, Mr. Munroe, you use gasoline sometimes for freeing pistons as they rust in places?

A. I wouldn't use gasoline.

Q. Or some similar oil?

A. I would use a light oil but not gasoline.

Q. That illustrates the principle?

A. That illustrates the principle, yes.

Q. Well now I will put it this way: when you make a hydrostatic test you test the strength of a tank, do you not?

A. I do.

Q. Do you make the hydrostatic test with water?

A. That is right.

Q. And water doesn't have the same degree of penetration effect than gasoline or light oil would?

A. Not at the same pressure, no.

Q. In other words, a hydrostatic test is principally a strength test, is that correct?

A. Yes, that is correct. It is for strength or for any small leaks; if there are any small leaks it will show up along the seams of whatever you are testing. You can test it and if the metal was porous it would force the liquid through the metal if it was porous in any place.

Q. I understood you to say that you would not trust a tank that had been riveted and not welded or caulked, unless you were satisfied by some proper test that it was also gas-tight?

A. That is only natural. You are not going to install a tank in a compartment and then go in there and find that it leaks and then take it out again. Even a caulked tank might leak if it wasn't properly caulked.

Q. Caulking is the ordinary precaution to take to make a tank tight?

A. If it is going to be put under any great pressure, but under low pressure such as this it wasn't necessary.

Q. As I understand it, you said you observed evidence of solder on this tank before it was taken out of the Seminole; is that right?

A. Yes, that is right.

Q. Did I understand you to say that there was evidence of solder around any of the rivets?

A. There was on the lower line of rivets on the bottom; there is an indication of solder on them.

Q. On the outside of the tank?

A. It is pronounced on the inside of the tank, but due to the flaking or rust on the outside of the tank a majority of it has been removed, removed by the flaking and that rust.

Q. And this occurred, as I understand it, since last May when you first observed it?

A. This was observed since last May. Of course there was some flaking on there when the tank first came out of the compartment. I knocked it off in getting down to the clean rivet and clean seam, so that I would be able to examine it and not have the examination made through rust.

Q. Then there was an accumulation of rust under the solder which caused it to flake off; is that correct?

A. That is correct, but that only occurred since the fire.

Q. That is your assumption.

A. (No audible answer.)

Q. In any event, whenever it happened, that is something that will account for the removal of the solder if rust does get underneath it; is that correct?

A. Solder will flake off if it is on top of rust; it only penetrates as far as rust and only makes contact with the rust.

Q. And that can occur after the solder had been applied, of course?

A. Yes; after the solder is applied and worked down to the sides.

Q. How is solder applied, do you know?

A. Solder is applied by the use of an acid flux and a soldering iron; it is sometimes done with an open flame. The flux is put on to clean the metal up and make it perfect between the two metals.

Q. Of course solder on the outside of the tank would not protect the tank from inside corrosion?

A. No, it wouldn't.

Q. The best it could do would be to offer a support at the extreme outer edge, is that correct?

A. It acts as a support on the outside, yes.

Q. And if any rust gets under the solder and flakes off, it doesn't even do that, does it?

A. No, not if it is rusted.

Q. And the quality of iron is such that it is subject to rust?

A. It varies with the type of steel, whether it is steel or iron.

Q. Now take this bottom seam, you see that there is a sort of crack, I will call it, or notch, where the bottom of the tank didn't come down quite so far as the side of the tank; is that correct?

A. That is correct.

Q. And that notch, according to your observation, had been filled up with solder?

A. It was.

Q. To begin with, there is no question but that it had never been welded, is that correct?

A. I don't know.

Q. You didn't see any evidence of welding on it?

A. I didn't remove any of the solder to determine that.

Q. Would you have been able to see it without the removal of the solder?

A. I assume that there was no welding there.

Q. You think that crack or notch had been filled up with solder?

A. I believe it was entirely filled up with solder; wherever I saw it, it was; there were one or two small places where the notch wasn't completely filled and smooth.

Q. Of course it would have been impossible to put solder or anything else on the sides of these tanks while

they were in place in the compartment, with the bulkhead in place?

A. No, you couldn't put the solder in there; you would have to turn the tank on its side or end and solder the bottom of it.

Q. You would have to take it out in order to work on it?

A. The tanks would have to be out of there in order to solder them.

Q. If this bottom piece was soldered, as I understand it, the tank stood up in place on a wooden base in the tank compartment?

A. That is correct.

Q. So that it was resting on the edge where this solder had been applied; right?

A. That is right.

Q. And it was resting on wood, wasn't it?

A. On wood.

Q. And I suppose it would have a tendency to cut somewhat into the wood?

A. It would have a tendency to compress the wood.

Q. What effect would that have on the solder after it was applied to the bottom of the tank?

A. No effect at all.

Q. It would place a strain on it?

A. It would have a tendency to force the solder up into the wood at that angle.

Q. Whatever the effect, Mr. Munroe, it would have had the effect of placing a strain on the solder, wouldn't it have?

A. The solder would bear some weight, but I wouldn't say it was anymore strain—not as much strain as metal itself; not a damaging strain anyway.

Q. All around this bottom edge where you thought the solder had been applied there were places where there was no solder present at the time you observed it?

A. There was no solder at all. There was solder there, but it was not filled up as full as the other parts of the rim or the edge.

Q. When we were there the other day there were spaces where there was at that time no evidence of solder at all?

A. No more than what I have spoken of.

The Reporter:

May we have a recess.

The Court:

Yes. We will take a five-minute recess.

(Recess.)

(By Mr. Matteson):

Q. We were speaking a moment ago about the subject of interior corrosion. What causes interior corrosion of a tank?

A. Due to the moisture from the chemicals that are in the fluid contained in the tank.

Q. And gasoline has such a fluid, does it?

A. I believe the present gasoline contains considerable acid that is not entirely washed out.

Q. And any moisture or water accumulated in the tank of the type of the Seminole would accumulate in that crease around the bottom?

A. It would accumulate there, yes.

Q. And the effect of such water or acids from gasoline would be to corrode metal?

A. Yes, it would work faster in the presence of air and oxygen.

Q. There is always a certain amount of air in water?

A. A certain amount, yes; and a small amount of oxygen.

Q. You have experienced very considerable tank corrosion in tanks containing water only—steel tanks?

A. Yes.

Q. You spoke of steel or iron with respect to the effect of corrosion, I think. What is the difference between steel and iron in that respect?

A. Pure iron doesn't rust or corrode except in a fine powder. Steel, when it oxidizes, builds up a flaking, but not necessarily does it remove a great deal more of the original metal. It has a swelling tendency in steel.

Q. When you speak of pure-iron do you mean cast iron?

A. No, I am speaking of pure wrought-iron.

Q. There is a difference between cast iron and steel?

A. There is.

Q. With respect to corrosion?

A. Yes; cast iron varies, too.

Q. Which is more subject to corrosion, cast iron or steel?

A. Steel.

Q. When steel corrodes it is subject to what is called pitting, is it not?

A. That is correct.

Q. In other words, instead of corroding evenly it corrodes in holes or pits, is that true?

A. It will in some places more than others, and that is true of any rolled metal.

Q. You didn't make any test of any of these other tanks, did you?

A. No, sir.

Q. Did you move number 1 tank in the course of this investigation you made in May?

A. No, sir.

Q. The reason that I ask that is because these photographs which you have shown here, for instance Exhibit 5-K, show the number 1 tank displaced to starboard, which I estimate is about six inches; is that about right?

A. I would say that it is around five or six inches; that is hard to determine; five inches maybe.

Q. I show you this photograph, Libelants' Exhibit 4. That shows the opening for the number 1 tank with the valve in place, doesn't it?

A. Yes. I don't know whether that is the number 1 tank or not.

Q. I believe the testimony indicates that it is. If that were the fact, that the fixture shown in the opening in Libelants' Exhibit 4 is the number 1 tank, the number 1 tank must have been practically in place at the time that picture was taken, wasn't it?

A. I believe that that is the number 2 tank.

Q. That as it may, if the statement I just made is true, then the number 1 tank must have been substantially displaced at that time?

A. That tank as shown in that photograph is approximately from the center of the hull; it is merely tipped to one side. I think you will find that to be the number 2 tank.

Q. We will take that up later. In any event, you are sure that you didn't move number 1 tank at that time?

A. I am sure that I didn't touch number 1 tank at all.

Q. Who was present—just a minute. Were number 2 and 3 tanks moved at that time?

A. Neither number 1 or number 2 tank was disturbed.

Q. Who was present at the time you moved number 4 tank and made these tests that you spoke of?

A. The man there at the yard that handled the derrick; I don't know who he was. I believe Mr. Newell himself was handling the—

Q. He is the man you spoke of as your assistant?

A. No, sir. I hired Mr. Newell to take the tank out, and that was all. He had to handle the derrick; that wasn't my job to handle the derrick.

Q. What date was this done?

A. I don't recall the exact date.

Q. Do you recall the day of the week?

A. I believe it was Monday or Tuesday. We started to do it on Saturday but it rained and I couldn't get anything done, couldn't get the boat pumped out; so I think it was Monday or Tuesday that the work was done—it was either Monday or Tuesday that the work was done.

Q. That was after the Court had adjourned at the last session on Friday?

A. Yes, sir.

Q. You began your operation on Saturday and completed it on Monday or Tuesday; is that correct?

A. That is correct.

Q. Was Mr. Thompson present?

A. Mr. Thompson? No, sir. You mean that gentleman, Thompson?

Q. Yes, sir.

A. No, sir.

Q. Was Captain Patten present?

A. No, sir.

Q. Was any one representing the libelants, or the respondent Pilkington, present?

A. Not to my knowledge. None of these gentlemen here, at least.

Q. Was any notice given to them, of what tests you were making?

A. Not by me. It wasn't my job.

Q. By whom were you requested to make the test?

A. Mr. Underwood.

Q. How long were you engaged in making this pressure test on the number four tank, that you described to us, altogether?

A. I believe it was the best part of an afternoon. I know we didn't get away from there until quite late; it was about dark before we left there—before I left there.

Q. Would you say, from two to six, about four hours?

A. It might have been. It took some time to fill the tank with water. I didn't keep an exact check on the time that we worked on it.

Q. And in that period you did all of these things that you have described? Made all these various tests?

A. I made them personally; yes, sir.

Q. And you spoke among other things of fixing a riser at the top of the tank and filling the tank with water to the top of the riser?

A. That's right.

Q. And it was after that, that you capped the vent hole and gave it the City pressure test; is that right?

A. Yes.

Q. How long was that, how long a period of time was that riser pipe under the pressure test?

A. I don't remember the exact length of time; it was probably twenty minutes, half an hour. I know it took some time to go all around the tank and examine everything.

Q. You put it in place and then you went around and examined the tank?

A. I examined all seams and all rivets.

Q. And that took about twenty minutes, you think?

A. Twenty minutes to half an hour, at least.

Q. The tank was in an upright position at that time; was it not?

A. It was standing on its bottom, in an upright position.

Q. And I think you said you went around it with a hammer?

A. I used a machinist's hammer; about a pound hammer, pound and a half hammer; about a pound hammer, I guess.

Q. Did you do that before you filled the tank, or afterward?

A. I did that before I filled the tank; also during the time that it was full; and every time I made a test on it for a different pressure, I sounded it with a hammer.

Q. Did you use any pressure gauges of any kind to note the pressures you were getting?

A. No pressure gauges at all.

Q. There is no pressure gauge to determine what the city water pressure was?

A. I merely inquired from one of the men that I know, in the City water department, the head of the thing, what the pressure was in that locality.

Q. Of course the pressure varies with the length of your connection from the city main, does it not?

A. Oh yes, indeed.

Q. You have the effect of pipe friction and hose friction?

A. Pipe friction and all that to contend with.

Q. Then I take it that you haven't much doubt that there was an accumulation of rust on the inside of the tank, to be knocked loose when you hammered it?

A. No, I do not assume for a minute that there was any sediment or anything on the inside of that tank.

Q. You don't know whether there was or not?

A. No; I can't tell.

Q. It would be natural, under the conditions that that tank had been subjected to for the last four years, that there was a considerable accumulation of such kind in the inside of the tank, is that not right?

A. There is a bare possibility; there is a good possibility that there might have been some scale, from those tanks sitting open as long as they have.

Q. And as a matter of fact there is good reason to believe that the tank was partially filled with water containing a certain amount of debris, at the time of the fire; isn't that true?

A. That I don't know; I don't know. Apparently there was salt water in it at that time, maybe.

Q. Under the conditions under which you made this test, of course any accumulation of debris or rust, anything there may have been in the tank, would have been on the bottom of the tank, would it not?

A. Well, they were in an upright position all the time, yes.

Q. And with this V-shape around the bottom of the tank, it would be natural for any such debris to lodge in that V-shaped formation, would it not?

A. It would be the natural place for it to lodge, yes.

Q. And applying a pressure test, the first effect of this would be to force any such material into that seam; isn't that correct?

A. You can say that it might have a tendency to force it in there, yes. You are still assuming that there is stuff in there, though. I don't know that there was. It might have been displaced from putting the water into the tank. I put that in from the bottom, it had a swirling motion, it would disturb any rust flakes or mud or dirt of any kind that was in that.

Q. Now this filler plug that cracked, the first you noticed of the crack was when you heard the crack, is that right?

A. I heard it; yes.

Q. You hadn't noticed it before that time?

A. There was no crack there prior to my turning the fitting into the threaded hole.

Q. At least not that you observed?

A. I certainly would have seen one if it was there. I examined that very closely.

Q. This connection to which you screwed the hose connection, is a strong, cast-iron connection, I think you said?

A. It is a standard reducing bushing.

Q. And that is made to stand considerable strain, isn't it? You ought to be able to screw a pipe in there as

hard as you can do it by hand, without causing any damage, oughtn't you?

A. I can take a brand new one out, and split the same way. I did that one, by setting up the fitting too tight; use a Stilson wrench; using an eighteen inch Stilson wrench on a three-quarter fitting.

Q. Well, what did you use in screwing up this connection?

A. An eighteen inch Stilson wrench.

Q. They come bigger than that?

A. Beg pardon?

Q. Stilson wrenches come much bigger than that?

A. Oh yes; come to four feet and bigger; they come smaller, too.

Q. Well the point I make is simply this; it is quite possible that there may have been at least a flaw there that wasn't readily noticeable, before you started to screw this up; isn't that true?

A. Not necessarily. There didn't have to be a flaw in that casting in order to make a crack.

Q. You didn't take the casting out of the tank, did you, to examine it?

A. No, I didn't remove it.

Q. Didn't examine it on the inside?

A. It certainly was not noticeable on the outer face, if it was there.

Q. Just where was the crack in the casting?

A. It extended from the small hole clear to the outside of the bushing, right straight across, which you would—the type of crack you would get in trying to expand a hole.

Q. Now I didn't visualize it very well. You have a small hole in the tank.

A. You have a small hole in the bushing; you have a large hole in the tank.

Q. And it was the bushing that cracked?

A. It was the bushing that cracked; not the tank.

Q. I see. Well the bushing, is that sort of a reducing connection?

A. That is a reducing bushing, yes, to reduce the hole from two inches to three quarters of an inch.

Q. In other words, it is two inches diameter on one end, and three quarters on the other; is that it?

A. Yes, sir; it looks exactly like a nut with a hole in the center of it—the thread.

Q. And that was part of the original installation of the tank?

A. That was part of the original installation of the tank. It looks just like a plug.

Q. Can you see it in this picture, for instance?

A. You can see the outer edge of it right there.

Mr. Underwood:
Referring to Exhibit Four.

Q. Is this what you have reference to?

A. That is the edge of the plug; yes, sir.

Q. (Marking on photograph.) The edge of the plug.

Mr. Underwood:
Better call it a bushing; it isn't strictly a plug.

Mr. Matteson:
No, the plug wouldn't have a hole in it.

Mr. Underwood:
It is like a plug, except the hole.

A. It is built just like a plug, threaded plug, only in the center of the plug it has another hole with a reduced size.

Mr. Botts:

I don't believe you identified that photograph by number, did you, Leonard?

Q. Referring to Libelants' Exhibit Four.

A. That is a standard bushing.

Q. Is that screwed into the tank, or riveted in?

A. Screwed into the tank. When I examined it after the crack, and heard it, I looked at it and I could distinctly see the bright metal all the way along the crack.

Q. You spoke of the difference between single riveting and double riveting, and the purposes for which single and double riveting are used. In view of what you told me about your experience in riveting, I don't take it that you consider yourself an expert on riveting.

A. I don't say that I am an expert. I have studied it.

Q. You haven't had a great deal of experience with it?

A. I haven't put it in practice a great deal.

Q. And have you—you say you have never had any experience in the construction of tanks, yourself?

A. Not of this type of tank, no.

Q. And consequently I take it you haven't had a great deal of experience in differences between punching and drilling holes for tanks?

A. Not in this particular case, no—this type.

Q. Now referring to these valves, which have been marked Exhibit Eleven: (separating valve stem) you were saying that this flaw or crack that appears in the valve part of Crane number 125, would not cause leakage of gasoline past the valve—reducer gasoline valve.

A. As far as I can tell from this valve, and the shiny part of it, the seat is below—the actual contact between the plug and the seat, is below the hole in the plug

Mr. Underwood:

Below the crack in the plug?

A. Below the crack.

Q. How do you determine that?

A. I determine it by the brightness of the metal. Apparently from this point to there, is the contact seat.

Q. As a matter of fact it is not as bright at the top as at the valve surface.

A. It is slightly—it is not as bright as it is below the crack.

Q. And where it is bright, that indicates that it has had contact with a binding surface?

A. That would indicate contact with the seat. Even if there was—even if it contacted above this point, or the point of the crack, there is still sufficient seat below the crack to keep the valve tight.

Q. Now you are referring to the area of brightness between the bottom of the valve and where the dull part begins, is that right?

A. That is right. Well I don't know that that was the seat before the fire, though—or the contact of that plug before the fire.

Q. Well the brightness would seem to indicate that.

A. The brightness indicates that that is where it touches now. That whole plug has been so badly burned from heat or distorted from heat, that there is other cracks in there as well.

Q. Well you notice that there is considerable irregularity in the plug; that it is worn off a great deal more in some spots than others; have you noticed that?

A. Yes, there seems to be some irregularity along the bottom there.

Q. That is an indication of wear, is it not?

A. No, sir; that was put there when the plug was ground into the seat; because this bottom face of this plug is not true surfaced with the seats; it is not concentric.

Q. Well the bottom surface does not touch anything when the valve is closed, does it?

A. No, it does not.

Q. That part goes into the hole?

A. That is right.

Q. This projection on the bottom of it, is just a sort of a guide, is it not?

A. I don't know what that was for.

Q. Now as you turn that around, can't you observe that it is a good deal more worn in some parts than others?

A. Now just what part do you mean? You mean this brightness on this plug?

Q. I am not talking about the brightness; I am talking about the shape of it.

A. Well the plug as a whole is a casting, and naturally it would be a little irregular, because it has not been turned in a lathe to make it perfectly round.

Q. But the valve, to be a good valve, should be machined to fit its seat?

A. This area of the face of the plug, from this point to the bottom, has been machined, or has been ground into that seat; machined first and then ground to fit that seat.

Mr. Underwood:

Would you say, indicating that portion of the plug which can possibly come in contact with the seat of the valve?

A. That's right.

Q. Now looking into the valve seat, what is it that this rounded surface of the valve fits against?

A. This—I don't know how to explain it; that shoulder down in the bottom of the valve with the slight angle on there, which is the seat—

Mr. Underwood:

Had you better look at them one at a time?

A. You can't get the light in there unless you get it just right.

Q. What is it that you call the seat?—the seat there? Can you indicate? There is a lot of area in there.

A. I can point to it, but I don't know how I can describe it for the reporter to get.

Q. Here is a pencil.

A. I have a pencil right here.

Mr. Underwood:

Just indicate it.

A. This shoulder, right where the point of my pencil is, can you see? That is the seat on which the plug rests or is forced down tight against, that is beveled; it is narrow and it is beveled, to fit that plug.

Q. How wide is that seat?

A. You mean, the face of it?

Q. Yes.

A. The face of that seat appears to be. I should say about three thirty-seconds; it is hard to tell; it is over a sixteenth; you can't measure it.

Q. The reason I asked you that was because I wasn't quite sure where it began and where it stopped. Do I understand that it begins at the edge and goes back up to this crease?

A. No, sir; it only begins on this point right there, and extends down into the hole. This ridge there is the ridge left by the tool that cut the seat square in the first place, to make a smooth surface to start grinding on.

Q. Well it would look to me as if the only thing that the valve seat would come in contact with would be practically the upper edge of what you call the seat; is that right?

A. No; it is ground to fit that entire angle—that corner of that seat; the corner from the top face here to the

inside of this circle here. It does not touch on the top, and it does not touch on the inside here; it touches on that angular face which is right across the corner. I can draw a picture of it better than I can describe it.

Q. Well that looks to me a good deal narrower than three thirty-seconds, is the thing that raises a question in my mind.

A. It might be only a sixteenth.

Q. In fact, except for the edge, it would appear to me that the hole goes down almost vertically, doesn't it?

A. It does, with the exception of that slight angular face where the plug fits to it.

Q. Well, there is only a very narrow edge that comes in contact with this valve, is there not?

A. That is right. That is correct.

Q. And whether or not gasoline would leak through this particular flaw that we have been pointing out here, would depend on whether that flaw came down to the edge or not?

A. Whether the seat touched that flaw; yes.

The Court:

Well as the valve is screwed into this, the valve seat, what finally gives it final contact, when it becomes tight, you can't screw it any further?

A. This plug is driven down into that angular seat in here.

By the Court:

Q. Well that is a curve there.

A. This is a curved surface.

Q. As it gets into the valve seat—

A. That is probably ground to the slight curve too, to fit this.

Q. That is what I was going to ask you. When this curvature comes in contact with the curvature there, and

then there is a tightness, or tightness beyond which you can't tighten it?

A. That is what determines the bottom of the valve, is the tightening of the plug.

Q. Well the natural—a glance at this valve seat would indicate as Mr. Matteson expressed it, that it was vertically straight, And that there was no rounded curvature there, to match this rounded curvature on the valve stem.

A. (Witness drawing.) That is approximately a cross-section of this valve. Of course that particular one, there is an opening goes down here, but that doesn't matter. The plug is shaped like this, the stem goes on up here. Now the only contact that there is between the plug and the seat, is this—this is the seat, with a little short angle there; and this plug comes down and contacts that; it does not rest here or on this side.

Mr. Underwood:

In other words, it doesn't rest on the horizontal surface?

A. Or the vertical surface.

Mr. Underwood:

But on the curved surface.

A. On the angular surface.

By Mr. Matteson:

Q. Just draw a line there from each end of the seat, out here, and mark it Seat; mark it Edges of Seat. (Witness marks.) Then there is simply the width of that very narrow seat that comes in contact with this rounded surface of the plug or valve; is that right?

A. That is correct.

Q. And how wide do you figure that is, from observation of the valve?

A. Say a sixteenth of an inch, or a little more. It is over a sixteenth, if you want to speak of it in that particular fraction.

Q. Well whatever the cause of it, you do see, do you not, that this valve seat is worn shiny, practically to its upper edge, on both sides of the flaw?

A. You mean the upper side of this face?

Q. Yes.

A. I wouldn't say that.

Q. Take it and look at it in various lights, and be sure.

A. The shiniest part of that seat is right at the bottom of that flaw.

Q. I am not talking about the shiniest part.

A. That is where the contact is.

Q. I take it that wherever it is shiny, there has been some contact; perhaps there has been more contact at some point to make it shinier there, but wherever it has rubbed there has been contact; is that right.

A. This other shininess can be due to handling. I would not say for a minute that that is contact of the seat.

Q. All right. Now what do you say about this valve, which shows distortion by the fire, or any effect of fire?

A. Well this plug shows very minute cracks in the plug, right through there; you see several of them.

Q. Now look the entire fixture over and show me anywhere else on the entire fixture that there are any cracks due to the fire—possibly due to the fire.

A. I can't offhand see any particular ones on the external part of this thing now. I can't get a good enough light down in there to determine any in the seat.

Q. And of course the interior of the valve is somewhat more protected than the outside of the valve?

A. What the outside of the valve looks like does not matter as long as it is tight.

Q. But what I am saying is, in the case of fire the outside would be more affected than the inside, very probably, would it not?

A. Not necessarily. That plug may be of different metal than the bowl,—the outside bowl of that valve.

Q. Now you were speaking about the connection of this valve; I think you told me that all threaded connections are tapered more or less.

A. That is correct.

Q. And for that very reason you don't expect a threaded connection to be screwed up the full length of the threads, do you?

A. Not always. That depends a great deal on the tap or the die that is being used.

Q. Well the point is that the threaded connection is used repeatedly, each time you use it you will probably be able to screw it up a little further than the last time.

A. You probably could tightened it up a little further each time.

Q. And when you come to the point where you have used up all the threads, you have used up all your possibilities of tightening it any tighter, haven't you?

A. No, sir; not until the male—or the female end has been expanded or the male end has been reduced until it is smaller than the size of the fitting.

Q. Well now take this fitting here; I refer to the fitting that screws into valve number 150; you see that that screws up the full length of the threads very readily, don't you?

A. It seems to now; yes, sir.

Q. And brings the pipe end of the fitting up against the end of the valve; is that right?

A. It seems to at this time; yes, sir.

Q. Well then after you have reached that stage, your tightness is going to depend on whether the end of your pipe fitting accurately fits against the seat of your valve; is that right?

A. You are not dependent on that; no.

Q. That, plus whatever there is in the threads?

A. Yes; if it goes up as it does now, yes. It goes up that way.

Q. Now that is not a machined fit on the end of that pipe against the valve, is it? It is just an ordinary piece of pipe sawed off, as straight as a workman could saw it?

A. No, sir; that is machined.

Q. What?

A. That is turned in a lathe, that union; the shoulder of that union is turned in a lathe—the end of it.

Q. Well do you think that the fit of the shoulder of the union against the valve proper, is an adequate connection for a gasoline pipe, when the threads have been all used up to the maximum of their capacity?

A. I would not say that as this valve and union are now, that that is a proper fit, no. I would not pass it as being a proper fit or a tight fit.

Q. On the opposite end, we have some of the threads still exposed.

A. That is correct.

Q. And that is the normal thing that you would expect, is it not?

A. Yes.

Q. That shows that you have still got some of your tapered threads to use up for the purpose of getting tightness?

A. That's right.

Q. That is what is lacking on the other end?

A. At the present time it lacks that; yes. I don't know that that is the condition that has always been in there.

Q. Of course. Now the same thing, referring now to Exhibit Number Two, the same thing exists as it is at present of course, with respect to this union that is adjacent to the valve and the Tee, that I was calling attention to on the oher exhibit. In other words, the threads going into the union have been entirely—passed entirely into the union; is that right?

A. Yes, they have in this case; yes, they have passed in there.

Mr. Underwood:

I am sorry I didn't hear that; do you mind if I ask that that be read? (The last question and answer were read by the reporter.)

Q. In other words, they have gone in and exerted their maximum of wedging effect, due to the taper?

A. They have not exerted their maximum wedging effect, no.

Q. Why do you say that?

A. That fitting could still be set up tighter, and still be perfectly tight. I say that because there is still room for the pipe, or the male end, to be driven down into the female end, whether there is any threads on it or not; there is still threads in contact with each other.

Q. Well let's take just this end, which I take it is the male end.

A. Well this happens to be the male end of the union; yes.

Q. Now all I am talking about is the threaded connection which connects the pipe with the male end of the union; that has gone in as far as it can go, hasn't it?

A. No, it has not; it can still go further.

Q. Why do you say that?

A. Because there is nothing inside here to prevent the pipe from continuing right on out through here. You could have this pipe extending out here, with the exception of not being able to make a joint at this point; but if it wasn't for that, you could continue on through, it could go there another nearly a quarter of an inch.

Q. But to begin with, you would have to have some threads on the inside for it to run through.

A. There are threads in there; you don't have to have threads in here, no; it would compress the point to that point and still be tight, because there are threads further back in here; there is threads on the pipe.

Mr. Underwood:

The female part?

A. In the female part, the threads are in there.

Q. Well of course the pipe is thicker before it is threaded than it is after it is threaded; threading takes some off it, doesn't it?

A. It takes some off.

Q. So after you got to the point where you were forcing the part of the pipe that had no threads, into the male end, you would have an exaggerated wedging effect, would you not?

A. It would still be a wedge; it would be exaggerated, yes.

Q. Well that has gone in a lot further than is normal, hasn't it?

A. That is about normal. You can't tell from—you could not tell from the lack of threads on the outside whether that is an improper thread or not, because in a great many cases pipe varies in size. A thread or die is standard, and sometimes the pipe is larger, which would show more threads out here; or if the pipe was smaller it would show less threads.

Q. Well do you say there is room, looking down into the male end of this union, for that pipe to come right on through?

A. There is. That is the end of that shoulder that is shown inside there, is the end of the brass pipe.

Q. The end of the brass pipe; you don't see all of the brass pipe through that hole?

A. No, you only see the end of it.

Q. You don't see all of the end of it, do you?

A. Yes, I see all of the end of it.

Q. You say you see the full thickness of the pipe through that?

A. No, because some of it has been taken off by the die when the thread was cut; the end of the pipe would naturally not show as much thickness as the pipe further back.

Q. Well let me get at it this way. Whenever you screw a threaded connection, with a fitting such as this, you have that wedging effect, due to the taper, don't you?

A. That's correct.

Q. And if the fixture isn't strong enough to take it, after you have wedged it to a certain extent you will expend it or crack it, just like you did the fitting on the gasoline tank when you made the test; isn't that right?

A. Yes, sir.

Q. I will ask you to look at the pipe end of this fitting and tell me whether it isn't a fact that the male end of the fitting has been forced apart and expanded out of its normal shape by the wedging effect of screwing the pipe in.

A. I can't say offhand that it has; it doesn't look to me like it has. It might show with a pair of calipers or a micrometer, but to the visual eye it is not.

Q. Can't you see it quite readily by looking at the width of the crack right around the pipe, where the pipe goes into the fixture?

A. I know, but the pipe may not have been the full size to start with—a standard pipe.

Q. You say the pipes didn't fit?

A. The pipes could still fit, and not be standard size. One manufacturer makes his pipe one size, and another makes it a little bit smaller, and it would still fit, still make a tight joint.

Q. You say that this may have fitted, in spite of the indications that I have called your attention to, that might indicate that it wouldn't fit? Is that right?

A. I still—I say that that is a tight fit.

Q. Your opinion is that it is a tight fit?

A. Well yes; you can call it my opinion.

Q. And when you spoke of screwing down against the female end, what you meant was that this pipe might still have been screwed into the male end up to the point where it would come out, and prevent contact of the male end with the female end, is that it?

A. Of the union, yes.

Q. Of the union.

A. And still make a tight joint.

Q. I guess I understand that. It is true that threaded connections in brass pipe occasionally work loose through vibration, and leak; and have to be tightened up, isn't that correct?

A. An improperly installed line might loosen up, yes; and there is a great many things that would cause it. I mean—

Q. Even reasonably well installed, brass pipe connections used for carrying gasoline might occasionally require tightening, might they not?

A. Any pipe might require tightening up.

Q. Yes, and that is especially true in the engine room of a boat where there is always a greater or less degree of vibration; that is true, is it not?

A. It depends entirely—yes; strike out. There would be more tendency to vibration in the engine room than any other part of the boat, yes.

Q. And vibration may cause loosened connections?

A. It could, under certain conditions, yes.

Q. And for that reason it is desirable to have as few connections as possible, is it not?

A. The fewer threaded joints you have, the less liability there is of any of them vibrating loose.

Q. A potential hazard you have from that source?

A. Yes, you can't always do away though with all of them that you would like to. It would be better if you only had one piece all the way.

Q. And you would have that, if you used copper pipe instead of brass pipe, wouldn't you?

A. You would have one continuous piece, yes; but you still have other hazards.

Q. About this glass gauge that was in the engine room; I understand you to say that you discovered what you thought was the fitting of that glass gauge?

A. I did.

Q. Have you got that?

A. No, sir.

Q. Where is it now?

A. It is aboard the vessel.

Q. Can you make a sketch of what it looks like?—

Mr. Matteson:

Before we go farther, I would like to mark this sketch of the valve seat; I will ask to have that marked as an exhibit now.

A. I can show you a picture of one of those such valves in the catalog I have here, if that would—of this connection. You asked me to draw a picture of it.

Mr. Underwood:

Let's get that one marked.

(The sketch so tendered was marked Libelants' Exhibit #123 for identification.)

Q. Suppose you show me the picture of the fitting in the catalog, if you don't mind.

Mr. Underwood:
Is that for identification or in evidence?

Mr. Matteson:
In evidence.

Mr. Underwood:
That is out of the regular routine. It doesn't make any difference to me, but our rule from away back in March was that you can't offer anything except for identification.

Mr. Matteson:
That is perfectly satisfactory; I offer it for identification now.

A. I don't want to lose this book. That is a similar type, I believe; the one I saw out there I think has a metal handle on it like this, but that one I believe shows a wooden handle.

Q. I think it would be better for you to draw a little sketch of it. You can use that for a model if you like. I think you said that end—

Mr. Underwood:
Before we go further, may I describe the illustration which he indicated. It is the illustration on the left of page 209 of Jenkins Valves and Mechanical Rubber Goods Catalog #23, Copyright 1933 by Jenkins Bros.

Mr. Matteson:
All right.

A. You want this in a cross-section, or do you want it just—

Q. In a cross-section.

A. To describe that valve, it is merely an angled valve with a fitting on one end to screw into a tank or a pipe fitting, and on the other merely a connection to take the glass tube, with a packing nut on it. That is about as simple, I think, a description of it as even a drawing would be.

The Court:

Let's see the picture you pointed to.

A. It is a standard angle valve.

Q. Perhaps I can—

A. Not that I don't want to draw a picture of it, but it takes time.

Q. Perhaps you are right; perhaps we can do it by a few questions.

Mr. Botts:

If your Honor please, Mr. Matteson tells me he will be on this witness until five o'clock, and I would like to get over to the office just a minute, so if I may be excused—?

The Court:

Yes, sir; that is all right.

Mr. Botts:

Because I have some cross examination of this witness.

Q. I think it has been described, that this gauge came out of a Tee on the gasoline line; is that your understanding?

A. My understanding was that it came out of the Tee in the manifold.

Q. And that would be a vertical Tee?

A. That I couldn't—no, I would say it would be a horizontal tee.

Q. And what sort of a fitting would there be on that?

A. The lower valve of the side gauge would be screwed directly into that tee, as I gather it. It could be—now it may not have been.

Q. You have called attention to a gauge in this catalog, which I gather is about twelve or fifteen inhes high. This gauge that has been described, in the Seminole, as I understand it, ran the whole height of the tanks. In other words the tee would have to support a great deal more, as I understand it, than would appear in this illustration, would it not, in the way of weight?

A. If your tube ran continuously all the way to the top, it would have to support more than this as shown; there is no dimensions on that sketch there.

Q. Of course you don't know whether it was a standard gauge fitting such as is shown here, or not, do you?

A. It was a standard gauge valve.

Q. Just what was the object that you say you saw in the Seminole—you found in the Seminole, that you thought was the gauge?

A. The object that I saw was only the valve, as attached to a length of pipe as it came out of a tee; as I recall it came out of a tee, and there was five feet of pipe or more attached to it—the sides.

Q. Where did you notice that in the wreck of the Seminole?

A. That is in the engine room in all that pile of debris. There was the remains of another one laying on top of the auxiliary generating plant, forward into the engine room. Whether it came off of that, or whether it came off of the water tanks—pump, down in the lower or right hand, starboard—forward starboard corner, or not, I don't know.

Q. When was it that you observed that?

A. I don't remember; it has been some time ago.

Q. Well this gauge has been described as being fitted within a brass pipe.

A. I believe that was one of the descriptions of it; yes, sir.

Q. If that were so, how would the brass pipe be supported?

A. I would assume that the brass pipe would merely rest on the packing nut of the valve.

Q. Without any fastening?

A. Without any fastening; it wouldn't need any fastening.

Q. If it wasn't fastened, it wouldn't be much protection, would it?

A. Oh yes.

Q. Have you any information as to how this gasoline gauge was fitted to the top?

A. I haven't any direct—no. I assume that there was another valve of the same type at the top. That is the standard practice of installation.

Q. That would be the standard practice?

A. That is the standard practice of installation.

Q. And where would it be connected at the top? Back of the tank?

A. It could be connected to the filler pipe or to the vent pipe, either one, any pipe above that. It doesn't seem to have been connected with the vent pipe, because there is no indication of the tee connection in it.

Q. Now of course if it wasn't connected with the vent pipe or the filler pipe, it would have to have a vent at the top, or it would be useless, wouldn't it?

A. It would.

Q. And would you approve a gasoline gauge with a vent at the top?

A. Open vent? No, I don't believe that would be—

Q. That would be a dangerous thing, would it not?

A. I wouldn't consider it as proper, unless it extended above the deck, or led overboard, or something of that nature.

Q. The glass gauge as described in this catalog that you refer to, is a steam gauge, is it not?

A. That is a steam gauge; yes, sir.

Q. And a steam gauge would be somewhere around twelve or fifteen inches long, would it not?

A. Might be longer. I have bought them up to three feet. I know that they can be gotten on special order, longer than that; you can get them any length you want; get them six inches long.

Q. I am not talking about what you can get; I am talking about the height of the ordinary gauge on a steam boiler; it wouldn't ordinarily be over fifteen to eighteen inches, would it?

A. Well I am not familiar with steam engines so I don't know. It seems to me I have seen them on boilers, longer than that—stationary boilers, upright boilers.

Q. Now in this case the glass gauge must have been six feet or more high, judging from the height of the tanks; is that correct?

A. That's correct, if it was in one piece. It didn't have to be in one piece.

Q. That would be pretty unusual height for any kind of a glass gauge, would it not?

A. I would think it would be rather a long glass tube. I wouldn't personally install one as long as that.

Q. Now let me ask you this. You say you have examined a number of vessels for purpose of insurance. Have you ever recommended a vessel for the purpose of insurance, that had a glass gauge for determining the height of gasoline in the tanks?

A. I have never turned one down.

Q. Have you recommended one that had one?

A. I can't say that I directly recommended them, because I don't make any recommendations whatsoever, un-

less there is something that I don't approve of, that I make a recommendation that it be changed. Now I did not recommend the gauge, because I made no mention of it; it was there, they could use their own conclusions.

Q. Do I understand that with respect to one or more vessels, that you did make a report mentioning the gauge, one way or the other?

A. I have never made one; no; because none of the vessels I have ever surveyed have had any such gauge as that.

Q. Now let me ask you about the draw-off valve. Have you ever made a report for insurance purposes, with respect to a vessel which had a valve in her engine room for drawing off gasoline?

A. No, I haven't.

Q. Never had occasion to make a report?

A. I never had occasion to make a report on a vessel that had.

Q. You were saying that it was important to have a supply of gasoline available in the engine room, for certain purposes. It would be a very simple matter to have a separate tank on deck, in the vicinity of the engine room, for storage of gasoline that the engineer might want to draw off for any purpose, would it not?

A. You could have a tank on deck, yes; it would be handy.

Q. You have seen such auxiliary tanks on deck, have you not?

A. I have seen auxiliary tanks on deck; yes, sir.

Q. And if you had such tank, there would be no necessity of having a draw-off valve in the engine room, would there?

A. Yes, there would, in this condition, under the circumstances of this installation, it would be.

Q. Why would that be?

A. Because you need a supply of gasoline where it can be gotten at readily without having to go on deck to get it.

Q. For what purpose?

A. For priming the motors.

Q. Would you approve—would you say that it was proper for an engineer to draw off gasoline for any purpose, from any connection in an engine room, while the motors were running or hot?

A. I see no reason why it shouldn't be done?

Q. The drawing off of gasoline from any connection creates fumes, does it not?

A. That is correct.

Q. Those fumes are highly inflammable and dangerous, are they not?

A. So I am told.

Q. You haven't any doubt about it, have you?

A. No, I don't think I have a doubt about it.

Q. If you have your engines, or one of them, running, you have a danger of sparks in the engine room, do you not?

A. No, not in a properly installed motor, you would not have a tendency to sparks.

Q. You have auxiliary machinery that is liable to create sparks, do you not?

A. You might get some from the generator.

Q. A spark would cause a gasoline explosion if the gasoline fumes were near it, would it not?

A. It might, yes.

Q. Well, I take it that what you have in mind is that gasoline might be needed for priming; is that right?

A. That is correct.

Q. And that is the only reason you have in mind that gasoline might need to be available in the engine room, is that right?

A. Free gas, that's the only reason I see for having free gas in the engine room.

Q. Wouldn't it be quite possible to have squirt cans of appropriate capacity, with proper caps to them, so there would be no danger of gasoline escaping from them in the engine room, where they would be readily available for such service?

A. You use a squirt can for priming a motor.

Q. And you could have it properly filled and kept in the engine room and available for that purpose, couldn't you?

A. You could, and you do; but those squirt cans have to be refilled ever so often.

Q. And if you had them filled in the engine room and ready for use, in emergency you would have them, wouldn't you?

A. That is true.

Q. And if you wanted to refill them, you could go out on deck, where the auxiliary tank was, and refill them where there would be no danger from refilling, couldn't you?

A. You could if you had time enough between the first priming and the second priming. Sometimes it is not convenient, in a case of necessity, or an urgent case, where they would have time to go up a hatch, out on deck, and fill up a tank with gas, and then spill it on the way down.

Q. How long would it take to prime and start a motor such as the Seminole had?

A. To start both those motors I should say it would take five minutes at least.

(Following discussion between Court and counsel as to calling of handwriting-expert witnesses, recess was taken until 9:15 o'clock a. m. of the following day, to-wit, October 11, 1939.)

3102 Thereupon MR. WIRTH MUNROE resumed the witness stand and further testified as follows upon

Cross Examination (Continued).

By Mr. Matteson:

Q. Mr. Munroe, we were talking at the close of Court yesterday, I believe, about the glass gauge in the engine room of the Seminole; and I called your attention to the fact that the testimony is that the glass gauge was the height of the tank. If that were true, it would require a fairly substantial fixture at the bottom, to hold that, with the brass pipe protecting it, wouldn't it?

A. It could be done that way; yes.

Q. Well, it would require a fairly substantial fixture to do that, would it not?

A. Yes.

Q. And of course, below the glass gauge itself there would be the packing gland first, I take it?

A. The packing gland is on top of the valve.

Q. Yes. There would be a valve and a packing gland, and then the glass; is that right?

A. That is right.

Q. How high would you estimate that the bottom of the visible portion of glass would be above the manifold line?

A. Well I don't know that the gauge went all the way to the bottom of the tank; or, do you mean, above the manifold?

Q. Yes; it was affixed to the manifold line, I take it?

A. Yes.

Q. And the bottom of the visible portion of the glass would necessarily be some distance above the manifold line itself; that is correct, isn't it?

A. Maybe three inches; something in that neighborhood.

Q. That would be your estimate, about three inches?

A. It depends on the size of the valve and the size of the glass tube; I don't know what; I don't recall; I didn't measure the size of the tube.

Q. Do you know the size of the tube?

A. No, I do not; I did not measure it.

Q. Now you were telling us yesterday that you estimated that there were sixteen gallons of gasoline in the tanks when the Seminole was laid up. Was that what you estimated?

A. I estimated that that was the amount of fluid or what was in the tank, that could not be drawn out through the outlet.

Q. Does that refer to each tank, or to all four tanks together?

A. That refers to all four tanks.

Q. Now will you tell us by what method of calculation you arrived at that result?

A. By taking the depth of the crown, the bottom.

Q. Will you give us the figures?

A. I will have to refer to my notes.

Q. All right.

A. I estimated the depth of crown two and a quarter inches.

Q. Now I am not quite sure what you mean by the depth of the crown. Perhaps you could draw us a little picture.

A. The height of the crown, you might call it; the distance between the chord and the top of the arc.

Q. Yes; that is from the bottom of the tank, to the top of the crown?

A. Not from the very bottom of the tank, no.

Q. Well, from the bottom of the inside of the tank?

A. From where the sides came in contact with the—

Q. With the bottom?

A. With the bottom.

Q. I see; and that I think you said was about—

A. Two and one quarter crown.

Q. I am getting the height of the bottom of the crown above the side of the—bottom of the side of the tank; what was it you said there about two sixteenths, or three sixteenths of an inch—was that right?

A. Somewheres around an eighth of an inch.

Q. An eighth of an inch.

A. An eight or three, sixteenths.

Q. I see; all right. And then the—

A. But that still does not—there is more distance than that up to the point of contact. I mean, there is the doubling of it.

Q. I will get this straight; then the height of the crown, or the bottom, at the center—above that point, the tank is in a vertical position; you figure it was two and three quarter inches?

A. Two and one quarter.

Q. Two and one quarter inches; all right. What is the rest of your calculation?

A. We know the diameter of the tank, which is forty-two inches.

Q. All right.

A. Instead of using the formula of the circle, I did not know the exact curvature of that top, so I assumed it as a triangle, as if it was merely—the bottom was merely a cone, and figured that amount and deducted one-third for the crown, which is what we use in rough figuring where we have a curved line.

Q. I see.

A. —or a curved surface.

Q. All right. Now what is the rest of your calculation?

A. Well that gives me my volume.

Q. Then that will give you the volume of the tank, as I understand it?

A. Volume of that lower part of it.

Q. The lower part of the tank. If it was filled so it just came to the top of the crown?

A. That is correct.

Q. And will you just give us the figures for that calculation?

A. I have here the total computed gallons, as 6.747 in one tank; that's without the deduction of the crown.

Q. What I want to get at, is the step; how do you get the 6.747?

A. By merely figuring the volume of that cone.

Q. Yes, but how do you figure the volume? Give me the details of your calculation.

A. Well I haven't got them here; I only put down the results of them here. That's a simple computation; any school child can figure that one out. You have got a triangle, a known base, and area.

Q. All right.

A. And a circle.

Q. What do you say was the volume of one of these tanks per vertical inch, outside, above the crown?

A. I don't know; I didn't figure that. I have a table here in Kent's that will give it to me exactly.

Q. What did you figure it?

A. I figured it per foot. The table that I used happens to give it in feet; the volume for a known diameter, in feet.

Q. Can you give us the volume per foot for a forty two inch tank?

A. I will have to look in Kent for it; I have forgotten what page the tables are, now. I can't locate my table as quickly as I would like to. The number of gallons in a one-foot column of a 42-inch circle, would be 71.97 gallons.

Q. 71.97?

A. Per foot. Here is your diameter in inches. U. S. gallons.

Q. 71.97.

Mr. Underwood:

Referring to table 31 on page 95 in Kent's Handbook of—Mechanical Engineers' Handbook.

A. Edition number ten; 10th edition.

Mr. Underwood:

Edition 1923.

Q. Well, that would be approximately six gallons per inch, is that right?

A. Roughly, yes.

Q. Now as I understand it, in order to get this result that you have given us, you multiply six gallons per inch by two and one quarter?

A. No, I didn't.

Q. Well tell me what you did, then.

A. I figured a triangle, the base of 42 inches in diameter—it is not a triangle, it is part of a cone; offhand I can't, just describe the exact form.

Q. As if it were a cone instead of a dome, is that it?

A. It is the reverse of a cone.

Q. Well, you figure the height of that cone to be two and a quarter inches?

A. That is correct, with a base of 42 inches.

Q. And after you figured—

A. That is the base, not of 42 inches, but the area of a base—a circular base 42 inches.

Q. You figured the cubical contents of a cone whose base was a circle 42 inches in diameter, and whose height was two and a quarter inches?

A. I believe that is right; I am not sure. I know how I did it, but I don't know whether you are—I used the area of a circle 42 inches in diameter, as a base, with a height of—figuring on a triangle, as a triangle, two and one quarter inches in altitude.

Q. Well then after you got through doing that, what did you do?

A. That gave me a result in cubic inches.

Q. Yes?

A. And that divided by 231, which is the number of cubic inches in a U. S. gallon, gives me the gallonage of that.

Q. Yes. Well we might—I want to suggest that we might figure it another way, and see what you say to this. If you take the cubical—the capacity in gallons, of a circular tank 42 inches in diameter, and two and a quarter inches high, isn't there a coefficient that you could apply for a reduction of that volume to compensate for the crown?

A. There are other ways of arriving at the same volume, by going at it in a different way; I admit that.

Q. Well, that would be one method of getting at it, would it not?

A. I believe that would give you—I wouldn't say that it is absolute, without figuring it out.

Q. Now in any event, what you have given us, the figure of 6.747, is the volume of liquid you figure would be in any one tank if it was filled just to the height of the center of the crown?

A. Yes, sir; that is what I figured.

Q. And that would be two and one quarter, plus one-eighth inches above the bottom of the side of the tank?

A. No, it would be more than that, because you have the doubling of the side of your bottom, and the sides of your tank, where the doubling comes, where your rivets go through; you can't include that part of it.

Q. Well I am just trying to figure, what the level in the tank is, outside of your calculation; you have just told me that you figured—that your figure represents the volume of liquid in the tank, if the tank is filled just to the height of the top of the crown?

A. That is right.

Q. That is right. Now, the height of the top of the crown is two and a quarter inches above this lower edge?

A. It is not the lower edge of the tank, no. It is the distance between where the crown of the bottom starts from the side, if you understand what I mean.

Q. How far is that above the bottom?

A. I don't know what that distance is at the bottom, offhand.

Q. You can't tell us that?

A. I can't tell you that, because I didn't measure it. I did measure in some place; I haven't got that on this particular piece of paper. I measured with a straight-edge across the bottom of the tank, measuring to the total crown and then deducting from that the distance from the bottom edge of the side of the tank, to the point where the crown of the bottom starts, above the rivets.

Q. I see.

A. I only figured from that point up.

Q. But you took a straight-edge across the bottom of the tank, measured up from the center of the bottom up to the top of the crown; do you know what that measurement is?

A. I don't recall what my measurement was; no.

Q. Well your calculation of the quantity in each tank, which you have told me is enough to fill the tank to the top of the crown—?

A. Yes, sir.

Q. Assumes that the top of the crown is level with the outlet of the tank, doesn't it?

A. Yes, sir; because I measured those two to see if they were the same, and they were near enough for my estimate. They may have varied a fraction of an inch, but they were near enough for my estimate.

Q. What was the height of the center of the outlet fixture as installed on these tanks, above the bottom edge of the tank?

A. Four and three quarter inches, I believe.

Q. Four and three quarter inches?

A. I measured that; I have got it here I believe; four and three quarter inches.

Q. That is right. Now—

A. That is to the center of the hole. Now you can figure the bottom of the hole, for the outlet.

Q. That is right. Now you told us there was 6.747 gallons in each tank; is that right?

A. That's before—that's providing there is a triangle in there, that the bottom crown is a straight line and not a curve.

Q. There were four tanks, were there not?

A. There were four tanks.

Q. Well then the full capacity ought to be four times whatever the result is for one tank?

A. That would be 26.988.

Q. Well wasn't the estimate that you gave us in the first place, sixteen?

A. Yes. From that figure of 26.988 I deducted one-third for the curvature of the bottom; which is only rough, it is not absolutely correct.

Q. Well you had already deducted that.

A. No, I hadn't.

Q. In the 6.747, had you not?

A. No, I did not. I tried to explain that the volume of 6.747 was using the crown of the bottom as a straight line, or the end of the bottom being a cone, coming to a point in the center.

Q. Well your calculations I take it—

A. I merely deducted my third after I had arrived at the total figure. Just a matter of where you deduct it, whether you take it at the end or the beginning.

Q. It doesnt' make any difference where you deduct it, if you assume that the level that you are calculating is no higher than the bottom of the middle of the crown of the tank?

A. That is correct.

Q. Of course if it is higher, then it does make a difference?

A. It makes a small difference, yes. If the crown was higher than the outlet, the bottom of the outlet, it would be less gasoline.

Q. Were you assuming that the gasoline in the tanks was no higher than the bottom edge of the outlet of the tank?

A. In normal position, as the—whatever the fluid in your tank, as it flowed out through the outlet, it would drop to the bottom of that outlet.

Q. What was the width of that outlet?

A. I believe it was a three-eighths; it is more than three eighths. It was a standard three eighths pipe, which is larger than three eighths.

Q. The diameter of the hole would be three eighths?

A. The diameter of the hole is more than three eighths; yes.

Q. Now you have told us that—you measured the distance from the center of the outlet of the tank to the bottom of the tank, as four and three quarter inches?

A. The center of the outlet, yes, to the bottom edge of the tank.

Q. And you measured the distance from the bottom of the pan to the bottom of the groove in which the tank sat, did you? Or at least you confirmed your measurement of that, did you not?

A. I confirmed your measurement out there the other day, the depth of the groove; I don't remember the other.

Q. Well wasn't it—didn't we ascertain at that time that it was two and three quarter inches from the bottom of the pan to the bottom of the groove?

A. Yes, we did; you are right; I have it here.

Mr. Underwood:

Is that two and three quarters?

Mr. Matteson:

Two and three quarters.

Q. And I think that we confirmed, did we not, that the height of the top of the engine room floor, from the plate at the bottom of the ship, was nineteen inches? Was that correct?

A. The bottom of—the top of that opening—

Q. No; I am going down to the bottom plating of the ship on the inside now, through the top of the engine room floor. What measurement have we for that?

A. I have seventeen and a half inches from the keel plate to the top of the engine room floor.

Q. Seventeen and one-half inches. Then from the top of the floor to the center of the opening through which the outlet valves of the tanks came—

A. Yes.

Q. What measurements have we for that?

A. Twenty eight inches.

Q. Twenty eight inches. So that would put the center—

Mr. Underwood:

Excuse me; may I interrupt and get that? Read me the last question and answer, please.

(Preceding three Questions and two Answers, read.)

Q. So that will put the center of the opening through which the outlet from the tanks came, a total of forty five and one half inches above the bottom plating of the ship, would it not?

A. That is correct.

Q. Did you measure the opening from the engine room into the space under the tank compartment? Have you some measurement for that?

A. I have those measurements; I didn't actually measure them.

Q. What measurement have you for that?

A. The opening is nineteen inches high, twenty-one inches wide, with the exception of that angle which is in the opening.

Q. How much is that narrower?

A. It narrows it down to fourteen inches. Whether that is the original position of that angle or not, I do not know.

Q. Now while we are on the subject of measurements, have you some measurement for the size of the opening in the steel bulkhead between the engine room and the starboard passageway which took the windows?

A. I haven't got them right here, but they were taken. I haven't got them.

Q. And you haven't the height of the bottom of that opening above the floor?

A. I haven't it in any of my notes. I believe Mr. Underwood has that.

Mr. Underwood:

This is the window in the alleyway between the engine room and the aft bulkhead; Mr. Munroe measured them and I wrote it down; if you want them you can have them.

Mr. Matteson:

Have you got them?

Mr. Underwood:

Yes; do you want them?

Mr. Matteson:

Yes.

Mr. Underwood:

The width of the opening is two feet three and a half inches; the height of it is three feet one and a half inches. It is three feet eight inches above the floor frame.

Mr. Matteson:

And have you got how far down from the ceiling?

Mr. Underwood:

No, I haven't that.

Mr. Botts:

About six inches.

Mr. Underwood:

Approximately that. I remember that, but I didn't put the ruler on it,

Q. Now this opening, the measurements of which we have just put in the record, representing the opening in the steel bulkhead which took the window into the alleyway, of course that was merely an opening cut into the steel bulkhead, was it not?

A. That is right, with a frame inside of that.

Q. There would necessarily have been a frame inside of that, which would have reduced the size of the window about two inches on each side?

A. Not necessarily; it might not over three inches altogether; an inch and a half on each side. It might have been a little more for the thickness of the sill; the sill may have been a little bit thicker than the rest of it.

Q. You would estimate an inch and a half for the sides, and say about two inches for the top and bottom?

A. It may have been more than that. There would be no necessity of making it much heavier frame than that.

Q. Now in the first place I want to describe to you a drain line, which I believe that Captain Baker said was in the pans under the tanks; the starboard pan under the tanks; consisting of a pipe which led from the starboard forward corner down to the floor beams of the vessel, forward to the base under the bathroom on the starboard side of the ship, forward of the tank compartment, and up and joining into the side of the outlet of the toilet discharge, which is said to be a few inches below the water level,—below the water line at the side of the vessel; in which the water would flow back from that overboard discharge until it stood in the pipes to the height of the outside water level of the vessel. Would you consider that a proper drain?

A. It would be a proper drain, providing the pans were above the water line.

Q. Well you mean, a proper drain for draining gasoline outboard?

A. It wouldn't be the best. It would take care of the job, but it wouldn't be the very best.

Q. Now under the conditions that I have described, you understand that the lower part of the pipe, the uprights, up to the water level, would be filled with water?

A. The pipes would be filled—in that pipe the water would be the same height as it would on the outside of the vessel, yes.

Q. And gasoline floats on water, does it not?

A. It does.

Q. And consequently, if any gasoline ran from the drip pan into the discharge pipe, it would float above whatever water was in that pipe, would it not?

A. To a small extent, yes.

Q. Well it would not be heavy enough to force itself or the water out of the pipe, would it?

A. It would if you had enough head on it.

Q. If you had enough head on it?

A. Yes.

Q. It would take quite a little head on it, wouldn't it?

A. Not a great deal.

Q. How many inches?

A. A couple of inches, higher than the pipe, for it to force its way down.

Q. Well let me see if I get this right. You mean that if gasoline ran out of the tank, out of the pan into the pipe, so that it filled the pipe to a level of two inches above the water, what do you say would happen?

A. That it would gradually work out into the other,—into the water below it, providing the outlet is not too far down.

Q. Do gasoline and water mix?

A. Yes they do to a certain extent; form an emulsion.

Q. Is that what you are assuming would happen there?

A. It would, with agitation,—there could be an emulsion formed, yes.

Q. Well isn't it a fact that gasoline would necessarily float on the water in that drain pipe line?

A. It would float to a certain extent, but after there was enough on the surface it would force its way down, it would force the water out after a while, providing there was not too much volume of water below it.

Q. Well I am assuming that the pipe is filled and runs down to the bottom of the vessel, runs forward and is filled up to the point of the overboard discharge.

A. Well I don't know that it did run down and then back up again.

Q. I am just asking you to assume that.

A. That is a different problem.

Q. That is the problem I thought I put in the first place.

A. I am sorry, I didn't understand that there was a trap in there, or a reverse siphon.

Q. If there was a trap in there, as you call it, it would not serve the purpose of a gasoline drain line at all, would it?

A. No it would not. I am sorry I didn't understand your question before, but with the reverse siphon it wouldn't be as satisfactory.

Q. Wouldn't be as satisfactory?

A. No.

Q. Wouldn't be satisfactory at all, would it?

A. It could work under the conditions; I know the reason why it would work.

Q. Well, tell us.

A. There is a condition that hasn't been brought into the thing, and that is the fact that it discharged into a toilet connection, where there was constant flow,—not constant, but frequent flow of water past that, which would have a tendency to suck any other water,—any other pipe leading into it.

Q. It wouldn't suck the water cut, would it?

A. It would suck the water from the small pipe, through.

Q. It would always,—the pipe would always be filled with some water, would it not?

A. It would always be filled, but every time that water passed through the larger pipe from the toilet, it would have a tendency to draw from the smaller pipe, any water that was in that, as you flush it, due to the flow.

Q. Would you pass such a pipe as a proper drain pipe?

A. Not with the inverted siphon in it, no.

Q. Now in the second place, did you find any evidence of any pipe that could be used as a drain pipe, on the starboard side of the pan?

A. Not on the starboard side of the pan.

Q. There was none there?

A. No.

Q. Now isn't it a fact, for a drain line to be a satisfactory line for that purpose, it would have to lead from the receptacle to the drain in a continuous down grade, to a point outside the hull of the vessel, above the water line?

A. To be a perfect one, yes.

Q. And if it was arranged in such a way that the water would flow back through it, that would interfere with its function as a drain?

A. Such a drain, running on a gradual grade, or constant grade, running to the outside of the vessel, when that vessel was under way, water was passing by her side, past the opening of that pipe, there would be a suction cut of that pipe continuously, pulling any liquid that was in the pipe, out, regardless of how high or how far below the water line it would be.

Q. And if the vessel was at rest and the line, outlet of the line, was below the water level, the water would always stand in the line to the level of the water outside?

A. It would, yes.

Q. And if the vessel listed to that side, it would increase the height of the water in such a pipe?

A. That depends on how far the pipe is from the side of the vessel, where the rise would be; how high the upper end of it is.

Q. It would cause a rise because the water level on that side would rise?

A. If it should come nearer the center of the vessel, there would be no rise. If the upper end of the pipe was near the center of the vessel, or point of roll, center of gravity, pivot point of roll, there would be no movement or rise and fall in the pipe, whatsoever.

Q. I think you said in your direct examination that drains in the drip pans would not be necessary if the pans did not leak; is that right?

Mr. Underwood:

If the tanks did not leak?

Q. If the tanks did not leak, of course there would not be any necessity of drip pans either, if the pans did not leak, would there?

A. There wouldn't.

Q. You were saying yesterday that there was no need for access to the tank compartment for the purpose of inspection of the tanks; is that right?

A. No absolute need, no.

Q. What do you mean by absolute need?

A. I mean that those tanks could be used for many years without having any outside inspection.

Q. I see. You don't think it is necessary, with respect to a gasoline tank, to have it under continuous observation by a careful engineer?

A. No it is not necessary. You will have a leak just the same, you might have a leak, I mean, regardless of inspection.

Q. But if you have an inspection then you know about it, don't you?

A. Not necessarily. A leak could occur between inspections and you would not have seen it at all.

Q. Well you will admit that a leak that you can't discover is a much more serious matter than one that there is some possibility of discovering?

A. Well it is sometimes nicer to know, you maybe put your mind at better rest, if you think you can see the outside of the thing.

Q. And if you know, then you can avoid known things until the defect is remedied of course?

A. Yes. But there is no reason why those tanks should have leaked though so there was no need for inspection.

Q. I think you said that there was no need, because you could apply a hydrostatic test?

A. That is correct.

Q. Is that the reason why you say it is not necessary to have access?

A. That is a reason, yes. You can test them beyond the service point of your tank.

Q. Now a hydrostatic test is quite an intricate matter, is it not? Takes a lot of time and a lot of arrangement?

A. I don't know; it is one of the simplest tests I know.

Q. Well if you had a boat like the Semniole, you wanted to apply a hydrostatic test to her tanks, you would have to first of all remove the gasoline from them, would you not?

A. Not necessarily, no.

Q. At least you would certainly want to remove it?

A. You could run your hydrostatic test with gas in them if you wanted to.

Q. Did you ever hear of running a hydrostatic test with gasoline?

A. No, but you could use any fluid. Hydro does not necessarily mean water.

Q. Well if you used water, water is the normal thing to use for the hydrostatic test, isn't it?

A. That is correct.

Q. And if you used water you would want to get all the gasoline out of the tanks before you put water in, would you not?

A. Not necessarily, no.

Q. If you had your tanks half full of gasoline, you say you would just fill them up the rest of the way with water, and hold your test that way?

A. Float your gasoline on top of your water, if you wanted to. It is possible to do that. I don't say that that—

Q. That would be—

A. The way everyone would do it.

Q. That would be just about throwing away so much gasoline, wouldn't it?

A. Not at all. All modern gas tanks are stored in underground tanks and pumped out by forcing water into the tanks.

Q. Well hydrostatic test of tanks is the test that is made periodically, at considerable intervals; is that not a fact?

Mr. Underwood:

I object to the question unless further facts are included; what tanks, and what type of vessels, and by whom.

Q. I am talking about any kind of a hydrostatic test of a tank on a vessel. As a matter of fact it is not practical to make such tests at frequent intervals?

A. You say it is not practical to make them?

Q. Yes.

A. No I do not know that it is impractical. Maybe I misunderstood your word.

Q. Have you ever conducted a hydrostatic test on a vessel?

A. Not on the vessel itself, no.

Q. Have you ever conducted any other hydrostatic test than the one you described to us the other day?

A. I have, on other tanks.

Q. What sort of tanks?

A. Gasoline tanks.

Q. What size?

A. And water tanks, both.

Q. What size?

A. They were small tanks, fifty to sixty gallons apiece; not round, they were angular tanks.

Q. Would you say it was a practical matter, relying on hydrostatic tests as a matter of keeping the tanks, the gasoline tanks of the Seminole, under sufficient inspection, year in and year out?

A. If you want to go to the trouble of making hydrostatic tests, yes, I would say one test a year would be quite sufficient. Very few of them are ever made, though.

Q. Then your idea would be to have a hydrostatic test once a year, and no other means of observation of the tanks in between.

A. Well there were pans underneath there, and if there was any leak in the tanks it would certainly show up in the pans. You wouldn't be able to readily determine just which tank it was, though; that would mean going to a yard and having the tanks removed, which would be the safest thing to do.

Q. Now do you approve the placing of wooden stringers in the bottom of a drip pan under a gasoline tank for the purpose of supporting the tank?

A. I certainly do.

Q. And if there were a leak in any of those gasoline tanks resting on those wooden stringers, it is a fact, is it not, that the leak would be absorbed by the wood and run off in the form of vapor?

A. It would, yes; but there is other things to consider besides that.

Q. Do you consider that that would not be a hazard which should be avoided?

A. That is the lesser hazard; what you refer to by not using wood.

Q. Do you know any set of standard rules of practice with respect to vessels of any class, that permits the use of wood fixtures in a tank compartment?

A. I am not familiar enough with any of them, to know. I have never seen anything else but wood cradles put in tank compartments—or cushions under tanks.

Q. Do you know that that practice is forbidden by Lloyd's rules with respect to yachts? Do you know?

A. I do not know it. I know that that is the common practice in this vicinity.

Q. What are Lloyd's rules for yachts?

A. Lloyd's rules are made up, as I understand it, solely for insurance purposes. They will insure a yacht that is made up by Lloyd's quicker than they will without them.

Q. Who are *they*?

A. Beg pardon?

Q. Who are "they"?

A. The insurance companies.

Q. Isn't it a fact—

A. Lloyd's is merely a brokers'—brokerage of many insurance men; central brokerage house.

Q. It is your idea that Lloyd's Classification Society is an insurance brokerage?

A. No; Lloyd's—I won't say that that particular one is. You mean the one that compiles these rules?

Q. Yes.

A. No; that is a society very similar to our American Society of Naval Architects, or American Society of Marine Engineers, or Automotive Engineers, or any others, that establish a standard. That standard may not always be practiced in every view.

Q. Such standards as are established by such organizations, are recognized as standards of careful and prudent practice, are they not?

A. Lloyd's is considered a good practice, yes, for ocean-going vessels.

(Informal recess was had, 3:36-3:43 p. m.)

Q. I take it, Mr. Munroe, that the objection you have to Lloyd's rules with respect to yachts, of which we have copies here, marked 101, 101-A, as applied to the Seminole, is that such rules apply only to seagoing vessels; is that right?

A. Practically yes. You may build a boat to Lloyd's rules that isn't seagoing; but it is primarily for seagoing vessels.

Q. Do you think that makes any rule with respect to wood in tank compartments, inapplicable to a vessel of the type of the Seminole?

A. I don't quite understand your question.

Mr. Matteson:

Will you read it? (Question read by reporter.)

A. I don't say that it is necessary to follow those rules exactly; that if has any bearing on what was done in here.

Q. I think you said that you knew of no other way of fastening the tanks, in the tank compartment, other than by wood bracing; is that right?

A. If I said that I certainly didn't mean it. There are other methods of fastening, without wood bracing; yes.

Q. And they could be fastened by steel straps to the bulkhead?

A. By steel straps, yes.

Q. These tanks were not fastened by steel straps to the bulkhead, were they?

A. As far as I can see, they weren't.

Q. Did you measure the diameter of the holes in the bulkhead through which the fixtures from the tank came? —I mean the outlet valves and the filling lines?

A. I don't recall whether I measured them or not. I don't think I did. If I did, I don't recall the measurements.

Q. Were they four inches?

A. My recollection is that they were possibly four inches, yes; they may have been four and a half; may have been three and three quarters.

Q. And of course the tanks fit up fairly close to the bulkheads, do they not?

A. That is correct.

Q. That is shown for instance in Libelants' Exhibit 4, is it not?

A. That indicates that that tank is tipped up; it would throw it a little closer to the edge of the bulkhead than it might be normally.

Q. But it would be very close to the bulkhead?

A. Yes; fairly close; within an inch.

Q. And the lower opening is partly filled with the valve fixture that comes through it, is it not?

A. Yes.

Q. And the upper openings, where the filler lines went through, were the same diameter, approximately?

A. Approximately, yes.

Q. And they were two-inch filler lines which went through there, were they not?

A. Two-inch pipe, yes; inside diameter.

Q. That would be how much exterior diameter?

A. Approximately two and a half; two and five-eighths inches outside diameter of the pipes.

Q. And the tanks would fit as closely behind the bulkheads, in the vicinity of the filling holes, as they would the outlet valves; is that correct?

A. It would if the bulkhead was perpendicular, parallel with the tank, the side of the tank.

Q. It should be perpendicular, should it not?

A. Normally, yes, it would be perpendicular; it wouldn't absolutely have to be.

Q. Now did I understand you to say that in your opinion those eight holes in the bulkhead would make sufficient ventilation for the tank compartment?

A. There was other ventilation besides that.

Q. That other ventilation?

A. There was ventilation between the pan and the side of the bulkhead, all around.

Q. How much was that?

A. Over an inch; an inch to an inch and a quarter.

Q. Around the edges of the pans?

A. At the bottom of the bulkheads where the pans fitted in.

Q. And the space below that—

A. That is at the end where the tank—or the pan, is rectangular.

Q. And the space below that is ventilated by this hole in the bulkhead, seventeen and a half inches by twenty eight inches, is that right?

A. I assume that is one of the holes; there may have been others; and there may have been other places for air to have circulated through there. There was a space under the floor forward of that.

Q. And so far as you know, that floor covered that space entirely, did it not?

A. Which floor?

Q. The floor forward of the tank compartment.

A. The main floor of the vessel?

Q. The main floor of the vessel.

A. I assume it did.

Q. Then the only ventilation would be through this hole seventeen and a half by twenty eight inches in the center of the compartment at the level of the engine room floor, is that right?

A. That was one of them. There was another place that might have been opened, where the steering gear went up to the pilot house; that may have been open through there; that floor may have been away from there. There may have been other ventilation places there.

Q. You don't know of any such thing?

A. There is no indication of it now. There had to be a shaft there,—a shaft-way for the—

Q. A shaft large enough to take the steering chains?

A. The steering chains or, judging from the type of steering gear that she had on her I assume that would have been a shaft because the rack is down below the main floor—the steering gear.

Q. What would be the diameter of this shaft?

A. Inch and a half; two inches; inch and a half.

Q. That would operate in a bearing, would it not?

A. Yes, but there had to be also a requirement there for the engine room telegraph to lead down through, and open enough for a man to work on it; install it.

Q. The engine room telegraph consists of pull-wires, does it not?

A. It does; but you have to get in there to install them, and you have to have room enough to install and repair them.

Q. But you know of no—

A. No, there is no indication today of what was there. There might have been a space there six feet square; I don't know. There may have been a space two feet square; may have a grille on one side, and might not have; may have solid wall.

Q. Let's just assume the things we don't know about, didn't exist. If they didn't exist, you would still say that these openings that we have been talking about would furnish adequate ventilation for the tank compartment?

A. I don't say that those holes in the bulkhead furnished adequate—no. I don't think that they were the entire form of ventilation for that compartment.

Q. If they were, you would not consider that adequate ventilation?

A. If they were, I wouldn't say that that was quite sufficient, no.

Q. Now in the engine room, there has been some testimony to indicate there may have been what have been described as gooseneck ventilator pipes, consisting of two-inch pipes with a gooseneck above the deck, turning over toward the deck, the pipes running down and into the bilges in the engine room. In the first place, did you see any—have you at any time seen any evidences of the presence of such pipes?

A. No, I have not. That doesn't say, though, that they weren't there. I wouldn't say that they weren't there. It is customary to put those in.

Q. Well the point is, that you saw no evidences of their having been there; is that right?

A. I can find no pipes or see no goosenecks, no. There is a lot of things missing off the boat that could have been there.

Q. Just answer my question, please. Would you consider such gooseneck pipes, if they had existed, would have been any assistance in ventilating the engine room?

A. They certainly would; they would have been of great assistance.

Q. Do you consider a two-inch pipe to be adequate for a ventilator pipe in an engine room the size of the engine room of the Seminole?

A. If there was more than two—if there were four, I would say, yes.

Q. Well when you testified that you considered that the engine room of the Seminole was adequately ventilated, were you taking into account the possible existence of such pipes?

A. I was.

Q. How would such pipes assist in the ventilation of the engine room?

A. The air as it was forced into the engine room by the other cowl ventilators, the large cowl ventilators, that only came through the deck and by the windows, the air would have been forced down through the floor and out through these gooseneck ventilators, with the pressure built up inside of the engine room.

Q. Do you know what the standard size—recognized standard size for such ventilator pipes in a vessel the size of the Seminole, would be?

A. No, I do not.

Q. Isn't it a fact that the recommended size of such ventilator pipes, by the Board of Fire Underwriters, is six inches or more?

A. I don't know. I have never read that.

Q. And at least three inches is recommended for vessels twenty feet and under?

A. I couldn't say.

Q. Now without such ventilator pipes, do you think there would have been adequate bilge ventilation in the Seminole?

A. I don't know what ventilation there was aft. There may have been a manhole on the after deck, which led from the bilge. If that was there it would assist a great deal in the ventilation of it.

Mr. Underwood:

Let him finish.

A. There are a lot of things—there are a lot of ways—

Mr. Matteson:

Before he goes further, that is not answering my question nor giving direct testimony as to conditions; just merely speculating as to what may have existed; and I object to him proceeding along that line, and move to strike out the answer.

The Court:

Read the question. (Last question and answer read by reporter.) I think the question itself rather asks for speculation.

Mr. Matteson:

I will withdraw the objection to it, if your Honor please, and follow it up.

Q. Well then, when you testified that there was adequate ventilation in the engine room of the Seminole, are you assuming that such things as you have suggested, —such as a manhole aft, existed?

A. I assume that there was the normal amount of ventilation holes used in the boat, practically. I have never seen one without such things.

Q. Then as I recall the question that was put to you yesterday, it assumed merely the presence of the skylight, and the presence of the window in the passageway, the presence of the hatch, the presence of the window on the port side of the engine room; and you testified on the basis of the existence of those things that there was adequate ventilation in the engine room. Now I understand now that you are also assuming that there were other means of ventilation, which were not included at that time—included in the statement, which I am giving you now: is that right?

A. I will still hold on the first point too, although it is contradictory to what I just said; that it is possible to ventilate that engine room alone with what openings there were in that engine room; the windows, the hatches, and the cowl; the engine room alone—not the bilges.

Q. Yesterday you made some comment with respect to Libelants' Exhibit 24, regulations for the prevention of explosion and fire on motor boats, approved by the National Board of Fire Underwriters; and I think that you suggested that these regulations were one man's opinion.

A. That is correct.

Q. I call your attention to the statement in the rules, the seventh paragraph:

Mr. Underwood:

Before you go further, may I ask that the previous question be read? (Question beginning at 5th line on this page, and answer, read by reporter.)

Q. —Which reads as follows: After examination of many boats, and doing everything possible to avoid unnecessary expense, the matter was taken up with the Na-

tional Board of Fire Underwriters, and the following have been considered necessary by their engineers.—That would seem to indicate that it was more than one man's opinion, would it not?

Mr. Underwood:

I object to that, if your Honor please; the document speaks for itself; the testimony of the man who said that he was the author of it, speaks for itself.

Mr. Matteson:

I don't think he said that he was the author of it.

Mr. Underwood:

That is my recollection. At all events, the document speaks for itself.

The Court:

I think that is arguing with the witness. I sustain the objection to the question.

Q. Well, I would like to ask you about one or two of these things and see how much disagreement there is between your point of view, and the point of view expressed here. For instance, in the 10th paragraph, on the page that I have referred to, it is stated that all tanks should have an indicating device, and such device shall not consist of glass gauges other than those of bullseye type, or of petcocks.—do you disagree with that?

A. I do.

Q. And the next paragraph, that—All outlets for drawing gasoline for any purpose whatsoever, be prohibited in the engine room.—Do you disagree with that?

A. I disagree with that too.

Q. And the next page,—that drip collectors be fastened on all carburetors; openings should be screened with #40 mesh brass.—Do you agree or disagree with that?

A. I disagree with that.

Q. Well what is your point of disagreement on that?

A. Because there are carburetors today that the drip pan is entirely unnecessary; that such conditions are taken care of by the manufacturers of the carburetor.

Q. Then I understand that you don't approve of drip collectors on the carburetors?

A. They have no particular value, in my opinion. In my experience, is that such a thing only leads a person to disregard flooding of a carburetor; say, Well the drip pan will take care of it: when it does not, only to a certain point. It is just as dangerous as not having them at all.

Q. If the carburetor does flood, it does prevent gasoline from going into the bilges, doesn't it?

A. Temporarily, yes.

Q. And you think because—(interruption). The next paragraph is that, There shall be a cut-off valve at each tank and each carburetor.—Do you disagree with that?

A. I don't see it is necessary under all conditions. It depends a great deal on the installation of the tanks and the motors and everything else.

Q. Now the next paragraph, that—Three-inch or larger ventilating pipes running all the way down to the bilges, be placed in all four corners of the engine room.—Do you agree with that?

A. I agree with the fact that ventilators, gooseneck ventilators, or any ventilator running to the bilge, is good practice; not absolutely necessary in all types of vessels though.

Q. Now do you agree with this statement: No ventilation above, either at deck or sides, will remove these vapors.—Referring to gasoline vapors.

Mr. Underwood:

Where is that found?

Mr. Matteson:

That is on page 3 of the exhibit; paragraph at the bottom, above the signature of A. C. Hudson.

A. Read that question again, will you, please.

(Last question read by reporter.)

Mr. Underwood:

I object to that, on the ground that the whereabouts of the gasoline vapors referred to, is not apparent—not included in the question. Where are they? What boat are they in? What type boat?

Mr. Matteson:

I will read the paragraph back; perhaps we will have it in more complete sense. Beginning with the statement that I read before, that three-inch or larger ventilating pipes running down all the way to the bilges, be placed in all four corners of the engine room. These shall be made so that they cannot be closed. The little water that will enter in a heavy sea would be negligible in comparison with the danger of confined gasoline vapors. Two of these pipes should be provided with electric fans, to remove gases from the bilges. If a suction fan is used, motor must be of the explosion-proof type, and located outside of fan duct. These fans should be run for at least ten minutes before starting, and after shutting down engine. Where boats are so small as to make electric fans impracticable, the same pipe should be installed with the fans omitted. No ventilation above, either at deck or sides, will remove these vapors.—

Q. I call your attention particularly to the last statement, which I take it refers to vapors in the bilges, in the lower part of the engine room. Do you agree or disagree with that?

Mr. Underwood:

I object to the question, on the ground that the type of vessel, and relative location of other ventilation in the bilges, and other pertinent information, is not included; therefore it is not a proper hypothetical question.

The Court:

I think the witness may explain; he is asked if he disagrees with that described rule of construction. If he thinks—if he wants to make any remarks about it, he may; or any difference in boats, to be brought out, may be brought out on redirect examination. I overrule the objection.

Q. What is your answer?

A. I do not entirely agree with that. It depends entirely on the construction of the vessel, the type of vessel, and a great many other conditions. You could put a cowl ventilator on deck, that would force air into that compartment and out through the bilge at a different point, and accomplish the same thing, without a blower, or without the vents leading entirely to the bilge. It depends entirely on the capacity of your engine room, the size of it, the volume of it.

Q. Well, we will refer to an engine room of the size of the Seminole. I take it that you would only disagree with this statement if there were other means provided in the bilges or lower part of the engine room, through which the accumulations of gasoline vapor could be exhausted: is that right?

A. I don't get that question.

Mr. Matteson:

Will you read that?

(Preceding question read by reporter.)

A. I am afraid I still don't get the twist of that question.

Q. Well, I will try to rephrase that. This statement, —No ventilation above, either at deck or sides, will remove these vapors,—you would agree with, if there were no means provided in the bilges or the lower part of the engine room for exhausting—to permit the exhausting of gasoline vapors?

A. I would say that you could not completely rid that engine room floor with such ventilation, unless there was other forms in the boat; some bilge ventilation at the sides, such as the goosenecks, as have been previously talked about.

Q. Now I think you said you did have some familiarity with the rules of the National Fire Protection Association, copies of which have been marked Libelants' Exhibits 25 and 97?

A. I say, I have seen copies of them. I do not possess a copy of them.

Q. And you say that taken as a whole, it is your understanding that they are not fully followed?

A. They are not fully followed; no.

Q. Well now let's see where you disagree with these rules. Take for instance page 3 of Exhibit 25, paragraph 1(d): Seams of ferrous metal tanks shall be welded, or riveted and welded.—Do you disagree with that?

A. I disagree with it, on the grounds that there are other forms of sealing that tank besides caulking or welding.

Q. Apparently the sense of this rule is that other forms are excluded.

A. That is the sense of the rule as I gather it.

Q. And you disagree with the rule, for that reason?

A. I don't believe that you have to live up to the letter of that rule there just because they say it shall be welded, necessarily, when brazing would do just as well, or soldering.

Q. Brazing of course is used only on copper or brass, is it not?

A. No; used on iron, as well.

Q. The next statement is,—All outside rivet points and heads shall be welded.

Mr. Underwood:

If your Honor please, I object to that on the ground that it is not fair to call specific items to the attention of this witness, without giving him the benefit of the following, which is the very initial paragraph in the regulations as they appear in Exhibit 97, which is: No provision in these regulations is to be retroactive as regards construction.—Matters of construction. The Witness has said that he does not possess a copy of them, hasn't used them in practice. I don't think it is fair to catechize him about specific sentences without letting him have that information as well.

Mr. Botts:

Now you have given it to him; go ahead.

Mr. Matteson:

We have referred to these rules as standards of practice, if your Honor please. This witness says he does not fully agree with them. I want to make clear the points on which he does or does not agree.

The Court:

Well this witness has expressed an opinion as to the construction of the Seminole. Now provided you incorporate in your question the proper assumptions in regard to what these rules are, then you may question whether he agrees or disagrees. Any observation that Mr. Underwood makes there about any general suggestion, is proper to be incorporated; or any other sugges-

tion you want to call to the witness' attention, Mr. Underwood, you may do so—as to what these rules are. In other words, here is a system of rules that this witness says he does not follow and does not recognize. I think you are entitled, Mr. Matteson, to inquire if he agrees or disagrees with certain rules.

Mr. Underwood:

If your Honor please, these rules don't even purport to cover the Seminole; because it expressly says they are not to be retroactive. The Seminole was built and her gasoline tanks were installed, before 1930, the date the rules were promulgated; so it is utterly immaterial.

The Court:

What do you say to that? Why should the witness be interrogated about these if they don't apply to the Seminole?

Mr. Matteson:

If we were going to apply them as rules, there might be some force in that statement. But what we are applying them as, are standards of due care. And they are standards of due care, no matter when a vessel was built.

The Court:

Well I think you may ask that, but I think you ought to ask it independent and unconnected with the matter of these rules: Do you think so-and-so? Do you think the Seminole should have been constructed along certain lines? But to have this witness explain why he disagrees with those rules, when the rules on their face don't apply to the Seminole, I think is improper.

Q. Now, do you agree or disagree with a statement that—Outlets on gas feed lines for drawing loose gasoline

for any purpose whatever, are prohibited in the engine compartment?

Mr. Underwood:

If your Honor please, I object to that. Here is a statement now draw actually out of this book, I suppose, but apparently out of thin air. I don't think it is proper to catechize the witness.

The Court:

I sustain that objection. The question is, Mr. Matteson, "are prohibited". Now we must have some standard. If that standard is inapplicable to the Seminole, I think it is not a proper basis. I think you can ask him, Do you think so-and-so?—the conclusion that that states; but not ask him whether he agrees with a certain statement that a certain method of construction is prohibited.

Q. Put it this way: Are you of the opinion that gasoline feed lines for drawing loose gasoline for any purpose whatever, are prohibited in the engine compartment?

Mr. Underwood:

I object to that; it is the same question.

The Court:

I think that is the same question. I hope I make myself clear, Mr. Matteson.

Mr. Matteson:

Will he read the question?

(Last preceding question read by reporter.)

Mr. Matteson:

That is, "*should be* prohibited".

A. There are conditions where these draw-off lines should not be prohibited.

Q. That is your opinion?

A. It is my opinion. I wouldn't hesitate to install one on a boat if I thought it necessary.

Q. Well would you—do I understand you, that you consider that they would be properly installed in a vessel of the type of the Seminole?

A. You say, that they could be properly installed?

Q. Yes.

A. They could.

Q. And of course an item such as an outlet on a gas feed line is not an item of permanent construction, is it? In other words, it is a matter that can be readily altered?

A. It can be readily altered, yes. They can be removed at any time.

Q. That is a simple matter?

A. Yes, sir.

Q. Can you give us a rough idea of the dimensions of the engine room of the Seminole?

A. Very rough; I didn't measure it. I would say that it was approximately twelve to fourteen feet long; probably nearer fourteen feet long; and possibly twelve feet wide, I think; eleven or twelve feet wide; maybe more than that. I did not measure the compartment.

Mr. Underwood:

Sixteen feet four and a half; twenty feet wide.

A. Twenty feet wide? Wider than it was long?

Q. I think that is about right. And have you got the height?

Mr. Underwood:

I don't want to mislead you about that; width at a point four feet above the bilge is twenty feet; that prob-

ably includes the alleyway. Width of the engine room above the cabin floor level, between the port side of the hull and the fore and aft window on the starboard side, seventeen feet. It would make it approximately square; sixteen by seventeen.

Mr. Matteson:
Sixteen feet long?

Mr. Underwood:
Fore and aft.

Mr. Matteson:
And have you the depth of it?—from floor to the skylight?

Mr. Underwood:
I have the height in the way of the raised trunk, eleven and a half feet. Height from engine room floor to deck line; ten feet.

Mr. Matteson:
I think that will suffice.

Q. You were referring to the valve, here the other day, that has a composition seat in it, and said that there are composition seats that are satisfactory for gasoline. You don't know whether this valve had such a seat, or not?

A. That is correct.

Q. Now I refer you to this exhibit—the ticket is off; this is Exhibit number 17, which includes a trap, used in the gasoline line. Is that what you call it?

A. That is what it is, a trap; gasoline trap, or fuel trap; not necessarily gasoline.

Q. The purpose of a trap of this type is to permit water or impurities to filter out of the gas and accumu-

late in the lower part of the trap, where they can be drained off: is that correct?

A. That is correct.

Q. Would you approve an installation in an engine room, which incorporated a trap of this type in the gasoline line, and then led a feed line from the bottom of a trap to one of the auxiliary gasoline motors?

A. I wouldn't say that it was good engineering practice; no.

Q. As a matter of fact it is very poor engineering practice, isn't it?

A. It is not the best.

Q. I want to get back to that test which you made of these tanks, for just a minute. When you ordinarily make a hydrostatic test, by placing a riser on top of a tank, and putting a head in it, what is the method of determining whether or not the test is successful?

A. To note the drop in your riser.

Q. That is, you have a riser of small diameter?

A. That is correct.

Q. Which is adequate to secure the head and pressure in the tank, but a small leak or distortion below will permit the water to fall noticeably in the riser; is that right?

A. It would.

Q. And that is the usual method of making the hydrostatic test, —to leave that condition for a period, and note whether the water falls or not, in the riser?

A. That is right.

Q. Now did the water fall in the riser that you used in connection with this test?

A. It did.

Q. And that was because of the leaks that you have described to us, that you were unable to stop?

A. It was.

Q. Consequently you couldn't determine by that method, by the usual method, whether the test was successful or not, could you?

A. That particular test there was not completely satisfactory.

Q. Now you spoke of the oxidation of the tank by exposure, since last May. Will you tell us just what that consisted of? I think you said something about red lead paint having disappeared from it.

A. That is correct. That was on the lower portion of the tank, that was buried in the ashes before I removed it from the compartment.

Q. It was painted with read lead, you say?

A. There was red lead paint on it when I removed it from the compartment.

Q. And there were no traces of red lead paint when we saw it the other day?

A. It had been washed off by the rains.

Q. Now you have talked to us some about the priming of the engines. Why is it ever necessary to prime a gasoline engine?

A. Because when a motor is cold it doesn't get the proper amount of gasoline in the combustion chamber, or into the cylinder itself, by merely drawing it through the carburetor, unless you choke it or prime it.

Q. And as a matter of fact, the purpose of priming is to make it start quicker; isn't that right?

A. A motor that has to be primed will not start at all without priming it.

Q. I see; what you need in the cylinders in order to make the engine run, is to force gasoline vapor up?

A. You do.

Q. And when your engine is cold, gasoline is drawn in the metal manifold and does not vaporize so readily?

A. No, it does not.

Q. And is that the reason you have to prime engines when they are cold?

A. That is the reason.

Q. Now when they are hot, the engines have turned over, gasoline is drawn into the manifold, the heat will vaporize the gasoline, will it not?

A. It will if the manifold is short enough.

Q. And that would give you your necessary supply of gasoline vapor in the cylinders?

Mr. Underwood:

If your Honor please, I object to this unless the size and type of the motors is included in the hypothetical question. According to the witness' last answer he needs that information properly to answer his question.

Q. I am talking about the engines of the size and type of the Seminole, particularly.

A. Well in the engines of the Seminole the manifold is quite long; the intake manifold is quite long; and that type of motor will not start, even when hot, without slight priming. It doesn't take the amount of priming when they are hot, as it does when they are cold.

Q. Have you ever operated the engines of the Seminole?

A. I have never seen them before, until this case came up.

Q. Now there is testimony in the case that the reason why it was necessary to supply—to prime the engines of the Seminole, was that the air supply, compressed air, used for starting the engines, was not adequate to turn the engines over for more than a very few revolutions. That would be a reason for priming the engines, would it not, if it were a fact?

A. Certainly would.

Q. And you of your own knowledge know of no different reason, do you?

A. I know of no reason why.

Mr. Underwood:

I am sorry; was that answer completed?

(Last question and answer read by reporter.)

Mr. Underwood:

Does that complete your answer?

A. I said all I wanted to.

Q. You said some wicking that woul be used for packing a glass gauge is good—a glass gasoline gauge, is good, and some is not.

A. That is correct.

Q. What kind of wicking would not be satisfactory for that purpose?

A. Anything made of rubber. Cotton is perfectly satisfactory; it is not as good as asbestos, however.

Q. Of course you don't know what the wicking actually used on the Seminole was, do you?

A. No, I do not.

Q. You were saying yesterday that after a test had been made of the gasoline tanks, the gasoline from the gauge glass could be run back into the manifold line?

A. It could be; yes.

Q. Just how would you accomplish that?

A. It could be drained out before the tanks were turned on again; you could turn the tanks off.

Q. You would have to first turn off all the tanks?

A. You would.

Q. And then you would drain the valve through the gasoline discharge pipe?

A. You would open the—leave the lower valve of the gauge open, and let what gasoline there was in there run into the line; or if they were full, it would run into any carburetor chamber, or wherever there was room, you could start up your motor that way.

Q. Then as I understand it, every time you wanted to get the gasoline out of the glass gauge, you would have to do it in one of two ways; either by starting up some of your gasoline-consuming machinery, or else by opening the draw-off valve and drawing it out?

A. That would be correct.

Q. I think you said yesterday that if the valve on the feed lines adjacent to the manifold lines were shut off, there would be no head of gas anywhere in the gas line, between that point and the carburetors; is that right?

A. There would not be as much head.

Q. There would be some head?

A. There would be a very slight head, yes.

Q. And of course, where the line was such shape that it ran down and under the floor and then up to the carburetor, air could return into the lines through the carburetor, could it not?

A. No, it would not.

Q. You think not?

A. It would not; no.

Q. Why not?

A. There is a float valve in the carburetor that shuts that off. Even if it wasn't there, air would not enter that pipe, either.

Q. You spoke of your objection to soldering pipes, and that if they were removed—if you wished to remove the pipes or break the connections, you say you would have to use a blowtorch to get the solder off.

A. An open flame; a blowtorch, or a torch of some kind. They would have to be heated.

Q. Soft solder can be removed with a knife, can it not?

A. It can be, but it would ruin the fitting; if you attempted to turn that pipe out of the fitting, that solder would ball up in there and make an awful mess. If you wanted to throw the fitting away afterwards, yes.

Q. I think you said yesterday that there do come times when through necessity you have to tear down the gasoline lines. What did you have in mind by that?

A. Possible stoppage from foreign matter. Some—

Q. Anything else?

A. No, that would be the only reason, unless you wanted to change the location of the line.

Q. Of course if you tighten such connections repeatedly, there comes a time when there is only one thing to do, and that is, renew them; that is correct?

A. That is correct.

Q. That would be such an occasion, would it not?

A. That would be one occasion. You might discover one faulty fitting in the line, up at the end, where it had to be undone from the end; unmade, right up to that fitting—unless there were unions in the line.

Q. I think you spoke yesterday of the fact that according to your observation there was a little burning of the timbers in the floor of the engine room and in the bottom of the tank compartment, as evidence of the fact that there was no gasoline in the vicinity of those members at the time of the fire. Did I understand you correctly?

A. I don't believe that I said that there was no presence of gasoline. I said there was no severe fire there.

Q. Well, if the lower parts of the engine were filled with gasoline vapor, but not gasoline liquid, a fire might be started by an explosion, or a condition of the gasoline vapor, without any necessary charring of those members; isn't that correct?

A. I don't know that I can answer that exactly.

Q. In other words, dry gas, or gasoline vapor, would burn or explode quickly?

A. If there was gasoline there, or gasoline fumes, I would assume that the thing would blow up in one flash.

Q. And then it would be over?

A. Then it would be over; wouldn't set fire to anything, unless there was some more liquid to burn afterwards.

Q. If there were liquid gasoline remaining then that would burn and char the members in its vicinity?

A. It would.

Q. I think you said yesterday that you would not hesitate to go into the engine room of the Seminole if she had been laid up for two months, and throw an electric knife swtich on a switchboard, if you had not smelled gasoline; is that correct?

A. That is correct.

Q. If you had been warned—I will say if you had smelled a strong bilgy odor, and had been warned against the danger of striking a match or making a light, would you have felt the same way about it?

A. I think that if I had been warned, I might have taken a little more precaution, examined a little bit closely. A bilgy odor is not necessarily gasoline.

Q. It would show—a bilgy odor would show lack of ventilation, of course, would it not?

A. Not necessarily.

Q. What would a bilgy odor indicate to you?

A. The odor of stagnant water in the bilge, if there was any.

Q. Well the odor in itself would indicate lack of ventilation, would it not?

A. I don't think so. I think you could have that odor without—or with even ventilation.

Q. You say that one reason why you would have no fear of throwing a switch in the engine room, would be that you would expect no spark, or a very small one, when you closed the switch?

A. I would expect no spark at all with the switch when I closed it, if the switchboard was high enough above the floor—

Q. What was that?

A. If the switchboard was sufficiently high above the floor so that there would be little danger of any fumes reaching to the switchboard.

Q. You would not expect any sparks on a switchboard or in its vicinity, if you closed a knife switch in the engine room, would you?

A. I certainly would not; not on one hundred ten volts.

Q. And if you closed a switch on the lower left hand corner of the switchboard and there was an emanation of sparks; eight to ten inches to the left of that, that would have been something unusual, wouldn't it?

A. I wouldn't expect it; no.

Q. That would have been what you would call a short circuit, would it not?

A. Well that I couldn't say, what it was—would be.

Q. It certainly was something that should not occur under those conditions?

A. Something—no, it should not occur; you wouldn't expect it.

Q. Well when you get an emanation of sparks, in a supposedly closed and insulated circuit, that is what you call a short circuit, is it not?

A. Yes.

Q. And such thing will not occur if the lines are properly insulated and in proper condition, will it?

A. No, you wouldn't get it from properly insulated wire.

Mr. Matteson:

That is all.

By Mr. Botts:

Q. Mr. Munroe, you have testified with reference to the expansion of gas—I mean, of air, in the gasoline tanks, and the necessity for a large or small vent pipe. I would

like to know whether or not you have ever made any technical study as to the expansion—the coefficient of expansion of air in relation to change in temperature.

A. I have made no technical examination and study.

Q. You don't know what that is, do you?

A. No; I know that it does exist, though.

Q. Do you know enough to know whether or not that expansion is relatively small in relation to the entire volume of air?

A. That—I do know that that depends a great deal upon the variation of temperature, and also atmospheric conditions. You can get the same breathing with difference in atmospheric conditions.

Q. You say that the coefficient of expansion of the air will vary with the atmospheric conditions as to humidity?

A. Not if you want to call it the coefficient of expansion of air, I don't mean that. I mean that a tank will breathe due to the difference in atmospheric pressure on the inside of that tank and the outside, due to atmospheric pressure—I mean barometrically speaking; not in temperature but in barometric pressure; that depending entirely on the size of the vent pipe.

Q. But do you have any idea at all as to what that coefficient of expansion of air is, in relation to change in temperature?

A. No.

Q. You don't have the least idea about that?

A. I don't know; no. Not necessary for me to know that; I can find it in one of these books here.

Q. Can you—would you mind finding it?

A. I don't know; it might take a little time for me to find it.

Q. I would like to have that, if you have got that in your book.

A. I don't know if it is in this book or not.

Q. Well I won't finish on it, so if you have any book with that in it, I would be delighted to have you produce that tomorrow.

A. It varies with the temperature.

Q. All right, can you from your books of reference or any other source, give me that coefficient of expansion in relation to change in temperature?

A. I believe I can give you what you want; I am not sure.

Q. All right; if you would, just in order that we may be satisfied with reference to your source of information, bring your reference book with that in it.

A. All right.

Q. All right sir; then I will pass that question until tomorrow. Now Mr. Munroe, I am not at all sure in my mind the shape of those drip pans that you mentioned in there. I understand that they were square at one end. Would you mind taking a pencil, if you have one—I don't suppose you like mine, because they write like a nail, very hard.

A. I left my pencil home.

Q. Now suppose you draw a section of the tank compartment showing both drip pans and their shape; that would be—they are divided.

A. That's the plan.

Q. I don't want to file this in evidence; I just want to be sure that I understand. Then as I understand it, these drip pans followed generally the curve of the gasoline tanks, in the center of the vessel, and were square at the outside of the vessel?

A. That is correct.

Q. Generally speaking; all right. Now then, these wooden four by four supports upon which the tanks rested, were you able from the examination that you have made, to determine in what method those four by fours were installed underneath the half-circular end of the drip pan toward the center of the vessel?

A. No, I could not tell, because I didn't remove those two tanks, and there is no way of reaching in there—at least I didn't attempt to reach in there to find out.

Q. Then you don't know at this time how those supports were underneath the two center tanks?

A. No.

Q. You didn't take them out.

Mr. Underwood:

Indicating the curved surface of the tanks—curved ends of the tank.

A. Semi-circular.

Q. Then the only one you know how they were installed, was underneath the single tank?

A. Number Four tank.

Q. And that was removed—

A. And number One tank—the square end. You can see number one after you remove number four.

Q. There was no possibility, the way these tanks were installed there, while they were all in place, for a person to examine them and ascertain whether they leaked, was there? I mean, by physically examining the tank.

A. The only part of the middle two, maybe; I don't know what other hatches there were. There was room between number one tank and the outer side of the vessel to have seen down, and for a man to have gotten that side of number one tank.

Q. Now let me—I call your attention now to the Libelants' Exhibit No. 11, the double cut-off valves, from the draw-off line. Do I understand you to say that from your examination, both of those valves were in good shape and proper, prior to the time when the composition was destroyed by the fire?

A. I can see no reason, at the present, under the present conditions, that they weren't correct.

Q. Do you see any—if they were both in good shape, any reason for two valves for that draw-off line?

A. Yes, I see a reason for two valves.

Q. What?

A. Because two valves are better than one.

Q. I see.

A. That is a very simple answer.

Q. If one was good, the other would be unnecessary, is that true?

A. No; the second one is a double precaution; it is a safety factor. I mean if you had a piece of wire that would hold, and your tension was five pounds, and you put one in there that would hold ten pounds, you didn't need the other five pounds, but you had it there for a factor of safety.

Q. Now let's get to the question. If the first—if one valve was good, and in good shape, then the other didn't serve any purpose in cutting off the gasoline, did it?

Mr. Underwood:

If your Honor please, I object to that an argumentative. I think the field has been covered, and the testimony is clean on it.

The Court:

Well I don't want to cut off Mr. Botts; I think the examination is proper; I am sure he thinks he is developing something that hasn't been developed; so I overrule the objection.

A. What was the question, again, please? (The last question preceding, was read by the reporter.)—If the inner valve was tight, the outer valve didn't hold back any gas; no, except what was in this short line here, depending on whether they closed off the outer valve first, or the inner valve first.

Q. Now I understand you to say that you think a draw-off line in an engine room, such as we have in the

Seminole, is proper and a desirable installation; am I right?

A. I believe that such a draw-off valve is perfectly safe, perfectly practicable, in a boat of her type.

Q. Now then my recollection of the reason you gave for that opinion was; that it was convenient to have it readily available for the purpose of drawing off gasoline for priming; is that one of the reasons?

A. That was one of the reasons; yes.

Q. Now I don't recall the other reason; would you mind just telling me what other reason you thought that was desirable?

A. You mean, outside of the use for priming?

Q. Yes; that is one reason—to get gasoline for priming. Now for what other reason is it desirable?

A. Because she was used as a cruising houseboat, with several small tenders, that had to be supplied with gasoline. It was impossible for them to get gasoline from any shore station where she cruised, and those boats had to be supplied; and any gasoline that was being furnished to those boats, it was better to have it come under the supervision of a licensed, or at least experienced man, who operated that gasoline.

Q. Then as I understand your point, it is substantially this; that if they were going to secure their supply of gasoline for other boats, from the Seminole, it was better to have it in the Seminole—in the engine rom, than elsewhere; is that it?

A. That is correct.

Q. But do you agree that it would be better and safer not to draw it off at all for that purpose?

A. No, I won't agree with that.

Q. You don't agree with that?

A. No.

Q. You think then that it is just as safe to draw off gasoline in an engine room, and transfer it through buckets or containers, and put it in other boats—it is your

opinion that that procedure would not in any way tend to create a fire hazard, by leaving gasoline vapors in the vessel?

A. If properly handled, there was no more danger than there is filling your automobile at a filling station on the street.

Q. Now wait a minute; do you mean to tell me—did you hear the testimony as to how it was said this gasoline was drawn off in that vessel—in the engine room?

A. I heard some of it, yes.

Q. You heard the testimony, that they set an open container such as we have, Exhibit 13, underneath this draw-off valve, and allowed gasoline to flow into that container?

A. Yes.

Q. And then when it was full they would hand it out the window; you heard that testimony?

A. I did.

Q. All right; now then do you think that that procedure would cause, or be likely to cause any gasoline fumes to be left in the engine room?

A. A very, very small percentage.

(At 5:05 o'clock p. m., hearing was recessed until 9:15 o'clock a. m. of the following day, to-wit: October 12, 1939.)

3444 Miami, Florida;
Monday, November 13, 1939.

Hearing was resumed pursuant to adjournment of Friday, October 13, 1939.

3445 CAPT. J. W. BRYANT as a witness on behalf of Respondent, was recalled and testified as follows:

Direct Examination.

The Court:
You have been sworn previously in this case?
A. Yes, sir.

The Court:
Your oath that you have already taken covers the balance of your testimony.

Mr. Matteson:
If your Honor please, I understand that Captain Bryant is now being called as a witness for Respondent Phipps; and that this is not further cross-examination, but examination on behalf of the Respondent Phipps?

Mr. Underwood:
That is correct.

The Court:
Did you make the point as to his oath?

Mr. Matteson:
Oh, no, sir.

The Court:
I admonish you though, Captain, that the oath that you have taken in the case is binding on your testimony now

By Mr. Underwood:

Q. Captain Bryant, did you ever go to Pilkington's yard in Fort Lauderdale with J. F. Riley?

A. Yes, sir.

Q. Do you remember any particular time when you went there with him?

A. Why it was in the first of the year '31. They notified me, Mr. Riley did, that he had taken charge of—taken over the Seminole from the Miami office, and she was down at Pilkington's yard at Fort Lauderdale, as I recall it; and he asked me to drive down with him, because he had never been down there; and I drove down with him.

Q. You went down in whose car?

A. Mr. Riley's car.

Q. What happened on the way down?

A. Well we got lost on the way down; getting to the yard, we got on the wrong road, and rode around down there.

Q. Between Lauderdale and Pilkington's yard?

A. Yes, sir.

Q. What happened when you got to Pilkington's yard; did you see Mr. Pilkington?

A. Yes.

Q. What happened then; what words passed between you three?

A. Well Mr. Riley had never met Mr. Pilkington, and he was taking over the boats,—Mr. Riley was. And Mr. Pilkington came out, and I introduced him to Mr. Riley, and told him that Mr. Riley was taking charge of the boats, and all of the correspondence and stuff would be addressed to Mr. Riley and the Palm Beach Company.

Mr. Underwood:

You may cross-examine.

(Informal recess was had).

Mr. Matteson:

No cross-examination of this witness, if you Honor please.

(Witness Excused.)

3447 Thereupon, Mr. WIRTH MUNROE as a witness on behalf of Respondent, was recalled and further testified as follows upon

Cross Examination.

Mr. Botts:

Mr. Matteson has some questions to ask.

Mr. Underwood:

If your Honor please, Mr. Matteson had concluded his cross-examination, and Mr. Botts was cross-examining the witness when he was last on the stand. It seems to me we should have Mr. Botts conclude.

The Court:

Mr. Matteson may ask any question he has to ask.

Mr. Matteson:

It doesn't make any difference to me.

The Court:

Either way.

By Mr. Matteson:

Q. Just one or two things, Mr. Munroe. Last October when we visited the Seminole, your attention was called to the fact, was it not, that the side plates of the vessel had not been removed, but that new plates had been placed on the side over the old plates: That is a fact is it not?

A. That's the way it appears out there.

Q. At one stage of my cross-examination, some question arose as to whether this valve shown in this exhibit number 4 and 5, was the valve of No. 1 tank or the valve of No. 2 tank. Now I would like to straighten that out if I can; and I call your attention to exhibit number 3. You recognize exhibit number 3 as showing the valve of No. 1 tank, do you not? You can see the toilet connection and the small generator also, I believe?

A. It has the appearance of being No. 1 tank. I believe this is the valve; that's in the plating.

Q. Referring to the valve that is attached to the pipe marked sea connection; is that right?

A. That is correct. I didn't actually see the side of the vessel there.

Q. Well at the left hand lower corner of the picture—

A. That's the shelf.

Q. That is the deck stringer plate on the port side?

A. No, it is sort of a bilge stringer, web stringer, that runs all through the entire vessel, and it is the same height as the main deck forward and aft of the engine room.

Q. Well taking those things into—

(Discussion between counsel.)

Mr. Matteson:

I would like to have the witness satisfied.

A. I am satisfied now that that is No. 1 tank. I was doubtful about it before.

Q. Well you can identify the valve shown in number 4, with the valve shown in number 1, can you not? They are the same valve, same opening? I call your attention to the pipe attached to the valve,—upright pipe marked sea connection on number 3; and I believe you can see a part of it in the lower corner of number 4. Also you can

see the same piece of seaweed there coming through the opening, can you not?

A. That's the same opening.

Q. Same opening?

A. My previous assertion, my recollection was that that was in the—that piece of seaweed, so-called, was in the second opening; but my recollection was incorrect on that.

Q. You are satisfied now it was No. 1?

A. I am pretty sure it was No. 1; that it is No. 1.

Q. I think you said in the course of your examination that a cylinder or a sphere is the strongest form of construction; is that correct?

A. For what purpose?

Q. For any structural purpose; an arch is stonger than a straight surface?

A. Yes.

Q. And where the pressure is against the outside of the arc, so that you have a bridge effect, that is the strongest construction, is it not?

A. It is stronger than a straight surface; yes.

Q. I mean, stronger than it would be if the load was against the inside of the curve?

A. Not necessarily. Do you mean, whether the arch is inverted, or whether it is convex or concave?

Q. No.

A. Which side the pressure is on?

Q. Yes. That one which is convex toward the pressure, is stronger than one that is concave toward the pressure, is it not?

A. That depends entirely on the anchorage of your ends.

Q. Well I am assuming that the ends are anchored?

A. One has compression, and the other has tension, depending on which the curve is, and the weight to the curve.

Q. But the compression is the stronger resistance, is it not?

A. I don't know that you can say it is stronger.

Q. You don't concede that?

A. I wouldn't concede that it was the stronger, no; because it entirely depends on what your anchorage it on the other end.

Q. Well take a tank like the tank of the Seminole, with an inverted crown on the bottom; isn't it a fact that the—assuming the proper anchorage, of course—that the bottom would be the strongest part of the tank?

A. The bottom would be the strongest part of the tank for your down pressure, yes.

Q. Now getting back to that test in October,—or the test in May, rather, that you made: Were you present when the tank was lifted out of the Seminole?

A. I was.

Q. And when it was lifted out, do I understand that you had had some stringers placed so that the tank was placed in an upright position on the stringers?

A. That's correct.

Q. And when you made your first examination of that tank, was it then in the upright position on the stringers?

A. It was.

Q. Now after the test, as I understand it, a part of the bottom crown of the tank was pushed down out of line; that's correct, is it?

A. That's correct.

Q. You noticed that after the test had been made?

A. That was after the test was made.

Q. Are you able to say that that depression of a part of the crown was not there when the tank was first placed in its upright position?

A. That bulge in the bottom was done by myself; I put it there.

Q. Well now I didn't ask you that Mr. Munroe; and I move to strike it.

A. I beg your pardon. It was not there when the tank first came out of the compartment.

Q. How do you know that?

A. Because I examined the bottom before any water was put into the tank at all, or any testing was done.

Q. Well when you examined it, it was sitting these stringers, is that right?

A. That's correct.

Q. And those stringers were about four inches high?

A. There were two 4 x 4's.

Q. Two 4 x 4's?

A. Yes.

Q. Then how did you examine it, under those conditions?

A. I put my head down and looked up underneath it.

Q. Through this four inch space between the bottom of the tank—

A. Seven and a half inches, or seven inches. A 4 x 4 is three and five-eighths inches, to be exact, and there were two of them, one on top of the other.

Q. One on top of the other?

A. That is correct.

Q. Were there two sets of those?

A. There were.

Q. You feel pretty sure that that depression in the crown was not there when you started the test?

A. I am absolutely sure it was not there.

Q. You spoke of jumping on the top of the tank. Jumping on the top of the tank would not create any pressure on the contents of the tank, unless the top of the tank gave, would it?

A. The tank was completely filled with water; the top of the tank did not have to give but very, very little to create the same.

Q. The extent of the pressure you put on the tank by that means, would depend upon the extent to which the top moved, would it not?

A. No indeed.—Well it would to a certain extent, yes.

Q. Do you say that the top of the tank was depressed to any extent by your jumping on it?

A. It was; it had to be.

Q. Was it depressed to the same extent as the depression in the bottom on the tank?

A. No indeed.

Q. Well how much do you think the top of the tank was depressed by your jumping on it?

A. That is very hard to say; but, a very small amount.

Q. Well could you give us any idea of the measurement?

A. There might have been a variation of probably a sixteenth of an inch, or to an eighth of an inch—which I doubt it was even that much.

Q. And did the top of the tank return to its original shape?

A. It did.

Q. Did you as a matter of fact observe that the top of the tank was depressed to any extent at all by your jumping on it?

A. I couldn't tell; I couldn't watch the top of the tank and be in motion at the same time.

Q. So you guess that it was a sixteenth or a little less, that was depressed—

A. I could have accomplished the same thing by using a timber or a maul or anything of weight hitting the top of the tank the same way; but not having that handy I merely kicked it with my heel.

Q. And of course, whatever you used, the pressure created would depend on the top of the tank's giving to a certain extent, would it?

A. It would have to give a very small part.

Q. And the pressure would depend on how much you would give it?

A. The pressure is multiplied terrifically in that distance between the top and the bottom.

Q. Well now you interest me. What authority have you for that statement?

A. It's the same principle as the hydraulic ram.

Q. Well what is the principle of the hydraulic ram?

A. A hydraulic ram is a container solid full of water, with a small piston at the end of it, that has a very short stroke. I do not know the exact formula or plan for the difference in power between the piston and the end of your ram.

Q. Well in the hydraulic ram that you are speaking of, is there any difference in area between the top of the piston and the point at which the pressure is applied?

A. Oh yes; the piston might only be half an inch in diameter, and the other end of the ram might be two or three feet.

Q. And that's the way you get your increase in pressure, by a difference in area, is that right?

A. Not necessarily in area.

Q. Well what makes the difference in pressure?

A. Water cannot be compressed. You have the same pressure at the—in half an inch that is spread over the area at the other end.

Q. Suppose we have a cylinder, with a piston in it, and the cylinder is full of water; and you apply a power to the piston, pushing down on the water; isn't it a fact that the pressure on the opposite end of the piston will be no greater than the force that you apply to the piston?

A. You are getting into hydraulics, and I am not a hydraulic engineer.

Q. Well Mr. Munroe you have been explaining to us the effect that you say you produced on this tank, and you attribute it to the principle of the hydraulic ram?

A. That's correct.

Q. And if that is so, you ought to be able to tell us about it?

A. I cannot explain to you all the workings of a hydraulic ram. I know that it exists; but I am not a hydraulic engineer.

Q. Can you tell us anything whatever about the principle of hydraulics, as to the forces that are produced, and how they act by the compression of a piston against a chamber filled with water?

A. I don't get your question at all Mr. Matteson.

Q. Well I am simply asking you for the underlying hydraulic principle that explains this hydraulic ram you are talking about. What is the hydraulic principle that is involved? How does it work?

A. I have told you what I know about a hydraulic ram.

Q. Well you have told us nothing; is that what you know?

A. No.

Mr. Underwood:

If your Honor please, I object to that as characterizing the witness' testimony. I didn't produce this man as a hydraulic expert in the first place, but to inquire about certain facts.

Mr. Matteson:

You certainly had him testify that he produced an effect known as a hydraulic ram, on this tank, and he attributed certain results to it.

The Court:

I don't see that there is anything for the Court to rule on.

Mr. Underwood:

I object to the last question, your Honor, as characterizing the witness' testimony.

The Court:

I overrule the objection.

(By Mr. Matteson):

Q. Put it this way: Do you consider that you have explained to us the principle of a hydraulic ram?

Mr. Underwood:

I object to what the witness considers he has explained. How does that help us to the conclusion of this case?

The Court:

Well he is on cross-examination, Mr. Underwood; I think the question is proper.

(By Mr. Matteson):

Q. Is there any further explanation of it you can give us?

A. I don't think I can.

Q. When a pressure is created by a piston in a cylinder filled with water, can you tell us how the resulting forces are distributed around the walls of the chamber and the opposite end? Any principle of dynamics relating to that?

A. I know that your pressure is equal on the bottom as well as on the sides.

Q. It is distributed over the bottom and the sides, is it not?

A. It is.

Q. And top as well?

A. No, not on the top. Of course you have the added weight of the water there.

Q. The distortion that occurred on the bottom of the tank was a great deal more than any displacement on the top of the tank, was it not?

A. There must have been more pressure on the bottom than there was on the top, otherwise it wouldn't bulge. You have the added weight of your water to help you out, so that you really have got more pressure at the bottom than you have at the top.

Q. The tank was completely filled with water?

A. The tank was in a vertical position.

Q. And completely filled with water?

A. Completely filled with water.

Q. And you noted this bulge on the bottom of the tank just after you had jumped on it; is that right?

A. After I had jumped on it. I then examined the tank all over; I had examined it just previous to my doing that, and I examined it again afterwards; and when—at that time I saw the bulge in the bottom, and you could see that it was freshly done by where it had loosened the galvanizing under the bottom of the tank.

Q. And it was subsequent to that, that you applied the riser test, was it?

A. It was before that— that was the last test I put on.

Q. That was the last test?

Mr. Underwood:

You mean, the jumping test?

A. The jumping test; the ram test was the last test I put on.

(By Mr. Matteson):

Q. Now do I understand that you examined the bottom of the tank just before what you call the ram test?

A. I did.

Q. And up to that time had there been no distortion of the bottom?

A. There was no distortion of the bottom.

Q. Now you have testified to some extent about hydrostatic tests of tanks. It is a fact, is it not Mr. Munroe, that one of the prerequisities for a satisfactory hydrostatic test of a tank, is that the tank should be thoroughly cleaned before such a test is made?

A. I don't know that that is; no.

Q. If that isn't done, any material that may be in the tank will be forced into the seams, will it not,—or it may be?

A. It may be forced into the seams, yes.

Q. And that would give a misleading result to your test, would it not?

A. All depending on what the material is that is in there.

Q. Now these tanks as they were originaliy constructed, as I understand it, had two inch outlets on the sides, at the top and the bottom; is that right?

A. There were two inch holes, bushings welded into the tanks, both top and bottom. Not in the top of the tank nor the bottom of the tank, but the sides at the upper and lower end.

Q. And that apparently was the way the tanks were constructed, was it not?

A. That is the way they were constructed originally.

Q. And a two inch opening would be very large for an outlet on a gasoline tank wouldn't it?

A. Yes.

Q. It would seem to follow from that, Mr. Munroe, would it not, that the tanks were probably not originally constructed especially for the purpose of containing gasoline?

A. I can't say that they were originally intended for gasoline, no. They were probably intended for multiple purposes.

Q. As a matter of fact they are identical with tanks that are ordinarily used for storage of water, are they not?

A. I wouldn't say that they are identical, but, very similar.

Q. Very similar?

A. —construction.

Q. And the large opening that we were just referring to is indicative of a water tank rather than a gasoline tank, is it not?

A. I wouldn't say that it was.

Q. I would like to ask you this question, Mr. Munroe. You have talked some about the drains on the trays under the tanks. If the level of the trays was below the water line of the ship, any drain leading from the trays over-

board would necessarily admit water back into the trays, would it not?

A. If the trays were below the water line, yes.

Q. Do you know what zinc plates are used for on the hull of a vessel like the Seminole?

A. I do.

Q. What are they used for?

A. To prevent electrolysis in the main hull.

Q. What is the cause of electrolysis?

A. Electrolysis is an electrical current that is set up between the iron and the bronze. If you have all iron you don't need the zinc plates. It is only where you have bronze fittings going through the iron, or bronze propellers; it is usually the bronze that the zinc would be taken out of the bronze, if you didn't have the zinc plates to eat up first.

Q. Where are zinc plates ordinarily placed on a vessel like the Seminole?

A. That depends. The majority of them are put near the propellers, usually on the hull; sometimes you see them placed on a strut, depending on where the greatest action takes place.

Q. Well they are placed anywhere in the ship where you find excessive pitting or corrosion, is that right?

A. That is correct.

Q. And that may be forward as well as aft?

A. They might be forward, they might be amidships, they might be aft.

Q. I mean, you didn't by your answer mean to suggest that the only place they are ever put is near a bronze propeller?

A. Oh, no.

Q. And as a matter of fact, if they are put on any other part of the vessel, where there are steel plates and steel frames, you haven't any contact with bronze and steel at that point, have you?

A. You won't need a zinc plate where you have steel to steel.

Q. Well the only place you would have bronze to steel, would be at the propeller, isn't that right?

A. Propeller, and the shafts.

Q. And that is in the after part of the ship?

A. Yes.

Q. And I think you just agreed that they are many times put in the forward part of the ship, as well as the after part of the ship?

A. You might have a bronze seacock fastened to a steel plating; none of it would appear on the outside, but yet there would be electrolysis set up between the bronze,—inside the plating.

Q. What I am getting at is this. It isn't the mere fact there is bronze against steel, that causes the electrolysis, is it? Isn't it the fact that there is an electric current, in addition to that?

A. There is a possibility of it, yes. But you get a greater amount of electrolysis where you have bronze or brass; any material that has zinc in it.

Q. Well it wouldn't occur in a vessel that had no electricity aboard her, would it?

A. No.—Oh, yes it would, too; I beg your pardon. It would.

Q. You think it would?

A. Yes indeed.

Q. But it is aggravated, is it not, by the presence of electricity?

A. It is sometimes aggravated by the presence of a ground wire running,—even a radio wire running to the shaft.

Q. That has to do with stray current set up in the hull, is that right?

A. Due to a stray current, yes.

Q. What would you say would be a normal number of zinc plates for a vessel of the size of the Seminole?

Mr. Underwood:

If you Honor please, I object to that on the ground it is a hypothetical question, and sufficient facts are not stated.

The Court:

I will overrule the objection.

A. Now what was that question, again, please?

Mr. Botts:

Read the question.

(The last question was read by the reporter.)

A. I don't know that I can answer that question. There are too many things dependent on it.

Q. Well let me ask you this: When one of these zinc plates is applied, about what is its usual size and weight, in a vessel the size of the Seminole?

A. You can put them on various sizes; there is no standard size for them. You can get them any size and put them on any size you want, depending on the amount of electrolysis or action that takes place at certain points.

Q. Well ordinarily they are about a foot by a few inches are they not?

A. You can buy them in sheets that size, but they are not put on a vessel, that size.

Q. Usually smaller than that?

A. Oh, yes.

Q. Usually about what size, would you say?

A. Not over four by eight.

Q. And how much would a plate that size weigh?

A. I would only be guessing at it.

Q. Well approximately?

A. Four or five pounds, six pounds. It depends on the thickness of it. Usually about a half inch thick.

Q. Now if you found as many as a dozen such plates on a vessel like the Seminole, isn't it a fact that that would be an extraordinarily large number?

Mr. Underwood:

If your Honor please, I object to that as speculation. In the first place I didn't go into the zinc plate business at all. It isn't proper cross-examination at all. He is making him his own witness as to zinc plates. In the second place, how many zinc plates somebody might put on a vessel, might be because of electrolysis; it might be he wanted to guard against it,—although we haven't any evidence of it. It is purely speculative.

Mr. Matteson:

I think we are entitled to know what our opponents position is with respect to this zinc plate matter. We have some very interesting evidence in the case with respect to zinc plates; and one of the other witnesses testified with respect to them. Now I want to know what is indicated by the conditions that we have and know existed. I think it is fair examination.

The Court:

Did he testify about zinc plates?

Mr. Matteson:

No he hasn't testified about zinc plates, that is true. But it seems to me,—of course if they don't want to be interrogated about it why that is quite all right with me. It is evidence I will put on. I don't care to press it if Mr. Underwood doesn't care to have the witness testify.

The Court:

I think that technically cross-examination should be confined to matters gone into on the direct examination.

Mr. Matteson:

Of course I think I am entitled to a considerable degree of latitude.

The Court:
I think so too.

Mr. Botts:
If the Court please, as I recall it,—it has been so long since this witness' testimony was given; I recall the witness Simmon, as I recall it, stated that by this witness he was informed as to the use for these zinc plates. Now then this witness is presented as an expert, and I think in view of all those things that latitude ought to be allowed to find out what this witness knows, and really how much of an expert he is.

The Court:
Well I am disposed to allow the cross-examination, to test his knowledge, both along the lines gone into in direct examination,—it may be that it is competent. I am just in doubt there. I am going to rule on the safe side and allow this witness to answer. I am in doubt about it, but I will allow him to answer it.

(By Mr. Matteson):
Q. Do you have the question in mind, Mr. Munroe?
A. I would like to have it re-read again; there was so much other said that I can't remember; I don't want to answer without knowing what it is.

(The last question was read.)

A. That depends entirely on the size of the plates. If they were small, a dozen would not be too many.
Q. How thick are these plates? How thick is the stock from which these plates are made?

Mr. Underwood:
I object to that as speculative.

Mr. Matteson:

That is a standard matter.

Mr. Underwood:

There is no proof about the size of it.

The Court:

You asked about some particular plates?

Mr. Matteson:

No, sir. The plating for putting in the sides of ships, comes as I understand it, in a standard size. I think that is a fact; if not, this witness can testify that it isn't. I would like to know what that size is.

Mr. Underwood:

There is no proof about it.

Mr. Botts:

He has already testified the plates are usually about half an inch thick.

Mr. Matteson:

Did he testify to that?—Then I will withdraw the question.

Q. Did the Seminole have any intercoastal or other keelsons?

A. Not that I could see in her.

Q. Did you notice the condition of this stringer that ran along the port side, that we noted showed in this picture exhibit number 3? The horizontal, fore and aft stringer along the port side?

A. That which appears as a shelf? The deck line? The main deck line?

Q. Yes?

A. Yes I noticed that.

Q. Is that what you call the deck stringer? What name would you give it?

A. It would be a deck shelf there, or deck stringer. It is a strengthening frame.

Q. It is a strengthening fore and aft frame?

A. It would be a stringer.

Q. That runs the length of the ship on her port side, does it?

A. As I recall, I think it runs the full length on both sides.

Q. When we were out there in October, did you note the condition of that port deck stringer with respect to corrosion?

A. Well there are places at the present time where it is fairly rusted through, yes.

Q. But did you note by comparison, what the condition of the same stringer on the starboard side was?

A. No I don't think I did. I should say there were about equally corroded, though.

Q. Now you have spoken about the necessity of having gasoline in the engine room for priming engines. You are familiar with an approved type of safety can which is sometimes used in the engine rooms of gasoline boats, where a supply of gasoline is required for special purposes, are you not?

Mr. Underwood:

If your Honor please, I object to the question on the ground that it refers to an approved type of safety can. Approved by whom? If it is one of these rules, I object to it; rules have no binding effect on the respondent.

Mr. Matteson:

I will strike out the word "approved".

Mr. Underwood:

Just ask the question without the word "approved".

(By Mr. Matteson):

Q. You are familiar with a type of safety can that can be used for that purpose, are you not?

A. I am not.

Q. You have never heard of such a thing?

A. I believe they have such things, but I couldn't tell you what it looked like or how it operates.

Q. If such a thing were available, that would be a perfectly adequate means for having a supply of gasoline in the engine room without having draw-off valves attached to the feed line, would it not?

Mr. Underwood:

If your Honor please, I object to that. The witness is asked about something the existence of which he does not know about. He is asked to say if something would be effective that he doesn't know exists.

Mr. Matteson:

This man has testified among other things that it is perfectly proper, and in fact necessary to have draw-off valves for gasoline in the engine room. I certainly think I am entitled to cross-examine him to the limit on that point, about which I think there is no doubt whatever.

The Court:

Read the question now.

(The question objected to was read.)

Mr. Underwood:

If your Honor please, I refer to the phrasology at the outset of the question, "such a thing"; and suggest that the previous two questions and answers be read, so that you will know what the reference is.

Mr. Matteson:

Suppose I reframe the question. I think we are wasting time.

The Court:
All right.

(By Mr. Matteson):
Q. If there were a type of safety can which could be filled ashore and kept in the engine-room as an available supply for priming the engines, there would be no necessity of having draw-off valves on the gasoline line in the engine-room, would there?

Mr. Underwood:
I object to that as speculative. What kind of can is it; what are its dimensions; what can is it; produce one.

Mr. Matteson:
All right. The question is: If there is a type of safety can which can be filled ashore and kept in the engine-room as a supply of gasoline for priming the engines, there would be no necessity of having draw-off lines on the gasoline lines in the engine-room as a means of supplying gas. I think that is perfectly all right; I think we are entitled to ask that.

Mr. Underwood:
I object on the ground that there is no proof of such thing; there is no proof of the material; there is no proof of the dimensions or the means of use. How much does it cost, and just what is it. I think we ought to at least know what the subject of the question is.

The Court:
As I understand it, the purpose of the cross-examination is to elicit from the witness whether it is, within resonable operation of the boat, proper to use a can filled ashore with gasoline and keep it in the engine-room. I don't think that question tends to elicit that. I will sustain the objection to that question.

Mr. Matteson:

If your Honor please, I do not care to press it, but I want to make my point clear. This witness has testified that it is a proper and necessary thing to have draw-off valves on a gasoline line in the engine-room, and he says the reason for that is because it is necessary to have gasoline in the engine-room to prime the engines. Now I am suggesting an alternative means by which that result can be reached, and asking him if that means is available, if that would not eliminate the necessity of having these draw-off valves. I think we are entitled to have an answer to that question.

The Court:

I think that is entirely proper.

Mr. Underwood:

But that was not his question.

The Court:

Suppose you restate your question, because I think your point is well taken.

(By Mr. Matteson):

Q. Now, Mr. Monroe, I will put it this way: I think you have said that draw-off valves on a gasoline line in an engine-room are proper on a vessel on the type of the Seminole, because of the importance of having an available supply of gasoline for priming the engines. Do I undestand you correctly on that?

A. I believe that is the way I stated it.

Q. Now, if there were available a type of safety-can which could be filled ashore and kept in the engine-room as a supply of gasoline for priming the engines, then there would be no necessity of having draw-off valves on gasoline lines in the engine-room, would there?

Mr. Underwood:

I make the same objection; it is the same question; it refers to a type of safety can. What kind of a can is it; we don't know its size; we don't know its shape, and we don't know how much it will hold. We don't know anything about it. The question is, as I understand it: If you have a safety can, and enough of them, would you have to draw off gas from the tanks to prime the motors?

The Court:

It seems to me that the answer to the question is obvious, but I think he is entitled to ask the question: If you had a safety can that could be filled ashore, would it be necessary to have a method of drawing off gasoline from the tanks inside. It seems to me that that is obvious.

Mr. Anderson:

He asked, if your Honor please, if it wasn't necessary, would it be necessary?

Mr. Underwood:

My objection is to the reference to this type of safety can. What is it? I think the witness is entitled to have more information than Mr. Matteson's conclusion that there is such a can.

The Court:

The way I construe it, I think the answer is obvious, but I will let him answer the question. The question supposes something that has not been brought out yet. It is a hypothetical question, the hypothesis of which has not been established, as I understand it, at least by this witness.

Mr. Matteson:

I agree with you. We cannot do everything at once. This witness is going away, and I would like to ask him now—

Mr. Underwood:
Why do you say this witness is going away?

Mr. Matteson:
This witness won't be here.

Mr. Underwood:
This witness will be here.

A. I don't know how to answer that question. If the can was safe enough to meet the requirements apparently set up by some insurance company, you would not be able to get gasoline out of the can.

Q. Do I understand that you never heard of such a type of can?

A. I never—

Q. And the type of can—

Mr. Underwood:
I object to that—

The Court:
The objection is well taken. We don't know what can you are talking about.

Q. I will refer you for a moment, Mr. Monroe, to the text of paragraph "M as in Mary" on page 48 of Libelants' Exhibit 97, and ask you if you will just read that and tell me if you are familiar with the type of safety can referred to there?

A. You say paragraph "M"?

Q. Yes.

Mr. Underwood:
"M" for Mary?

Mr. Matteson:
That is right. You will have to read to the end of the paragraph.

Mr. Underwood:

We object to that question because it does not describe the kind of thing Mr. Matteson has in mind. It doesn't describe any can at all. It says: "Only approved safety cans filled at the station". What is an approved safety can. I don't know that the witness knows, and the question certainly does not say.

Mr. Matteson:

I am asking the witness if he is familiar with any such type of can.

Mr. Underwood:

What type of can; what are the dimensions and the specifications of this can; what is the secret?

Mr. Matteson:

There is no secret about it.

Mr. Underwood:

There certainly is in this question.

The Court:

What is the question, Mr. Colman?

(Thereupon the preceding question was read by the Reporter as above recorded).

Mr. Underwood:

I object on another ground, that it refers to the use of carrying gasoline for auxiliary units, and not for the main engine.

The Court:

I will sustain the objection.

(By Mr. Matteson):

Q. Well, I will put it this way, Mr. Monroe: do I understand that you know of no type of safety can which would be suitable for such purpose?

Mr. Underwood:

I object to the question on the ground that it has the word "safety" in it. What is a safety can; what are its dimensions?

Mr. Matteson:

I asked him if he knows any type at all.

Mr. Underwood:

What is a safety can?

Mr. Matteson:

Ask him.

Mr. Underwood:

What one man might call safe, he might call unsafe.

The Court:

You can ask him if he is familiar with (knowing these specifications)—if he can describe a can that will measure up to these specifications; you can ask him if he is familiar with any type of can on the market that measures up to that.

Mr. Matteson:

That is substantially what I have asked him.

The Court:

All right.

(By Mr. Matteson):

Q. Are you familiar with any type of can which you would consider safe and suitable for the purpose that we

have mentioned, that is, for maintaining a supply of gasoline in the engine-room for priming the engine?

A. I don't know that I have ever seen one.

Q. After reading this rule that I called your attention to, "M" on page 48, do you have any doubt that such a can exists?

Mr. Underwood:

I object to that, if your Honor please—

The Court:

I think that is arguing with the witness. I will sustain the objection.

Q. You would not say, I take it, Mr. Monroe, that such a type of can does not exist?

Mr. Underwood:

I object to that; that is arguing with the witness. You have to bring this trial to an end some day. You have been very patient with questions of this sort. If he wants to prove that such a can exists, let him do it with his own witnesses.

Mr. Matteson:

I want to know whether this witness knows if there is such a thing in existence.

By the Court:

Q. Is there on the market to your knowledge a can that would measure up to these specifications, or can you describe a can that would measure up to these specifications?

A. I don't know of any can that measures up to that description. There must be something that is known as a safety can, but it is not generally sold on the market to my knowledge.

Q. Well, you have examined the hull there of the Seminole: are you of the opinion that gasoline was drawn off from these tanks for the purpose of starting the engines?

A. I am of the opinion that gas was drawn off through these valves into a squirt can for the purpose of priming the motors.

Q. From what you saw, are you of the opinion that gasoline was drawn off from these tanks for the purpose of putting gasoline on auxiliary boats, or do you know that; do you have an opinion about that?

A. I only know from what testimony was given by the various captains and engineers on that boat—

Q. Not from the testimony, but from what you saw. Is it your opinion that it was done; did you see enough to form an opinion about that?

A. I did not see enough to form an opinion that it was done.

Q. Well, assuming now, from what you saw, you are of the opinion that gasoline was withdrawn through these draw-off valves for the purpose of starting the engines, do you know of any other method by which gasoline could have been obtained for that purpose and kept there on the Seminole; was there any other safe way of doing it; assuming that it was necessary to have gasoline there in the engine-room for the purpose of starting the engine, was there any other safe way of doing it, or what would you say was the safe way of doing it,—I will put it that way.

A. There are other considerations, of course; of course, the safest place on the boat to keep gas is to keep the tank on deck, and only bring it down in very small quantities; but, as I stated in previous testimony, there were times when the gasoline had to be gotten in a hurry, and the engineer wouldn't have time to go on deck to get it, therefore, I feel that it was a better risk to have it in there handy, rather than to have the man go up on deck to get it.

Q. Well, assuming that it was desirable from good engineering standpoint and operation of a boat that gasoline not be kept on deck, and that gasoline was withdrawn in the usual operation of the boat from the tanks for that purpose, what other method would there have been of retaining or keeping gas there for that purpose in the engineroom?

A. The only other place to keep it in the engine-room would have been in a separate container.

Q. Is that a tank?

A. Drum.

Q. Like an open can?

A. Well, not necessarily an open can; I would not put it in an open can, but it would be a tank, a 50-gallon drum, or a 55-gallon drum, or even a smaller quantity, but there would be just the same chance of leakage to get that gas out of there as there would be in any other one.

Q. What is the comparison between the method of keeping gas in the engine-room that you have just described and obtaining it from the tanks; the tanks that you know to have existed there.

A. I don't know that there would be any advantage.

Q. No preference, one over the other?

A. No preference, one over the other.

Q. You mean by that, Mr. Monroe, if gas was kept in drums of a smaller capacity than these tanks that were used, that that would be just as safe as to withdraw the gas from the tanks that were installed?

A. Yes, just as safe as if drawn from the main tanks.

Q. That drum that you spoke of as being just safe, would that be a drum as free from contact with the air as the tanks that were installed and you know to have been on the Seminole?

A. You mean free from any leaks?

Q. No; I mean with reference to keeping them closed up, keeping the tanks or drums closed except for vents.

A. The drum I had in mind is the same type that is used for the transportation of it; you would have to put a vent into it.

The Court:
All right; that is all I have to ask.

(By Mr. Matteson):
Q. A vessel of the type of the Seminole is not subject to any governmental regulations with respect to gasoline tanks installation, is it?

Mr. Underwood:
I object to that as a question of law.

The Court:
If it is a question of law, I don't know—maybe the witness can help me.

Mr. Underwood:
I don't see why the witness should be expected to know it.

The Court:
He might enlighten the Court; I am willing to have all the information you can give me.

(By Mr. Matteson):
Q. Is it or is it not, Mr. Monroe?
A. Is it or is it not what?
Q. Is a vessel of the type of the Seminole subject to any governmental regulations with respect to installation of gasoline engines and tanks?
A. To the best of my knowledge she was not.
Q. Now there are commercial vessels which are subject to such regulations, are there not?

Mr. Underwood:

I object to that is utterly immaterial.

Mr. Matteson:

I think I will bring out the materiality of it in just a moment.

The Court:

I will overrule the objection.

A. To the best of my knowledge a vessel used for transportation of passengers is subject—that is, over a certain size, and I believe that she would come in—

Q. With gasoline engines?

A. Even with gasoline, Diesel or any other.

Q. And for cargo carrying, too?

Mr. Underwood:

I object to that. He is arguing with the witness; he is trying to elicit from him an opinion on what the law is. It is utterly absurd. We have to finish the trial of this case some day.

The Court:

The objection is overruled.

(By Mr. Matteson):

Q. Vessels carrying cargo are subject to such regulation, too?

A. I don't know that I am conversant enough with these rules—I don't know as I know these rules sufficiently to testify about cargo vessels—

Q. Now is there any reason that you can think of why draw-off valves on gaspolines would be any less safe in a commercial vessel than a yacht?

Mr. Underwood:

I object to that; it is the same old thing: arguing with the witness. I respectfully suggest that this is argumentative, and it doesn't get us anywhere.

(Legal Discussion).

By the Court:

Q. Mr. Monroe, if this vessel was used for commercial purposes and not for private purposes, would it be subject to any different rule as to having that method of drawing off gasoline?

Mr. Underwood:

If your Honor please. I hate to object to your Honor's question, but when you say "subject to any different rule", do you mean statutory law or regulation of an official body or any rule of prudence?

The Court:

I mean as to statutory governmental rule or regulation. If this vessel was used for commercial purposes, would it be subject to any governmental rules that you know of that it would not be subject to as a private vessel?

A. Yes, sir; she would come under the steamboat classification.

Mr. Underwood:

If your Honor please, I think perhaps Mr. Matteson and I can agree on that; if she was carrying passengers for hire, she would be under certain governmental rules. At the time of this fire my recollection is—although I am not certain—that these rules did not exist, but if she had been then carrying passengers for hire she would not have been subject to any governmental regulation.

Mr. Matteson:

I think you are laboring under a misapprehension as to the rules I am talking about.

Mr. Underwood:

Perhaps I am; you have been very careful not to let anybody know what they are. Do you want to show them to me now?

Mr. Matteson:
Yes.

By the Court:
Q. Getting back to the time this vessel was destroyed, was she subject to any governmental rules if she had been used for commercial purposes that she was not subject to as a private vessel?
A. I don't know that I could tell you at that time; I believe she comes under it now, or would come under it now, but if it was in existence then, I don't know.

The Court:
I think, Mr. Matteson, that you must first establish by this witness that a different rule applied to another character of vessel before you ask him why it should not apply to a private vessel.

Mr. Matteson:
That a different rule applies to another type of vessel?

The Court:
Yes.

Mr. Matteson:
Yes.

The Court:
He says he doesn't know. He says that at the time the Seminole was destroyed he doesn't know if there was any rule in existence if it had been used for commercial purposes.

(By Mr. Matteson):
Q. I show you these rules of the United States Department of Commerce, general rules and regulations prescribed by the Board of Supervisors relating to tank

vessels, and I call attention on page 17 to Rule 11-5 6, sub-section "C", relating to gasoline fuel piping under "installation of gasoline engines", and I call your attention to the fact that this regulation provides that no outlet for drawing of gasoline shall be permitted in engine compartments, and ask you if you can suggest any reason for a different standard in that respect with respect to vessels to which theses rules apply; than with respect to the yacht Seminole?

Mr. Underwood:

I object to the question; the rules refer to tank vessels, that is, vessels which carry oil in tanks.

The Court:

Is that true?

Mr. Matteson:

Yes.

The Court:

Here is the way I view this: I think on cross-examination it should be first established that there are some government rules which would be applicable to the type of vessel that the Seminole was, and then, if you can establish what those rules are, you can ask this witness as to why—you can ask him does he know of any reason why these same requirements should not be observed in the installation of equipment and operation of it in connection with pleasure craft. Now it appears that this question incorporates a standard applying to a type of vessel that the Seminole was not.

(By Mr. Matteson):

Q. I will put in this way: if the Seminole were used as a tank vessel, would your answer be any different with respect to the propriety of having gasoline draw-off valves in the engine-room.

Mr. Underwood:

I object to that as speculative, if you Honor please; that is no part of this case at all.

The Court:

I don't think it appears that this vessel could be used as a tank vessel.

Mr. Matteson:

Any vessel could be used as a tank vessel.

The Court:

You mean for carrying cargo, for carrying a cargo of oil?

Mr. Underwood:

It would have to be rebuilt at a cost of $75,000.00

Mr. Matteson:

It can be done—

The Court:

I don't think that, Mr. Matteson.

(By Mr. Matteson):

Q. Is your reason for saying that draw-off valves are proper on the Seminole the fact that she was used as a yacht?

A. I don't think that that would change my opinion on the matter at all.

Q. It would not make any difference what purpose she was used for, in your opinion?

Mr. Underwood:

I object to that; it is the same question that I objected to before.

The Court:

I think that that is proper cross-examination. I don't think that is the same question. I will overrule the objection.

A. It depends on what the vessel is being used for.

Q. Well, in what kind of use would you say it was improper to have draw-off valves in the engine-room?

A. You mean the type of cargo that she was carrying?

Q. I am leaving it entirely open and up to you.

A. I don't know that it would be entirely improper even for a vessel carrying gasoline—for tank vessels—

Q. You think it would be proper?

A. It could be done with safety, yes.

Q. That is your opinion?

A. Yes.

Q. In other words, I will put it this way: if a vessel were reconstructed and made into a tank vessel carrying gasoline in tanks, you still think it would be proper for it to have draw-off valves on her gas-lines in the engine-room?

Mr. Underwood:

I object to that as speculation, and it is also repetition.

The Court:

I will sustain the objection. The question involves "reconstruction"; I think we should confine it to the vessel as it was.

Mr. Matteson:

If your Honor please, what I am trying to do is to test the knowledge of the witness. I want to find out whether it is based on the—

The Court:

In your question you bring in the idea of reconstruction.

(By Mr. Matteson):

Q. Do I understand you to say that it might be safe or unsafe according to the type of use the vessel was put to?

A. No, not necessarily.

Q. Do I understand you to say that it would be safe in any case?

A. It could be safe in any case, yes.

Q. What do you mean, "it could be safe"?

A. The manner in which it was used.

Q. In other words, it depends on the use of it, is that right?

A. Yes, it does.

Q. In what particular?

A. Well, the person who uses it is really what I mean, the care in which it is used.

Q. Its safety depends on the personal element, then is that right?

A. Yes, it depends on the personal element; in fact, everything we do depends on the personal element. If you walk down the street you run the chance of somebody dropping a brick on you from a building; it would be safer to stay at home.

Q. Did you bring with ~~you today your~~ volume of Kent's Mechanical Engineer, Kent's Engineering Handbook?

A. I have my volume with me, yes.

Q. May I see it?

The Court:

We are getting into something else now. I want to sign my mail and catch the 5:30 bus.

(Thereupon an adjournment was taken to 9:15, November 14, 1939).

Tuesday, November 14, 1939, 9:24 o'clock a. m.

Hearing was resumed pursuant to adjournment; and

3485 MR. WIRTH MUNROE was recalled and further testified upon continued

Cross Examination.

By Mr. Matteson:

Q. Just one more question, Mr. Munroe, along the line that we were talking of last night. I understood you to say that in your opinion the question of whether a draw off valve for gasoline, in the engine room, is proper, and was safe or not, depended on the type of vessel. And when I asked you in what type of vessel it was unsafe, I understood you to say that it depended upon the person who was handling it. Now what I would like to ask you is whether you still say that it is dependent on the type of vessel, or whether you confine your opinion to the man who is handling it.

A. Well principally I would say, on the man that is handling it.

Q. You don't make any distinction between types of vessels then?

A. No.

Q. Was that question answered?

A. I answered, No.

Q. Now I would like to show you this can, and ask you whether in your opinion that would be a suitable can for maintaining a supply of gasoline in the engine room of a vessel such as the Seminole, which might be needed for priming.

A. I have seen such cans as these, before. I have never considered them as being a safety can, though—any safer than any other can.

Q. Well why wouldn't that be a practicable method of maintaining a supply in the engine room for priming?

A. The possibility of leaks with this can is just as apt to occur as in any other type of can.

Q. I suppose in any can there may be flaws in manufacture, but is there anything about the type of can that you would consider unsafe?

A. I don't know that I can say that it is any more unsafe than any other can.

Q. Well do you consider it would be unsafe, that type of can?

A. I don't consider that any can is unsafe.

Q. Well then you consider that would be a safe method of keeping gasoline in the engine room, do you?

A. You could keep gasoline in that can, yes.

Q. And that would be safe?

A. I wouldn't say it would be any safer than any other container.

Q. If the can were properly constructed and free from flaws, would you consider it safe?

A. No more than any other can that was properly examined and free from flaws.

Q. Well would you consider any can safe?

A. Yes, any can would be just as safe; a squirt can is just as safe.

Q. Did you bring your volume of Kent this morning?

Mr. Underwood:

Are you going to offer that can?

Mr. Matteson:

Yes; I will mark it for identification.

Mr. Underwood:

May I look at it?

Mr. Matteson:

Surely.

(Said gasoline can was marked as Libelants' Exhibit No. 137 for identification.)

Q. Did you bring your volume of Kent with you this morning?

A. Yes, sir. This happens to be in two volumes; I think it is the same as the one you have there, only it is in two volumes.

Q. This is Kent's Mechanical Engineers' Handbook Volumes One and Two, 10th Edition, 1923; is that right?

A. That's correct.

Q. And you regard this as an authoritative treatise, do you?

A. Regard it as what?

Q. Do you regard these books as an authoritative treatise on the subjects they cover?

A. Absolutely.

Q. Is this the same volume that you had with you in Court before?

A. That's the same two volumes.

Q. Do you draw any distinction between fuel oil tanks and gasoline tanks, as to construction?

A. There is practically no difference between fuel oil construction,—that is if you are talking about distillate, now. If you are talking about fuel oil, bunker oil, bunker oil and gasoline, there is a difference. But between distillate and gasoline there is no appreciable difference.

Q. And distillate comes under the head of Fuel Oil, does it?

A. It is a light fuel oil; yes, sir.

Q. I notice the heading of 'Storage of fuel oil', page 888 of Volume 1, reference is made to the regulations for fuel oil storage published by the National Board of Fire Underwriters. Apparently such regulations are recognized by this authority; is that right?

Mr. Underwood:

I object to that. I object to asking this witness what this authority, this book, recognizes. Mr. Kent himself is the best evidence of that.

Q. Well, do you also recognize the regulations of the National Board of Fire Underwriters, as standard for fuel oil storage tanks?

Mr. Underwood:

I object to that unless the type of tanks is specified in the question. What type of fuel oil is to be put in these tanks?

The Court:

Do you recognize that as a good objection?—I haven't ruled on that; do you want—

Mr. Matteson:

I am not going to press the question.

Q. Are you familiar with the later edition, the 11th Edition of the same work?

A. No, sir; I haven't seen the later edition.

Q. This treatise in all its editions, is regarded as standard, is it not?

A. I believe it is considered as the standard handbook of mechanical engineers.

Q. Now one more question: I think—

A. I might add further to that, that it is not the only handbook for engineers.

Q. You suggested at one stage of your testimony that there was some difference in the standards to be applied to yachts in Florida and in the north. It is a fact that yachts are chiefly used in Florida in the winter time and in the north in the summer time, is it not?

Mr. Underwood:

I object to that as immaterial. It is recognized, I will admit, that a lot of yachts are used in the north in the summer and in Florida in the winter. 'Chiefly', I don't know, and I don't think anybody knows.

The Court:

Well I will overrule the objection. It may be material; I will have to see.

Q. Is that the fact?

A. There are a great many of the vessels or boats that are used here in Florida in the winter time, and in the north in the summer. But there are also a great many of them built solely for Florida use. The Seminole I believe was one of them.

Q. Well, do you say that there is any substantial difference between the climatical conditions when yachts are used in the north in summer and Florida in winter?

A. There is a great deal of difference between climatical conditions in Florida in winter and the north in the summer.

Q. What do you say is the difference?

A. Here in the winter time we don't have the heavy moistened air that they have in the north in the summer time in certain localities; they have a great deal more fog up there, which indicates moistened air.

Q. That is the chief difference that you think of?

A. That is the principal difference, at the time, yes. We have much warmer—our average temperature is much higher here in the winter time than it is in the north in the summer.

Q. When you examined the tank that was removed from the Seminole last May, did you find any evidence of the lower crown of that tank ever having been removed?

A. The lower crown?

Q. Yes.

A. I couldn't see—I think it would be very hard to tell whether the lower crown had ever been removed.

Q. You could see no evidence of it?

A. I could see no evidence of it.

Mr. Matteson:

That is all.

By Mr. Botts:

Q. Mr. Munroe, will you tell me, please, what your scholastic education consisted of? Are you a college bred man, sir?

A. I have had some college work, yes.

Q. Where and when, and how much?

A. I had some work in Columbia University in New York.

Q. When?

A. Summer school; 1924 and '5, I believe.

Q. How long were you there?

A. I was there two years; two summers.

Q. Two summers. You are a high school graduate?

A. I am.

Q. Miami High?

A. Miami High.

Q. And what was the nature of that technical—or that training that you took in Columbia University in the summer time?

A. Principally civil engineering.

Q. And what would have been the subjects that you studied there?

A. Well it was mostly field instruction in civil engineering, and laying out bridges, highways, railroads.

Q. Well it had—

Mr. Underwood:

I don't think he has finished.

A. Geodetic surveys; all types of land surveys.

Q. Had nothing to do with boats?

A. Had nothing to do with boats.

Q. Such special knowledge as you may have with reference to boats and their construction, has been gained, as I understand it, entirely from your contact with the construction of boats, principally here in Miami; is that correct?

A. That's the principal education, you might call it, yes. My knowledge has been gained in that manner.

Q. When you were in high school did you study physics?

A. I did.

Q. One year?

A. Whatever the course was. I believe it was one year.

Q. Chemistry?

A. Chemistry.

Q. One year?

A. Yes, sir; whatever the requirements were at that time.

Q. When did you graduate from high school?

A. Nineteen twenty-one.

Q. Have you ever worked on the construction of a steel boat?

A. No, sir.

Q. Your experience has been in the construction of small wooden hulled boats?

A. The actual construction, yes. But I have seen a great many steel boats built; been in yards where they have been there—where they were under construction; but I didn't actually work on them.

Q. You weren't engaged in construction on them, so your observation with reference to those would be merely more or less casual?

A. Well I wouldn't say it was casual.

Q. Well if you didn't work on them—

A. No, but when I go into a yard like that, I go in with the idea of learning something, by observation.

Q. You looked at them, then?

A. I looked at them, and talked about them. When you go to college you don't actually work on anything.

Q. Now, in referring to these tanks on the Seminole, and the overflow pipe, you made the statement, as I recall it——and I want to say I am depending entirely on my memory; it has been some time ago, so that if I don't recollect exactly what you said, please correct me, because it is just impossible—I haven't had access to a copy of your testimony, and it is impossible for me to be certain of my memory at this time, as probably it is with you. So as I recall it, you stated that this small overflow pipe was in your judgment safer than a larger one would have been. Is that correct?

A. I believe that was the gist of it. I stated that it was not necessary to have as large a vent pipe as a filler pipe.

Q. But you stated also that the smaller pipe was safer and better, didn't you?

A. I don't know that I used the word, safer. I may have, but I don't recollect having used the word, safer.

Q. Don't you recall, Mr. Munroe, that you said it would be either better or safer, because it would not permit the entrance of as much moisture into the tanks?

A. I believe I used the words, better.

Q. Well it may have been better or safer, but the thought that you gave us, as I recall it, was that the smaller pipe would restrict the entrance of outside moisture-laden air, and therefore for that reason be better; is that correct?

A. Yes, sir; I did make that statement.

Q. Yes; all right. Now then what would cause the moisture-laden air to enter the tank through this overflow pipe?

A. Due to the difference in temperature, between the day temperature of the air and the night temperature.

Q. Now isn't it true that if the pipe was large enough to allow a sufficient quantity of air to enter the tank, the air that entered would be equally moisture-laden whether it came in through a large or a small pipe? Wouldn't it?

A. No, sir.

Q. Now just a minute, do you mean to tell me that if we had two pipes, going to the outside atmosphere, and through each of those pipes the outside air was conveyed into a tank, that there would be a difference in the amount of moisture in the air sucked in through a larger or a smaller pipe, either of them coming from the same outside atmosphere? Do you mean to tell me that?

A. Yes.

Q. Which would bring in the most air—more moisture-laden?

A. The larger pipe. The larger pipe has the greater capacity.

Q. But if you brought in the same amount of the same kind of air, it wouldn't make any difference in the amount of moisture brought in in that air, whether it came in through a large or a small pipe?

A. The same amount of air would enter through either pipe, but it would take longer to do it through one pipe than the other.

Q. Then when the air finally got into the tank, there would be the same amount of moisture brought in, whether it was brought in through a large or small *tank*, wouldn't it? In other words, if a gallon of air came in through the large pipe, or through the small pipe, it would bring in the same amount of moisture, wouldn't it?

A. Yes, it would; theoretically it would; practically it doesn't.

Q. Now why do you say that? You are an expert; now tell me, give me some expert reason why that answer is true, if you can.

A. Well for the first place, I have handled a great many gasoline tanks.

Q. Did you ever measure the moisture content of the air that came into either of them? Are you capable—do you know how to measure the moisture content of the air?

A. Yes, I know how to measure it.

Q. How would you do it? Tell me, if you know.

A. You can get—

Q. Tell me how you would do it; you say you know.

A. Do you want me to manufacture you the instrument?

Q. You are an expert, you say you know that would be true; I want you to tell me how you know.

A. I know it is true, but I am not an expert on the manufacture of those instruments.

Q. Tell me how you would measure the difference in the moisture content of the air; that is what I asked you. You are an expert.

The Court:

Just let him answer the question, Mr. Botts. That is in the record that he is an expert, now.

Mr. Botts:

That he says he is an expert.

Mr. Underwood:

Mr. Botts has said he is an expert.

A. I am not an expert on that particular line.

Q. Then your judgment on that is a guess, just like mine would be, isn't it?

A. No, sir; it is not a guess.

Q. Well if you are not an expert, then how do you know?

A. I remarked that I had handled a great many gasoline tanks; a great many boats.

Q. How does that tell you how much moisture comes in through the air?

A. I don't have to guess; I know it is in there.

Q. You have made the statement that the air coming in through a smaller pipe would have less water in it than if it came in through a larger pipe.

A. I qualified that and said it would be the same amount.

Q. —Moisture.

A. But it would take longer to get it in there.

Q. Then do I understand you to say now that if the air—the same amount of air came in, supplied from the same outside source, that there would be exactly the same amount of moisture that would come in through air brought in through a small pipe as there would through the same quantity of air brought in through a larger pipe? Do you still say that, or do you stick to your other statement?

A. I don't get what you are driving at, Mr. Botts.

Q. All right, let's start over again. Suppose that you have a quarter inch pipe, running out this window into the air in its present condition as to moisture content; and you have a three inch pipe, or a two inch pipe, running out the window to the same supply of air; and you bring in one, two or five or whatever number you please, of gallons of air through the small pipe and through the large pipe. Will there be any difference in the amount of moisture in the air which is brought in through the large pipe or through the small pipe?

A. No, there actually will be no difference in volume; there will be a difference in time.

Q. All right then, you want to change your statement that you made a while ago, do you, that there would

theoretically be no difference but practically there would? Do you want to change that answer?

A. No, sir. There are other reasons why the moisture doesn't get into the tank.

Q. Now let's see if I have got you correct on this one proposition: that if the air came in through a quarter inch pipe or through a two inch pipe, from the same outside source, that the moisture content of the air would be identical whether it came in through the small pipe or the large pipe?

A. That is what I say; yes.

Q. That is what you now say; all right.

A. I said it before, too.

Q. All right, the record will show. Then is there any other reason now which you in your expert opinion can give us, why you say a smaller overflow pipe would be superior to a larger pipe, other than the element of the air bringing in moisture?

A. Yes, there is another reason.

Q. All right, why?

A. In the first place the vents is to carry off the air in the tank while it is being filled. Air will naturally compress; fluid does not compress as much, as a very small amount, of compression; air will compress a great deal. Therefore you can use a smaller pipe, and have the air pass off as fast as the fluid comes in through a larger pipe. Another reason—

Q. Wait a minute; why does that make it better? If the air gets out, it is out; why does it make any difference whether it goes out through a large or a small pipe?

A. If you will let me finish my answer, Mr. Botts, I will tell you. The reason for a small vent is to prevent quantities of gasoline fumes from passing over the side and out of the gas tanks.

Q. Well is there any disadvantage in having the gas fumes escape overboard, outside of the vessel, or do you want to keep them in your tank?

A. You need to keep the gasoline in your tank.

Q. I say, your gasoline fumes.

A. Yes.

Q. All right.

A. Your gasoline will become dilute, will not be as high quality after the fumes have passed off of it. So to keep your quality of your gasoline up to standard you can't leave it in an open container.

Q. All right; do I understand that you now abandon your original explanation as to why the small pipe is better than a large one, since we have agreed—

A I have not abandoned anything, Mr. Botts.

Q. All right; you have changed your testimony in that respect, anyway.

A. No, sir; I have added to it.

Q. Now then don't you know as a matter of fact that sufficient air can come in to equalize the air pressure on the inside and the outside, whether the pipe is half an inch or two inches?

A. Certainly air can enter, the same as it went out; equalize the pressure.

Q. And even if it was a quarter inch pipe, the air would come in fast enough to equalize any change in pressure due to temperature, in all of these four tanks, through a quarter inch pipe, couldn't it?

A. You could put a pinhole in there if you wanted to, and allow enough time for it. There is a factor of time in there, Mr. Botts.

Q. Oh yes; I am going to get at that and see what you know about it, in just a minute; that is what I am leading up to. What is the coefficient of expansion of air in a tank, do you know?

A. I know that there is a coefficient in any place, regardless of a tank. There is one part in 491., coefficient: 491.6.

Q. What do you mean by that?

A. For every degree above 32 degrees, a change of temperature.

Q. And you say it is 491.

A. Well to explain it so you can understand it—

Q. I understand it thoroughly without your explanation.

A. Well then I won't say.

Mr. Underwood:

That might be another issue in the case.

Q. But I want you to tell me where you get the coefficient of 491. Have you got your authority there? See if you are not wrong.

A. Right there.

Mr. Underwood:

Do you want him to look?

Mr. Botts:

Yes.

A. In this volume it is on page 655.

Mr. Underwood:

Let him read it, please.

A. May I read it?

Q. Yes, sir.

A. Air expands 1/491.6 of its volume at 32 degrees Fahrenheit, for every increase of one degree Fahrenheit, and its volume varies inversely as the pressure.

Mr. Underwood:

Let's get that fraction right in the record; one over four hundred ninety-one and six-tenths. Have you got that right, Mr. Bryant?

The Reporter:
Yes, sir.

Q. Now then if there was a change of one degree in the temperature, in these tanks, there would then, according to that table, be a change of volume of one gallon of air for every 491 gallons capacity of the tank, wouldn't there?

A. That's correct.

Q. Then for a change in temperature of one degree in these 600-gallon tanks, there would be roughly one and a half gallons of air?

Mr. Underwood:
I think it is a 500 gallon tank instead of 600.

Q. Were they 500 gallon tanks? Then if these were completely empty, then there would be a change of roughly 231 cubic inches of air that would be required to equalize for the outside temperature, for every degree of temperature, wouldn't there?

A. According to that, yes.

Q. What do you say about the length of time it would take 231 cubic inches of air to go through a half inch pipe?

Mr. Underwood:
May I object to that question, on the ground that the pressures are not given. What is pushing this air?

Mr. Botts:
Atmospheric pressure; I am speaking of atmospheric pressure; that is what we are talking about.

Mr. Underwood:
If your Honor please, if you have air in a compressed air tank, 200 pounds behind it, it will take one length

of time. If you have air in a tank with no pressure behind it except that incident to the change in temperature, it will take another length of time. Now how much pressure is behind this change of air? I think the witness ought to be given that; it isn't a fair assumption otherwise.

Mr. Botts:

Oh, counsel is just trying to be foolish, and succeeding very well. He knows we are talking about atmospheric pressure.

Mr. Underwood:

I think it ought to be incorporated in the question, so it can't be referred to otherwise.

Mr. Botts:

What are we talking about.

The Court:

Is it an artificial pressure?

Mr. Underwood:

That is what I don't know; it isn't in the question.

The Court:

I assume it means ordinary pressure without any artificiality.

Mr. Botts:

We are discussing the equalization of air in these tanks and out of these tanks; and counsel knows perfectly well; he has just tried to make a foolish question, and succeeded.

The Court:

Can you answer that question, assuming that there is no artificiality in the pressure, Mr. Munroe?

A. If you are figuring the outside pressure at normal atmospheric pressure.

The Court:
You can answer the question?
A. I don't know that I can give him the exact figures.

The Court:
Well is the question, whether you can answer it or not, is it a reasonable question to you, with that hypothesis?
A. I would say it was reasonable.

The Court:
All right; I overrule the objection.

Mr. Underwood:
May we have the question read, please.

(The question was read by the reporter.)

Mr. Botts:
At atmospheric pressure; add that to it; at sea level.

A. Offhand I can't tell you that, because it depends on——I don't know offhand what the volume of a half inch pipe is; I don't carry that around in my head, and I would have to figure the friction.
Q. Could you figure the friction? Do you know how to figure the friction?
A. It is right in that book.
Q. Well you don't know how to figure it then, do you?
A. Do I have to know? There is tables in there to tell me, without my having to figure it.
Q. All right. Now then do you know approximately what the atmospheric pressure is at sea level here in Miami?
A. The same as it is anywhere else.

Q. What is that?

A. Twenty-nine and a fraction inches; practically thirty inches we call it.

Q. And in pounds, how much?

A. I believe it is around seventeen pounds; I am not sure about that.

Q. In your testimony with reference to the advisability of having a smaller pipe, on account of restricting the moisture entering the tank, as you testified in your first examination, did you take into consideration the length of time that it would take the requisite volume of air to enter these tanks through a half inch pipe? Did you take that into consideration?

A. Did I take into consideration the length of time?

Q. Yes, that it would take for that air to come in there, when you said it would be better to have it go in through a small pipe?

A. Why, yes, naturally I took in consideration the length of time.

Q. All right; then did you get the length of time from your own knowledge or experiments; or did you take it from your reference books?

A. I made no experiments on the thing at all, Mr. Botts. I didn't take it from any book either. I took it my experience.

Q. Have you ever in your experience measured the amount of air that would enter or leave a tank for a one degree change in temperature?

A. I never have, and I don't think anybody else has, either.

Q. All right. Well then you said you took it from your own experience; I am trying to get at what your experience is in that connection. If you took your facts from your experience, you must have had some experience?

A. Actual contacts; knowing what occurs in nature; what occurs in actual boats.

Q. Now wait a minute, did you consult your reference book to find out how fast air would enter or leave a tank through a half inch pipe?

A. No, sir.

Q. You didn't?

A. I did not.

Q. You didn't take that into consideration at all?

A. I did not.

Q. Would you mind taking your handbook and, referring to the flow of air, and ascertain whether or not it isn't true that at 15 pounds pressure, 107—wait, I didn't understand this table.

Mr. Underwood:

Put that in the record; I didn't hear Mr. Botts' comment fairly.

Mr. Botts:

Just withdraw the question. This table that I had reference to doesn't—

Q. Don't you know as a matter of fact, Mr. Munroe, that at atmospheric pressure here, the change in the volume of air in the tank, due to atmospheric pressure, would be extremely slow, and that either a half inch pipe or a quarter inch pipe, or a two inch pipe, any one of them would be perfectly adequate to equalize the pressure in there and allow sufficient air to be expelled or taken in, dependent on whether the—depending on change of temperature in those tanks?

A. You say that it didn't matter what the size is?

Q. I say, that don't you know that even a quarter inch *tank* would have been sufficient to equalize the air pressure, the amount of air in those—in the tanks in the Seminole, considering the change in temperature caused by atmospheric conditions?

A. If you are considering the change in temperature only, I believe a quarter inch pipe would do it. I am sure I haven't made any figures on it.

Q. Well then as a matter of fact the air would go into these tanks, carrying the same amount of moisture, whether or not it was a quarter inch *tank*,—I mean a quarter inch pipe, or a two inch pipe, wouldn't it?—assuming that the outside aperture was the same in each instance?

A. Assuming that the outside aperture was the same?

Q. I mean the outside atmosphere was the same,—instead of aperture.

A. Atmosphere; the same amount of air would pass into that tank, yes.

Q. And carry the same amount of moisture?

A. A great deal of that depends on the length of your pipe. Of course if you have the same length of pipe, I still don't think the same amount of moisture would go in there.

Q. Why not?

A. Because it would have a tendency to condense before it got in.

Q. Why?

A. Because it takes longer time for it to get in, in the smaller pipe.

Q. And what would cause this condensation that you are talking about?

A. A difference in the temperature of the pipe.

Q. Now Mr. Munroe what I am trying to get at: In your experience as a boat builder,—and I am willing to concede that you are a good boat builder.

A. I am also a designer.

Q. All right, a good designer too; we will add that. I am willing to concede that you are a good boat builder and a good designer of the class of boats you handle. But have never in all your life made any experiments, have

you, to determine whether or not more or less moisture would—or the same quantity, would go in through a small pipe or a large pipe, into tanks such as this, have you? Now have you ever made any such experiments?

A. I have never made any, and I don't believe anybody else has ever made any.

Q. But you stated in your testimony that that would be a fact?

A. From practical experience I know that it does occur.

Q. I want you to tell me, if you have never made any experiment, how you know the amount of moisture that comes in, if you have never made any experiment to find it?

A. I know there is moisture in the tank, and that is the only way it could get there.

Q. But have you ever made any experiment to determine whether or not the moisture would come in more or less through a large pipe or a small pipe? You know that moisture goes in, don't you?

A. I do.

Q. And have you ever made any comparative test where one tank was with a large overflow or pressure pipe, and another one with a small one?

A. I don't know that. I have never made any test of that.

Q. Then as a matter of fact you don't know whether there would be any difference, do you? Now just frankly, do you?

A. I do know that the smaller the vent, the less trouble we have with water in our tanks; I do know that, from practical experience, and we always put in a smaller vent for that. That is one of the reasons we put it in; that is not the entire reason, not the sole reason.

Q. But you have never made any test to see whether or not that is a fact; you have simply assumed that the smaller pipe was better, is that it?

A. I don't believe anyone else has ever made any test. I have never made one, and I don't believe anyone else has ever made one.

Q. Then your testimony in that respect was without any foundation of testing; that was true, wasn't it?

A. It is without any foundation of test, yes. Practical experience means more than a test, sometimes.

Q. Well as I understand it, you have never compared the two, so just exactly where would your practical experience in that respect come in?

A. I just stated, Mr. Botts, that the tanks that had the smaller vents, we had less trouble with water in the tanks than we did with the larger vents.

Q. Give me an instance where you have made that comparison?

A. I cannot give you any definite one. That experience is spread over several years; not necessarily in boats that I have constructed, but in other people's boats, boats that I have been on, boats that I have had to repair.

Q. All right; now then let's get to another question; and that is this draw-off valve in the engine room. I understand you to say that you consider it proper practice to put a draw-off valve or cock in the engine room?

A. Under certain conditions, yes.

Q. All right, under certain conditions it would be proper, and under certain conditions it would not; is that what I am to understand from your answer?

A. No, that is not the way I meant it.

Q. All right then?

A. I meant that if it was necessary to get free gasoline in the engine room, it was perfectly proper to have a draw-off valve.

Q. Then am I correct this time in understanding your answer, that you mean, that the condition of the engine room would not determine whether it was proper, but it would be purely a matter of convenience; is that what you intend to say?

A. If it is necessary to get free gasoline in the engine room, regardless of the condition of the engine room, or anything else, it is perfectly proper that it should be there. But if you don't need to get it, then there is no need to have it. I won't say that it is improper not to have it.

Q. Then again I would like to ask you: Do you mean to say that it is a matter of convenience, is the element which determines whether or not it is proper?

A. I don't know that the word, convenient, is the exact word.

Q. Well my understanding is that you say that if under the conditions as they exist, it is deemed desirable to get—to draw off gasoline in the engine room, then for purposes of convenience, that you then consider it proper; is that right?

Mr. Underwood:

If your Honor please, I object to that because the witness didn't use that word; he used the word, necessary. "Convenience" is Mr. Botts' word.

The Court:

I think the witness can protect himself in that. I will overrule the objection.

A. What is the question again, please, Mr. Botts?

Mr. Botts:

Read it.

(The last question was read by the reporter.)

A. In the case of the Seminole.

Q. Wait a minute, let's get the question generally, and then we will come down specifically. Just answer the question as asked please.

Mr. Underwood:

If your Honor, please—

The Court:

He is drawing the emphasis on the matter of convenience, Mr. Munroe. Is that the reason?

A. I wouldn't use the word, convenient. It is necessary, it is not convenient.

(By Mr. Botts):

Q. When would it be necessary? What would be the circumstances that in your judgment would render it necessary, then? I am trying to find out when you say it is proper to have it in there, and when you say it is not?

A. When it is necessary to have gasoline to prime your motors.

Q. Then if with the sort of motor you have in a vessel, in order to start that motor you have to prime the motor, if that is the sort of equipment, then I understand you to say that you consider it proper to have a draw-off valve in the engine room?

A. That's correct.

Q. Then let's get to this: Do you say that there is any added hazard from accumulation of gasoline fumes, by having a draw-off valve in the engine room?

A. No, there is no greater hazard.

Q. In other words you assert that there is no added hazard by drawing off gasoline in a closed engine room? Is that your statement?

A. That's correct. I do not believe there is any added hazard.

Q. None whatever?

A. No, sir.

Q. Do you agree that gasoline fumes in an enclosed space such as an engine room, is to any degree a hazard?

A. That all depends on the quantity of it.

Q. Well if a large quantity would be a hazard, a small quantity would be a lesser hazard, wouldn't it?

A. Yes.

Q. Then if there is a substantial quantity of gasoline fumes in an enclosed space, that is a hazard, isn't it?

A. Yes, it would be.

Q. Now then do you agree that—strike that. Is it possible in your judgment, from your experience, to draw off gasoline from an open draw-off valve without some gasoline fumes being thereby left, if it is done in an enclosed space, some gasoline fumes being left in the enclosure?

A. There is a certain amount of fumes come from drawing off gasoline, yes.

Q. All right. Now then Mr. Munroe, if some gasoline fumes is a hazard, the extent of the hazard depending on the extent of the fumes, then isn't it true that any procedure which will allow any quantity, even a small quantity of gasoline fumes to be left in an enclosed place, would to that extent be an added element of hazard?

A. That all depends on the amount of ventilation you have there while you are drawing it off. If the engine room were entirely closed tight, it would be an entirely different situation.

Q. Then as I understand it, in effect, what you say is this: That if gasoline fumes are emitted in an enclosure, and then by ventilation taken out of the enclosure, when the fumes are removed the hazard would be removed, wouldn't it?

A. Yes, sir.

Q. And if the fumes stay there a hazard would stay there, wouldn't it?

A. For a certain length of time.

Q. Well as long as the fumes stayed there a hazard would be there, wouldn't it?

A. Those fumes would be diluted in time.

Q. Wait just a minute now, would you mind answering the question? As long as the fumes stay there, the hazard would be there, wouldn't it?

A. Yes, but your fumes could be diluted,—would be diluted.

Q. The extent of the fumes would measure the extent of the hazard, wouldn't it?

A. Yes.

Q. And if they were very diluted fumes the hazard would be less, wouldn't it?

A. Yes.

Q. But so long as the fumes stayed there, the hazard, to that extent, would be there, wouldn't it?

A. Yes, as long as the fumes were there.

Q. You agree that gasoline fumes are heavier than air?

A. They are.

Q. You don't know as a matter of fact that when gasoline fumes get into an enclosed place,—such for instance as the bilge of a boat, that until air circulates through there, that the gasoline fumes may stay there for a very long period of time. Isn't that true?

Mr. Underwood:

May I have that question read, please?

(The question was read by the reporter.)

A. That entirely depends on the volume of the bilge, or the space in which the fumes are contained, and the amount of the fumes.

Mr. Underwood:

What was the last, Mr. Bryant?

(The last question was read by the reporter.)

Mr. Botts:

Now would you mind reading the question,—

Q. Because you haven't answered it at all, Mr. Munroe.

Mr. Underwood:

If your Honor please, I submit that that is an answer to that question.

Mr. Botts:

Well, I am asking it again, then.

Mr. Underwood:

I object to the repetition of the same question.

The Court:

Let's hear the question and the answer.

(The last question and answer were read.)

Mr. Botts:

The question I asked, if the Court please, involves a question as to whether or not gasoline fumes are dissipated of their own motion, or whether they don't have to be removed; the length of time that they will persist.

The Court:

I think you have given your explanation of your answer, but I think you ought to answer it more in the nature of yes or no, and then give your explanation.

Mr. Underwood:

If your Honor please, I submit that the witness has in effect said that he can't answer it yes or no; he said "it depends on".

The Court:

All right, if he says he can't, then that would be his answer.

Mr. Underwood:

That is implicit in his answer already.

The Court:

I construe your answer as explanation. Now if you can answer the question yes or no, it calls for a yes or no answer. If you can't answer it yes or no, why then you can state why you can't answer it that way; then let your explanation be supplemental to that.

A. I don't believe I can answer yes or no to that question without having some definite knowledge of the question.

The Court:

All right.

(By Mr. Botts):

Q. Let's then get down to kindergarten questions. If gasoline fumes,—gasoline vapor, is put into an enclosure such as a completely enclosed tank where there is no aperture to the air, they would stay there indefinitely without becoming dissipated, isn't that true?

A. They would remain in that,—they would remain there.

Q. All right. In other words, gasoline vapors don't neutralize themselves and become dissipated by any self-enervating action, do they?

A. The fumes that were put in there, that depends on the size of the container; the fumes were put in it, depends on the quantity of the fumes, the amount of air that is in there. If you put a small quantity of fumes in

there, with a large quantity of air, the fumes will be dissipated; the percentage will be distributed over the entire volume of that tank.

Q. Mr. Munroe, if you will try and comprehend the question that I asked you, these explanations that bring in something entirely foreign to the question, won't be necessary. The question is this; suppose we would take a perfectly airtight tank and insert into that tank, gasoline fumes, and close it up in there, those gasoline fumes would not be dissipated by their own action, would they?

Mr. Underwood:

I object to that on the ground that the question is not complete. It doesn't say whether the tank is filled with gasoline fumes; and if not, what percentage of the content of the tank is air and what percentage is fumes. If Mr. Botts wants to assume the tank full of gasoline vapor and nothing else, that is one thing.

Mr. Botts:

I can't assume that counsel is as dumb as he acts, either. He is simply trying to distract attention from the question that I am asking; and the question is perfectly complete if he wants to listen to it and wants to answer it; and I am going to sit here, if we stay for two weeks, until I get an answer to these questions.

Mr. Underwood:

If your Honor please, I must object to Mr. Botts' comments that are personal to me, and ask you to admonish him not to continue along that line. He has spoken of kindergarten, and counsel not being as dumb as he acts, and so on. I think that is no proper part of the record in this case. If Mr. Botts is going to be permitted to indulge in those remarks, I think that I may perhaps be unable to restrain myself at various times, when

provoked by Mr. Botts. I would prefer not to have it there.

The Court:

I didn't understand that the remark about kindergarten referred to counsel. I do think, along that line, that it would be best to let the questions be devoid of comments on what the answer has been; just let it be a question, and without comments; I think that would be a good idea.

Mr. Botts:

I would like to have the last question answered, and you will see that it is a complete question.

Mr. Underwood:

May we also have the question and answer immediately preceding it?

The Court:

Before we have any re-reading, I want to think it over a minute.

Mr. Botts:

If the Court please—

The Court:

Let me think it out, Mr. Botts; I understand your position.—Now read the question, Mr. Bryant.

(The last question was read by the reporter.)

The Court:

Well here is my reaction to that: Of course you are dealing altogether with theory. You are assuming in the question that the gasoline fumes are emitted into an air-

tight compartment; and I take it from the question, it refers to a theoretical case or something dissimilar from an engine room.

Mr. Botts:
That is right.

The Court:
But the theoretical airtight compartment—

Mr. Botts:
Yes, sir.

The Court:
Now then as to whether that compartment is entirely devoid of solid matter or liquid matter,—as I understand the objection, there is not injected into the theoretical question, as to what the condition of the airtight compartment is. It may be airtight so far as contact with the air is concerned, but its physical contents are not inclined in the question.

Mr. Botts:
It contains nothing but gasoline fumes.

Mr. Underwood:
Then I have no objection to it.

The Court:
My understanding of the objection was on the ground that you didn't incorporate in the questions, the hypothesis or the basis as to what was in the airtight compartment.

Mr. Botts:
Well I thought when I said, take an airtight compartment and put gasoline in it, if I didn't say I didn't put anything else in it—

The Court:

Well the objection is that it does not embrace the condition as to what was in the airtight compartment. It is airtight so far as air is concerned, but as to whether there is some liquid or solid matter in there, is not included in this question.

Mr. Botts:

It seems to me that it is perfectly plain that if you take a vacant space and say you put air in it, are you not assuming—it is not necessary to say you are not putting nails in it or coal in it, or manganese in it, or anything like that. That you are putting gasoline in it.

The Court:

But what is in there already? If it is absolutely devoid of any—

Mr. Botts:

Nothing.

The Court:

—substance, and just free of matter, why then I think that the question is clear. But technically I sustain the objection, and as I understand it—well anyway, I sustain that technical objection.

Mr. Underwood:

If Mr. Botts, your Honor, wants to assume that the tank is completely filled with gasoline vapor, that there is no air in it, I won't object to the question.

Mr. Botts:

All right, let's proceed.

Mr. Botts:

The point is this now; that I want to make myself clear right now. He has put a man up here as an expert.

Now then I am testing,—and I am not arguing his expertness along certain lines, but I am testing whether or not he is in fact an expert witness on the question of gasoline and so forth, or whether he is just a common, ordinary witness in that respect. Every time I have asked him a question the witness has dodged, and if he hasn't dodged, counsel has gotten up and by making an objection has suggested a method by which he can dodge the categorical answer to that question. Now I would like to have the witness give me credit for trying to ask questions that are not trick questions. If he does not understand the question, let him say so and I will try and make it plain. But I don't think that it is proper,—and that's the reason that I have made the remark I have,—I don't think it is proper for counsel as it seems to me, to try to divert the course of an examination when a witness is on cross examination and is put up as an expert, and is therefore an intelligent witness,—for counsel to all the time interject by objections when the witness is perfectly capable of protecting himself. I would like to have a little chance to develop a line of testimony from this witness; and you certainly can't do it if you are continually being captiously interrupted.

The Court:

Well all I can do, gentlemen, is to deal with situations as they are presented. I had an objection to rule on, and I have ruled.

(By Mr. Botts):

Q. Mr. Munroe, suppose you take a perfectly empty airtight receptacle and put gasoline fumes in there; would those gasoline fumes ever dissipate themselves, or would they remain there indefinitely.

Mr. Underwood:

If your Honor please, I make the same objection.

The Court:
I overrule that objection.

Mr. Underwood:
That is the same question.

Mr. Botts:
Judge—

The Court:
Let's go on now; I have ruled.

A. Mr. Botts I cannot answer that question in the form it is put, because you have not told me what quantity of fumes there are in the can, or in the container; you have not stated that it is completely filled with fumes, to saturate the solution.

Q. If there is nothing but gasoline fumes in there,—if there are gasoline fumes and nothing else in that container, will they dissipate themselves, irrespective of the quantity?

A. But you didn't ask me that before, Mr. Botts.

Q. Exactly what I did. Can you answer the question?

A. Under conditions that there is nothing in that can or container but gasoline fumes, that is to the saturated solution, then I will say that they cannot be dissipated.

Q. Don't you know that there is no such term as a saturate solution of a vapor?

A. There is.

Q. All right. Would it make any difference whether there was a cubic centimeter of gasoline fumes in a tank, or a cubic foot, provided there was nothing else in that container,—as to whether or not they would be self dissipating?

A. If the tank contained a cubic centimeter or a cubic foot if that is the capacity of the tank, then there would be no dissipation, no.

Q. But suppose you take a perfectly vacant tank, no air, it is a vacuum, and you put a very small quantity of gasoline vapor in there, will it ever be self-dissipated?

A. That's a different question. No, it would not.

Q. Then gasoline vapor will not—if it is once placed in any receptacle, will stay there until it is removed by some means; is that right?

A. Fumes will stay in that thing until it is removed, yes.

Q. Then if you take a small amount of gasoline fumes and put it into an enclosed space such as the bilge of a vessel, unless by ventilation or otherwise that gasoline fumes is removed therefrom, it would stay indefinitely, wouldn't it?

A. It would if everything was tight, yes; if it was just as airtight as a tank would be.

Q. I am not talking about airtight, now; I say, since that isn't self-dissipated, if it is put in a place it will stay until it is removed by ventilation or some other means, wouldn't it?

A. Yes.

Q. All right; since gasoline is heavier than air, it would be true that it would be likely to collect and remain to some extent in the lower portions of a vessel such as its bilge, wouldn't it?

A. It would accumulate in that portion of the vessel in the bilge, yes.

Q. And it would tend to remain there or be dissipated, depending upon how adequate or inadequate the ventilation might be, wouldn't it?

A. Not necessarily the ventilation, no.

Q. Well, circulation?

A. Nor circulation.

A. If there were no circulation, it would be dissipated.

Q. How?

A. By the gradual dilution of the gas into the air that is in that space.

Q. Well if it became mixed with the air, it would still stay there, since it is not self-dissipating; it would still stay there until it was removed by ventilation, wouldn't it? It might become diluted, depending on the quantity of air with which it was mixed?

A. Yes.

Q. But it would still stay there unless it was removed by ventilation, wouldn't it? It might become less powerful a mixture?

A. To entirely eliminate it, it would take some ventilation.

Q. All right, and the quantity of air with which it was mixed, in relation to the quantity of gasoline fumes, would determine the relative mixture of the final air-gasoline fumes mixture, wouldn't it?

A. It would.

Q. In the gas in the engine room of a vessel such as the Seminole, or any other motor vessel, where it has a bilge more or less adequately ventilated, if gasoline fumes were emitted in that engine room, there would be a tendency for those gasoline fumes to fall or drop down to the lower level of the bilge, wouldn't there?

A. Naturally.

Q. And stay there?

A. Not necessarily stay there.

Q. Subject to being removed by ventilation?

A. That's correct.

Q. Then that being true, if a space was inadequately ventilated, a small quantity of gasoline vapor might be emitted daily, and fall into the bottom eventually if inadequately ventilated, creating an accumulation of gasoline vapors that might be dangerous, mightn't it?

A. There is a possibility of such a thing, yes, depending entirely on the size of the drop and the capacity of the bilge, and a lot of other x's.

Q. That would depend then upon the ventilation and the relative size of the containers or room, in relation to the amount of gasoline vapors, wouldn't it?

A. Yes.

Q. And if the gasoline vapors stayed there without being removed by ventilation, even a small quantity of gasoline would eventually become a dangerous mixture, wouldn't it?

A. It could be, yes.

(A brief informal recess was had.)

Q. Do you know what the explosive mixture of gasoline and air is?

A. I believe it is about one-half to six and a half per cent.

Q. If you want to refresh your memory, if you will look at your book, at page 591 you will find it there; if you are not familiar with it from your memory?

A. I believe my memory is correct in saying, one-half to six and a half.

Q. Then a mixture as low as one and a half parts of gasoline vapor in 100 parts, that is 98½ parts of air would be explosive, is that it?

A. It could be explosive, yes.

Q. I mean, the explosive mixture runs from one-half parts out of a hundred, up to six parts out of one hundred?

A. That is correct.

Q. Then if gasoline vapor should accumulate over a period of time in a bilge or other place until it got to one and a half per cent mixture, it would then become a dangerous explosive mixture, wouldn't it?

A. It would become explosive, yes.

Q. Then let's get back now, to that question of the draw-off valve in the engine room. Isn't it true that it

is impossible to draw off gasoline without some amount of gasoline vapor being lost into the room or space where the draw-off process is occurring?

A. There is a small amount of fumes dissipated into the air, in drawing off.

Q. Then Mr. Munroe wouldn't it be true that a draw-off valve in the engine room would have a tendency to some extent of permitting gasoline vapor to accumulate or be discharged into and possibly accumulate in the engine room?

A. Yes, it is possible.

Q. All right; the care with which that process was carried out would minimize that danger, wouldn't it?

A. Yes.

Q. And that's what you had in mind, I take it, when you said that the danger of a draw-off valve in an engine room was in respect to the manner in which it was operated; is that what you had in mind? That one person could do it more carefully than another?

A. I stated the personal element is one of the factors, yes.

Q. And if a person exercised extreme caution, they could minimize the amount of danger attendant on that process?

A. Yes.

Q. But even in the hands of a person that is most careful, there would be some gasoline vapor discharged, and therefore some element added hazard, wouldn't there?

A. There would be some added hazard. Of course there other dependencies on that; the size of the engine room.

Q. Certainly. The extent of that added hazard would depend on these other elements too but there would be in some degree an added hazard; that is true, isn't it?

A. I think you could say it would be an added hazard, yes.

Q. Then that being true, isn't it true that a draw-off valve in an engine room, creates an added element of hazard in the engine room? The extent of that added element I am not discussing, but it does increase that hazard to some extent, doesn't it?

A. By that deduction, yes, I would say it does.

Q. If your previous answer is correct, there would be some added element of hazard, wouldn't there?

A. Yes.

Q. Then isn't it true that to that extent, whatever the extent of that added hazard, that a draw-off valve is to that extent undesirable?

A. It all depends on the extent of the hazard.

Q. Well, to whatever extent the added hazard is created, to that extent it would be undesirable, wouldn't it?

A. Yes, you could say that.

Q. Then as a matter of fact, the idea of placing a draw-off valve in an engine room is a question of convenience, isn't it?

A. Not convenience entirely.

Q. Well, all right. Isn't it true that in determining whether or not you put a draw-off valve in an engine room, you balance the convenience thereby served, as against the added element of hazard?

A. The added element of hazard, in what respect?

Q. That you have just said exists. You have said there is an added element of hazard; now you would balance the convenience against the added element of hazard, wouldn't you, and determine whether or not it was worth while to add that added risk?

A. Well as I stated in previous testimony, that there are other hazards besides that of gasoline.

Q. Well we are talking about the hazard of gasoline, now?

A. —is the reason for having the draw-off in the engine room.

Q. All right, what are those other added hazards that you say, that would be sufficiently great to overbalance the added hazard which you concede is created by putting that draw-off valve? What are those other hazards that you thereby eliminate?

A. Well if you had no gasoline to prime your motors with, readily obtainable, in the engine room, and you had to go on deck to get it, then when a vessel—a motor should fail, either on a lee shore, or approaching a bridge or a dock, or many other things, you have the other element of danger,—hazard.

Q. But if you filled a squirt can on the deck or somewhere else, and had that in your engine room, that is all you would need for your priming, isn't it?

A. For one priming, yes.

Q. Well you can always fill it up after you have primed it, can't you?

A. Yes.

Q. All right; I get what you are driving at, all right. Now then in view of what you have said, is this in your judgment a proper deduction; that the amount of hazard created by a draw-off valve in the engine room, would depend on the amount of gasoline vapor that was thereby discharged into the engine room,—wouldn't it?

A. Naturally, yes.

Q. So that after all, in determining the element of hazard of a draw-off valve in the engine room, we would all get down to the quantity of gasoline vapor that was thereby discharged into the engine room, wouldn't we?

A. Yes.

Q. And then we would take into consideration the size of the engine room, and finally find out whether or not this discharge of gasoline vapor was likely to create an explosive mixture, wouldn't we?

A. Yes.

Q. And that would be the element of hazard?

A. That would be one of the elements regarding the gasoline, yes.

Q. Yes, that is what we are talking about, the element of hazard regarding gasoline. And if the use of that draw-off valve was such that thereby there would be discharged into the engine room a sufficient quantity of gasoline vapor to create an explosive mixture, it would then become a dangerous hazard, wouldn't it?

A. It would if it was discharging enough gasoline, yes.

Q. Yes, that was included in the question. Now then we have this can, exhibit 13,—that I believe is a five gallon can, isn't it?

A. Yes, it is a five gallon can.

Q. Mr. Munroe, if you would take an open nozzle and fill this can, exhibit 13, with gasoline, and then pour the gasoline out of the can, there would be left in the can practically five gallons of gasoline vapor, wouldn't there?

A. Yes, I would say it would be, about.

Q. And since the gasoline vapor is heavier than air, that would remain almost pure gasoline vapor in that can; wouldn't it?

A. It would for a while, yes.

Q. Yes; I mean until the circulation of air would dissipate it?

A. Yes.

Q. Then if you would fill that can with gasoline, and empty it, and then fill it again with gasoline, you would then discharge five gallons of practically pure gasoline vapor into the room where that draw-off process was occurring, wouldn't you? Because the gasoline going into the can to fill it, would force that five gallons of pure gasoline vapor out into the room, wouldn't it?

A. I suppose you could say you would, yes. I think it would.

Q. It is just bound to be a fact, isn't it?

A. It is logical.

Q. Then in addition to that there is, allowing the stream of gasoline to flow into a can, there is a certain amount of gasoline vapor that is caused by the force of the stream of gasoline striking the bottom and sides of the can, and the mixture in there, so there would be some additional gasoline fumes created that way, wouldn't there?

A. There would be possibly a small addition, due to the extra surface.

Q. Then we can assume that that added gasoline vapor in there would probably equal the impurity in the can, so every time we would have the can filled we would get about five gallons of gasoline vapor that would be dissipated, wouldn't we?

A. Yes.

Q. Now then would you mind taking your pencil and telling me what the cubic contents of the bilge of the Seminole was, up to a point eighteen inches above the floor of the engine room? Could you do that?

A. If I knew the dimensions of the bilge. I don't know the dimensions of the bilge.

Q. Well you have looked at the boat. We are not trying to get to the exact cubic inch, but couldn't you, from the dimensions that we have of that vessel, give me an approximation of the cubic contents of the bilge of that vessel up to that point?

A. Yes, I could give it to you.

Q. All right, have you a piece of paper?

The Court:

Here is a tablet.

A. As I recall, that engine room is twenty feet long.

Q. No, let's have the whole bilge of the whole ship?

A. The bilge of the whole ship?
Q. Umh hmh?

Mr. Underwood:
If your Honor please, I think we ought to agree upon the curves involved, too. The curve—the radius of the bilge, the sheer forward and the sheer aft.

Mr. Botts:
This witness is a designer, and I am willing to concede in connection with the designing of boats, that he is a competent man; with reference to some of the other things I am not so liberal. But he can take this vessel, we have got the blueprints of it, and the depth of the bilge, and so on, and he has looked at it, and he can come fairly close to giving us that cubic content.

The Court:
You want him to take all of that into consideration?

Mr. Botts:
I want him to take this vessel as is, what he knows about it,—the length, and so forth; the curve of the sides, which he has examined, and tell me as near as he can,—there must be a sort of a rule of thumb method of computing the cubic contents.

Q. Wouldn't it be approximately two thousand cubic feet?

The Court:
Well let him do his figuring first.—Go on and do your figuring and then answer it.

A. I can arrive at a very rough figure.
Q. All right, that's all we are trying to get at, is the approximation; if you will come within twenty-five per

cent of correct, it will be all right. You know the length of the vessel, do you?

A. I believe it is 120 feet.

Q. 104 I believe is the figure?

A. 120 feet on deck.

Mr. Underwood:

There we are, right off the bat.

A. I will say, 110 on the water line.

Mr. Underwood:

What is your length eighteen inches above the keel?

(By Mr. Botts):

Q. It doesn't matter; you have examined her, go ahead, take any figures that you want.

A. But I haven't taken any measurements on the top of the hull forward, or the top of the hull aft, Mr. Botts.

Q. I understand that, and therefore I understand that this is going to be an approximation; but at the same time, you have examined this vessel, and you can come reasonably close to that figure, can't you?

The Court:

He has examined the vessel, Mr. Botts, but he doesn't seem to have in mind the figures on which he has got to arrive at a conclusion. What figures do you want?

Mr. Botts:

Well we have the blueprints of the boat, they are in evidence; let him have those.

The Court:

All right, give him that.

Mr. Underwood:

The blueprints don't give the details that you want. He can have the blueprints, as far as that is concerned.

A. I can give a rough cube of the thing.

(By Mr. Botts):

Q. Well go ahead.

Mr. Underwood:

I have no objection to that, so long as all his figures go in and we can compare them against the actual figures so far as we know them.

Mr. Botts:

Certainly, if you can furnish the actual figures—

A. I will assume that the length of the thing is 110 feet.

Q. All right, go ahead.

(A.) Q. I believe the beam is 21.

Q. All right. When you get down to a point two feet or eighteen inches above the engine room floor, what would be—there would be some decrease due to the curve of the bottom, wouldn't there? Take all those things in consideration. Here is that blueprint.

A. That gives me no idea of the shape of the bottom, Mr. Botts.

Q. I know.

Mr. Underwood:

Referring to exhibit A.

Q. You have examined the bottom and know generally?

A. I don't recall what the depth is from floor to the bottom of the plating, now. Can you asssist me in that?

The Court:

If the witness does not know them, he will have to be given them.

Q. Assume at a point three feet above the bottom of the vessel, then?

A. We will assume that that is three feet.

Q. A depth of three feet.

Mr. Underwood:

Amidships?

Q. Yes, all right; and assume a beam of 16 at that point.

A. She carried her beam right to the water line.

Mr. Underwood:

Is that 16 foot beam assumption referring to a 16 foot beam amidships, or an average beam of 16 feet?

Mr. Botts:

Amidships, at a point three feet above the keel; that the beam amidships was 16 feet—I mean the width amidships was 16 feet.

A. Well the beam amidships was 21 feet, Mr. Botts. I would rather use the figure 21, if you don't mind, because I do know that she carried her beam right down to the water line.

Q. But wasn't the engine room below the water line,—the engine room floor considerably below the water line?

A. Yes, but a point three feet below, say a depth of three feet, that is practically your draft.

Q. All right. I think the testimony was it was a four foot draft. All right, take it 20 feet.

A. I will take it 20 feet.

Q. All right.

The Court:

Now you are building up a lot of record with this back and forth; I think the witness ought to go on and do his figuring and then answer the question.

Mr. Botts:

All right.

A. I would say roughly 2200 cubic feet.

Q. All right.

Mr. Underwood:

May he give at this point his estimate as to beam and length and so on?

The Court:

Just for information, provided we don't get into an extended discussion on this.

Mr. Underwood:

I don't want to discuss it.

The Court:

Suppose you give the elements on which you arrive at that answer?

A. I have assumed a length of 110 feet, a beam of 20 feet, and a depth of 3, which gives me a cube of 6600; and roughly the—no, I beg your pardon, deduct a third, it would give me 4400 as the result. We deduct a third for the end beam taken off, roughly; that is the figure I use for rough displacement.

Q. Then what would be the cubic content?

A. 4400 feet. That can vary a great deal, depending on whether she has a fine entrance forward, and fine lines aft, or whether she comes up. There is a great deal depends on that.

Q. Would you mind telling me how you arrived at that figure, 4400?—Now then—

The Court:
Do you withdraw that question?

Mr. Botts:
Yes.

(By Mr. Botts):
Q. Five gallons is what percentage of a cubic foot?
A. There is 7 and 48/100 gallons to the cubic foot; it would be approximately—
Q. Two thirds?
A. Two thirds; 66%.
Q. Tell me—assuming that there are two thirds of a cubic foot of gasoline vapor discharged into the bilge of that vessel every time a five gallon can was filled, tell me how many cans of gasoline would have to be drawn off in that engine room until the entire bilge of that vessel, up to a point three feet below the keel—above the kell, would contain an explosive mixture of 1.5; assuming that none of it is dissipated by ventilation?
A. I figure roughly about 41 times; 50 times; 41 times.
Q. Then by the time 250 gallons of gasoline had been drawn off in that way, if none of those fumes was dissipated, the entire bilge of that vessel up to three feet above the keel would be an explosive mixture of gasoline, wouldn't it?
A. It would have to be, yes; you would have to draw off that much at least.
Q. Now then assuming that this draw-off valve in the engine room was not used merely to draw off a squirt can full of gasoline to prime the engines, but was used habitually to draw off in five gallon lots, gasoline, and transfer it to other boats, what do you say now

about whether or not in your opinion it was a proper thing to have that draw-off valve in the engine room, used in that way? Was it in your judgment, proper?

A. I still contend it was proper.

Q. You do?

A. Yes, sir; there is too many other dependencies on it.

Q. From the examination that you have made of the Seminole at various times, have you been able to form an opinion as to what it was that caused the explosion and fire on the Seminole?

A. No, sir. I wish I did know.

Q. Well do you concede that it was an explosion of gasoline vapor?

Mr. Underwood:

I object to the witness being asked to concede anything, if your Honor please.

The Court:

I think that is well taken. He is not in position to bind anybody by his conclusion.

Mr. Botts:

I will withdraw the question.

Q. In your opinion, was that explosion caused by gasoline?

Mr. Underwood:

I object to that. He said he hasn't been able to form an opinion.

Mr. Botts:

He is on cross-examination; I am trying to find out just what opinion he has.

The Court:

It may be repetition; I will overrule the objection. Repetition will less burden the record than to have extended arguments.

A. I can't say that I assume that it was gasoline that caused an explosion. I won't say it could have—or I should say, did. Gasoline could possibly cause the explosion.

Q. Well do you know of any other substance which could have possibly caused that explosion?

A. Yes, there are other substances.

Q. All right, what?

A. Sewer gas.

Q. Wasn't any sewer available in the bilge of the Seminole, was there?

A. I don't know. There is another gas given off by the decomposing of seaweeds; giving off marsh gas, better known as marsh gas.

Q. What is known as marsh gas?

A. I believe it is a hydro-sulphide.

Q. Marsh gas is methane, isn't it?

A. I am not sure.

Q. Are you—do you mean to suggest that there might have been methane or marsh gas present in there, that caused that explosion?

A. I am not assuming anything, Mr. Botts.

Q. I say, are you suggesting that?

A. I am not suggesting it; no, sir.

Q. Well I want you to tell me,—you are here as an expert, I want you to tell me in your expert opinion, what other possible substances than gasoline might have caused that explosion?

A. Mr. Botts, I am here as an expert on the construction of a vessel, not on gases, or explosive gases.

Q. Well you have expressed an opinion with reference to explosions. I just want to know now if there is any-

thing else that in your opinion might have caused an explosion in a boat, with which you are familiar,—generally, I mean, your being familiar with boats generally; and you suggested that there is such a gas as sewer gas or marsh gas?

A. Yes.

Q. Do you mean to suggest that that gas might have been present in the boat and caused the explosion?

A. There is a possibility of it going in there.

Q. How could it have gone in there?

A. Through open windows.

Q. And how could it have gotten down in the bilge of the vessel?

A. By settling.

Q. And for it to settle there, it would have to be heavier than air, wouldn't it?

A. Yes, it would have to be heavier than air, to settle there, naturally.

Q. You brought in marsh gas or methane; don't you; don't you know as a matter of fact—do you know as a matter of fact what the specific gravity—or the weight of methane is, relative to air?

A. I know that both of them are slightly heavier than air—I mean, lighter than air, but I don't know just what the specific gravity of either one of the gases are.

Q. Either one of which gases?

A. The ones you just mentioned; marsh gas or sewer gas.

Q. Well the marsh gas, methane, and the sewer gas, are all one and the same, aren't they?

A. I don't believe sewer gas is the same as marsh gas.

Q. Marsh gas and methane are the same, aren't they?

A. I don't know.

Q. You don't know. Well then you don't mean to suggest as a scientific possibility, that methane or marsh gas could have caused this explosion, do you?

A. I am not assuming anything, Mr. Botts. You asked me the question and I had to answer it somehow or other.

Q. You could say you don't know, if you don't. You brought in sewer gas; now what is sewer gas?

A. I do not know the formula of sewer gas. I do know that sewer gas is explosive; I know that.

Q. Then it was just a pure guess without anything,—you didn't intend to propound that as a scientific probability or anything of that kind?

A. No, I did not.

Q. Well then are you able now, from your experience in boats, to suggest any possible explosive mixture other than gasoline, that could have been present in this boat and caused this explosion?

A. No, I don't believe I can.

Q. All right; then if it was a gasoline mixture that caused the explosion, can you suggest any other sources from which that gasoline vapor may have been emitted, and thus been present, other than the draw-off valve that we have mentioned.

Mr. Underwood:

If your Honor please, I object to that as purely speculative.

Mr. Botts:

He is an expert boatman; I am asking him.

Mr. Underwood:

Well it is speculative. It could have come from one of a thousand sources; could have been deliberately placed there.

The Court:

Let's see if I catch the question; read the question.

(The question was read by the reporter.)

The Court:

I think that is all right. I will overrule the objection. —Do you want the question re-read?

A. If you please.

The Court:

He starts out with the assumption; if it was from the gasoline vapor, could it have arisen from any other source than the draw-off valve.

(The question was again read by the reporter.)

A. Well there is any of a dozen places or more. Might have had a leak in the line; might have been a faulty valve somewheres. Might have been a leak in the tank. Might have been a thousand places.

(By Mr. Botts):

Q. All those things. All right. Now then—

A. Someone might have opened a valve and left it open.

Q. Well if that draw-off valve was opened and left open, either deliberately or inadvertently, that would still be from the draw-off valve, wouldn't it?

A. Yes.

Q. And still be a hazard, however it was opened?

A. You could have called leaving a shut-off valve to the tank, or the fuel line, a hazard, too, under the same conditions.

Q. In your testimony, you testified that these tanks,—assuming that all of them were mounted in the same way, with the one that you removed,—were mounted on wooden pads, I believe you used the word, pad?

A. Pad?

Q. Or, cushion?

A. Yes.

Q. And my notes indicate that—and to the best of my recollection, you said that you considered wood the best substance for a pad of that kind?

A. I did.

Q. Any why?

A. Because the wood is softer than metal, and prevents ——it make a softer cushion for the tanks to sit on, less chance of chafe, and the wearing of a hole into the tank.

Q. But isn't it true that if there was a slow leak in the tank, down into the pan where this wooden pad was sitting, that the wood itself would, absorb the gasoline and be in the nature of a sponge, retaining the gasoline and giving off the fumes from time to time, and yet concealing the quantity of gasoline? Wouldn't that be true?

A. The wood would absorb gasoline by capillary attraction, but being more surface from those bits of timber in there, there would be more surface for evaporation; therefore the gasoline that had leaked into the pan would evaporate that much quicker and be dissipated by the circulation of air around it.

Q. If there was a circulation; or it would descend into the bilge of the vessel if there was circulation, wouldn't it?

A. If there was not circulation.

Q. Then if the vessel was closed up tight and it gradually leaked into that pan and was absorbed in there, and then that broad surface for evaporation would cause the gasoline fumes to evaporate and go down into the bilge, wouldn't it?

A. It would only make it go down there quicker, is all. It would all go there eventually, but it would get there quicker with the wood.

Q. Now then do you consider it a proper installation of gasoline tanks such as were in the Seminole, to install those in such a manner that it is impossible to inspect them for possible leaks?

A. I don't think it is impractical.

Q. Do you consider that a proper method of installing large gasoline tanks such as were in the Seminole?—That is to install them so that they are not capable of being inspected for leaks?

A. Why yes, it is perfectly proper; it is quite common,—and proper.

Q. Wouldn't the fact—strike that. It is a fact that gasoline tanks sometimes leak, isn't it?

A. Practically most any thing is apt to leak.

Q. Then a gasoline tank designed to hold a large quantity, say, 400 or 500 gallons of gasoline, if it should leak, would become a very dangerous installation, wouldn't it?

A. If it leaked it would be dangerous, yes.

Q. And for that reason isn't it a better practice to have gasoline tanks installed so that they can be inspected for leaks? Isn't that a better practice?

A. You would have the knowledge that there was a leak in that tank, just the same, whether you could inspect it or not. The only thing inspection would do, would be to find out where it was, that's all.

Q. How would you have that knowledge, if it was a slow leak, a seeping leak, down in there? How would you acquire that knowledge?

A. By odor.

Q. And suppose it is in a rather a close tank room such as we had in the Seminole, where, when the vapor escaped it would drop down into the bilge; isn't it entirely possible it could go down there without any odor being apparent?

A. I don't think it could; it might, if no one was aboard, yes.

Q. Well I will ask you this, now; not referring to the extent of the added hazard, but to the fact of whether or not there is an added hazard; isn't it true that in in-

stalling large gasoline tanks in such a manner that they cannot be inspected, adds a certain element of hazard to the entire situation?

A. I don't think so, because you wouldn't look for a leak until you knew that there was one.

Q. You mean, if tanks were so they could be inspected, you wouldn't inspect them until you found out they were defective? Is that what you mean?

A. I say that, yes. That is human nature.

Q. Isn't it dangerous procedure?

A. No, I don't think so.

Q. You don't think so, you would rather wait, if there was danger of a gasoline leak, until the leak had developed, and perhaps fumes discharged in the bilge, before you went to look for it? You think that the better practice? You don't, do you?

A. I am not saying that is the better practice; I am saying that is the common practice.

Q. Common practice may not be good practice. Now the point I am getting at, that sort of a situation would add another element of hazard, wouldn't it? Now be frank; wouldn't it?

A. Yes.

Q. Sure it would.

A. It would be easier to leave all the gas tanks out and put said aboard her, and not leave any gasoline aboard at all; there would be no hazard in that; and leave the gasoline tanks ashore.

Q. I am trying to get the added element of hazard in this situation on the Seminole; and tanks that couldn't be inspected would then be some added element of hazard, wouldn't they?

A. I don't think so, no.

Q. Well you just said that it would. Which way do you want the question answered?

A. I still insist that the lack of inspection on the tank would not be any great hazard to the situation at all.

Q. I didn't say, great; I said, any; not great or small, but it adds some?

A. Well I say great. I admit there may be a small amount of hazard.

Q. Then it would be some small amount of hazard, we will put it that way; but not, in your judgment, a great element of hazard? That's the distinction you make?

A. That is the distinction I make.

Q. Very good. Now then let's get at this: Do you consider soldering the joints on large tanks such as were in the Seminole, a proper practice?

A. I do.

Q. You consider that proper?

A. Considering the pressure that those tanks had to undergo, soldering would be quite sufficient.

Q. Now you mean soldering on steel?

A. Soldering on galvanized iron.

Q. All right. Now then isn't it true Mr. Munroe that solder requires or is commonly applied by the use of an acid in connection with the solder?

A. That all depends on what you are soldering on; whether you are soldering on copper or soldering on—you can use—

Q. Soldering on galvanized iron?

A. You can solder on galvanized iron with a resin flux, or you can use a ready-prepared flux that has a small amount of acid in it.

Q. All right now; then isn't it true that when solder is applied to steel or galvanized iron, that there is very frequently caused by the solder, or other causes, a rusting underneath the solder, that has a tendency to cause the solder sometimes to flake?

A. Theoretically you might get such condition, if your solder was not properly applied, yes.

Q. I believe that my best recollection is that in connection with the tank that you examined, you stated that

after you examined it—strike that off "after you examined it"; that when you first examined it there were traces of solder above the point where solder now shows, on the vertical seams; and that between the time when you first examined it, and the visit that the Court made to the place, that the corrosion or some other cause had caused some of that solder to flake off. Didn't you say something of that kind?

A. I said nothing about the vertical seam.

Q. Well somewhere on that tank, that the corrosion had caused previous signs of solder to be eradicated by flaking?

A. I said that concerning the rivet heads at the bottom.

Q. I see; well I didn't recall the exact point.

A. On the outside of the bottom.

Q. Then the solder used in applying solder to these tanks, was of such a character that it did flake off by corrosive causes?

A. Accentuated by the heat of fire. Without the heat of the fire that wouldn't have occurred as readily, or possibly at all.

Q. Then isn't it true, especially on large gasoline tanks, that solder is a poor method of safeguarding the seams?

A. I would not say it was a poor method, no, sir.

Q. Well do you think it is the best method?

A. I don't say that it is absolutely the very best method.

Q. What do you consider the best method?

A. Welding is by far,—or brazing is by far the most superior method; it is absolutely tight.

Q. Other than leaving the seams entirely unreinforced, that is just with nothing but the rivets to hold them, what method of attempted safeguarding, if any, is worse than soldering, if you can think of one?

A. Most anything is worse than soldering.

Q. What?

A. I mean just not putting anything at all there, is worse than soldering.

Q. Eliminating doing nothing, is there anything,—the next worse thing is soldering, isn't it?

A. No, sir, I won't say the next worse thing is soldering.

Q. What is the next worse thing?

A. Patching up with chewing gum, trying to caulk it with a piece of twine or cotton.

Q. That isn't an ordinary recognized method is it?

A. You didn't say, recognized method.

Q. All right; you tell me what ordinarily used method other than doing nothing at all, is worse than soldering?

A. The next worse thing would be caulking it.

Q. You mean, solder is the worse?

A. No, sir, I do not say solder is the worse, I say caulking is worse than soldering. It has less chance,—beg pardon, there is more chance of leak in a caulked seam than there would be in a soldered seam.

Q. How is a seam caulked?

A. It is caulked with a fairly blunt edged tool, that has been described a thousand times here in Court.

Q. And then they just—the caulking is used by taking a tool and driving the metal into the seam?

A. No, not into the seam.

Q. Would you mind just taking a pencil and illustrating just how it is caulked? If you don't drive the metal into the seam, just exactly what does it do?

A. (Witness draws.)

The Court:

You had better put that on a fresh sheet of paper; they are liable to want that to go in evidence.

A. We will assume that your rivets are in here. In order to caulk this seam, you use a fairly blunt edged

tool at this point, not going in on the edge of the plate; on the edge of the plate, forcing this part of the metal over against this other plate, in that manner.

Mr. Underwood:
Before we go farther—

A. That is not driving the metal into the seam. If you drove one metal into the seam you would drive it down this way and expand the seam,—open it.

Mr. Underwood:
Will you indicate on there, please the seam? Draw an arrow to it—let me do it. Is that the seam, there?

A. That is the seam.

Mr. Underwood:
I will draw an arrow there and write "seam". And this next is the caulking tool.

A. That's your caulking tool.

Mr. Underwood:
That point there is the original edge of the metal?

A. That's the original edge of the metal.

Mr. Underwood:
Draw an arrow there and say, "Original edge of metal". Is this point here, the point to which the metal is forced by the caulking tool?

A. That is the point to which the metal has been forced by the tool. In other words, you sort of try to split this plate and expand it.

Mr. Underwood:

The last point I have indicated by an arrow, and at the end of it marked "Point to which metal forced by tool".

Mr. Botts:

All right.

Mr. Underwood:

Do you offer that, Mr. Botts?

Mr. Botts:

Well I am perfectly willing to let it be filed and charged to me as my exhibit. Just mark that as my next exhibit.

(Said sketch was admitted in evidence and marked Pilkington's Exhibit No. 15.)

(By Mr. Botts):

Q. My understanding is that you say you consider caulking a riveted seam,—I mean soldering a riveted seam, as superior to caulking a riveted seam, is that right?

A. I do.

Q. Now then you are familiar with the procedure in making the steel hulls of vessels, where the hulls are riveted, are you?

A. I know the construction, yes.

Q. And those, then, since it is a superior method, are of course soldered, are they?

A. They are not.

Q. How are they secured?

A. They are caulked, in the manner in which I described.

Q. And will you explain to us, if soldering is superior to caulking, why they caulk the seams of a vessel, rather than solder them?

A. Because we were talking about containers of gasoline, and not the side of a vessel.

Q. Well the tightness of the joints is more important on which type,—a vessel or a gasoline drum?

A. A gasoline container.

Q. And you think then that the solder will make a tighter joint than caulking?

A. It will.

Q. As I understand it, you have never had any experience in the making of steel hulls on vessels?

A. No I have not.

Q. And that is just your opinion, that the caulking of a joint is less effective than soldering?

A. I suppose you would call it my opinion.

Q. Now if the solder, by reason of corrosion caused by acid and atmospheric conditions, and so forth, should cause a flaking of the solder, at a soldered joint, wouldn't that add a leakage hazard to that container?

A. Yes.

Q. And that couldn't possibly occur where a joint is caulked, could it?

A. Certainly it could.

Q. It could?

A. Yes it could occur there, though there wouldn't be the effect of an acid there, that's right.

Q. It wouldn't be as likely to occur then we will put it that way, in a caulked joint, as a soldered joint.

A. A leak is just as apt to occur in a caulked joint—more so in a caulked joint than it would in a soldered joint.

Q. You have testified with reference to a drain line,—an overboard drain line from this pan underneath the tanks. The purpose, I take it, was to drain overboard any gasoline that might leak into that pan; is that correct?

A. I believe so, yes.

Q. Now then did you trace the outlet from that drain line, to see where it went overboard?

A. I couldn't find any drain line except where it came out of the pan. Apparently it had been destroyed, if it was there.

Q. Well I will ask you this; suppose that the outlet of that drain line was six or eight inches above the bottom of the pan, and two or three inches above the top edge of the sides of the pan. Then such a drain line wouldn't be at all effective in draining gasoline, if there should be a leakage, would it?

A. You say, the outlet—

Q. The overboard outlet is two or three inches above the top of the sides of the pan, and five or six inches above the bottom of the pan?

A. No, that would be impossible to make such a thing as that work.

Q. Yes; and if such was the connection, then it would be improper, or at least would give no added safety, would it?

A. Well it just wouldn't work.

Q. Just wouldn't work; all right. Now then you testified that it was customary in this area to put drain lines, or drain valves, draw-off valves, whatever you want to call them,—in engine rooms of gasoline vessels. Am I correct in that?

A. I said, of boats of the type of the Seminole.

Q. Well is there any other boat, except boats of the type of the Seminole, that it is customary to put draw-off of drain lines in engine rooms?

A. I don't know of any.

Q. Now then name some boats in the Miami area that are of the type of the Seminole?

A. Well there is a good many of them.

Q. Well name some upon which you can personally say, from your own observation, that have draw-off valves in the engine room.

A. I don't know that I can name—specify any particular boats. I don't recall the names of boats that I have seen with them.

Q. Then upon what basis did you make the assertion that such a custom existed?

A. Because I have seen it.

Q. All right, specify when and where?

A. I just told you that I don't recall the name of the boats that I saw it on.

Q. Well tell us when and where the boat was that you saw, that was of the type of the Seminole, that had a draw-off valve in the engine room?

A. I don't know that I can tell you where the boat was located. It was here in this vicinity, this locality, but just where she was at the time that I saw her, I couldn't tell you.

Q. Now you have testified to a custom. What do you mean a custom,—that it was customary? Do you mean it has been repeatedly, habitually,—that is custom, isn't it?

A. It is not done now as much as it was several years ago.

Q. It has come to be recognized as improper practice, has it?

A. No, sir, that's not the reason they discontinued it.

Q. All right, now, tell us one boat, one single boat, if you can specify, from which you draw your conclusion of the custom in that respect, that you say exists?

A. I cannot name any one specific boat.

Q. And you can't name any place where you saw it, nor any time when you saw it?

A. No I can't.

Q. That is a pretty indefinite basis to make an assertion of a custom, isn't it?

A. I do know that it exists,—or rather did exist; I won't say that it exists at the present time, but it did exist.

Q. Well, we will leave the custom there. Now then do you say that that custom, of putting draw-off valves in the engine room, exists with reference to boats of a type other than the Seminole?

A. I answered you once before, no, on that.

Q. It is only of the type of the Seminole, is the only ones that you know that is a custom?

A. Those big houseboats that were used for fishing around the Keys and Cape Sable and Shark River and that vicinity, where they have to get gasoline for their small launches.

Q. Did you ever, as a marine surveyor, make a survey of a vessel for your employer for whatever purpose, in which you found a draw-off valve in the engine room?

A. A draw-off valve such as the type that we are discussing now?

Q. Well, a draw-off valve.

A. In the Seminole?

Q. A draw-off valve,—of any type of valve; just draw-off valve?

A. I think you could find a draw-off valve in any boat right even today.

Q. That isn't the question I asked you. I said, in your surveys of boats, which you have made as a marine surveyor, have you ever found a draw-off valve in the engine room?

A. I can say I have, yes.

Q. When?

A. Now that depends on, if you are talking about drawing off large quantities of gasoline, I will say, no, such as those valves that were on the Seminole as a draw-off valve. But there are other valves where free gasoline could be gotten from the main tanks.

Q. All right, but not designed as a draw-off valve; is that what you mean?

A. Not designed primarily as a draw-off valve, but nevertheless it was a valve and it was in the line.

Q. But you have never found, in surveying a vessel, found a large draw-off valve designed for drawing off large quantities of gasoline?

A. No, sir.

Q. Well now then, what kind of of a draw-off valve have you found? What was the purpose of installation of these that you said could be used as draw-off valves?

A. In the old type motors, a draw-off valve under the bowl of the carburetor, or, in the newer boats, a draw-off valve in the bottom of sediment bulbs,—sediment traps, for the purpose of drawing off sediment and the water that has accumulated in that bowl.

Q. And that's the only thing that could be characterized as a draw-off valve, that you recall finding; is that right?

A. Yes; you could get any quantity.

Q. And that is—

Mr. Underwood:

May he finish?

A. You could draw off a large quantity of gasoline in there, through that small valve, if you took the time to do it.

Q. But those valves were designed primarily for other purposes, were they not?

A. Other purposes than what? Other purposes than drawing off gasoline?

Q. Than drawing off gasoline. They were designed to clear the pipes or clear the sediment bulbs, or sediment chamber of the carburetor, weren't they?

A. Yes, that was their purpose.

Q. And so they were not a draw-off valve. You could draw gasoline from them, but they were not draw-off valves, were they?

A. You could fill a squirt can from them, for priming.

Q. Would a valve that was inserted for the purpose of cleansing a line, drawing of sediment, would that be a —sediment and water, would that be a suitable place from which to draw off gasoline for a squirt can, to use for priming?

A. Why certainly; after you had drawn off the water, you could draw off the water, dump that overboard, and then get pure gasoline.

Q. And you have never made a survey, though, where you found a real draw-off valve?

A. Not a real draw-off valve.

Q. If you had, you would have recommended that they do something about it, wouldn't you?

A. Not necessarily.

Mr. Botts:

I am trying to get through my memoranda; I think I am practically through. I couldn't remember all these questions. I made them weeks ago, and I have to read them. There are some other questions; I can see now I have some other questions.

(Thereupon at 12:32 o'clock P. M. hearing was recessed until 1:30 o'clock P. M. of the same day.)

3556 Miami, Florida, November 14, 1939, 1:30 P. M.

Afternoon Session.

Thereupon, WIRTH MUNROE, a witness in behalf of the Respondent Phipps, resumed the stand and was examined further as follows:

Cross Examination (Cont'd).

By Mr. Botts:

Q. Mr. Munroe, with reference to these tanks that were in the Seminole how, if at all, would it be possible

to cut or remove either the bottom or the top of the tank and then reinstall it; would that be possible?

A. It would be possible to remove that end of the tank by cutting off the rivets and punching them out at the bottom.

Q. There is no evidence on these tanks that these rivets had been cut off?

A. If all new rivets were put in they would look just the same as original rivets.

Q. How would you cut them off before you punched them out?

A. You probably would have to cut them off with a cold chisel.

Q. Wouldn't cutting them off with a cold chisel necessarily leave a mark on the side of the tank?

A. Not necessarily.

Q. You think it would be possible to—

A. I think so; I think it would be possible to take them off without marring the sides of the tank.

Q. Now in your testimony with reference to these tanks you made this statement, "if there was any leak in the tanks it would certainly show up in the pan." Now if there was just a slow seepage or a very slight leak, it wouldn't show up in the pan, would it?

A. Not in the form of liquid, no.

Q. It would not show up in any form, would it?

A. I don't suppose you could call it directly in the pan, no.

Q. When you made the statement I just quoted you you referred to a very substantial leak.

A. I was referring to a substantial leak, yes.

Q. You were not referring to a slight leak or seep which might occur by reason of long usage of the tanks?

A. It wouldn't refer to seepage which would just wet the surface of the tank,

Q. In testing these tanks, Mr. Munroe, you stated that you made a hydrostatic test.

A. Yes.

Q. And, as I understand it, Mr. Munroe, you said that during the course of that test there was leakage around the bottom or outlet opening of the tank.

A. There was a leak in the bushing in the outlet of the tank due to a crack that had been put there by screwing in the fitting.

Q. Mr. Munroe, isn't it true that that leak in that bushing might have been an old crack that was reopened?

A. No, sir; that crack was put there at the time that I—not myself, but my helper—screwed the fitting in; my helper screwed it in.

Q. How is it possible for you to say at this time that that was not an old crack reopened rather than a new crack that was caused at that time?

A. Because, sir, when it occurred I distinctly heard it snap.

Q. And that would be true if it was an old crack that was reopened and extended a little?

A. No, sir; an old crack would not snap.

Q. Suppose there was an old crack all the way across that bushing and it was snapped off, there would be a snap, wouldn't it?

A. It would have snapped somewhat but not with a sound.

Q. How much more than somewhat was this snap?

A. This was a very loud report, very distinct. I examined it afterwards and could see the clean metal all the way through the top of the crack.

Q. All you could see was top of the crack, wasn't it; you didn't take the bushing out, did you?

A. No.

Q. All you could tell from the surface was that there was a crack across it?

A. Entirely a new crack across the surface.

Mr. Botts:
That is all.

Re-Direct Examination.

By Mr. Underwood:
Q. If these tanks had seeping leaks, how could that be detected?
A. By odor; by the odor of gasoline partly.
Q. In the modern boats or new boats that are built today are the tanks originally placed where they can be inspected on all sides?

Mr. Botts:
I object to that as immaterial.

The Court:
I am in doubt about that. I will reserve ruling on that. Answer the question.

A. The tanks in the modern boats are not in positions where they can be easily observed or examined. They are usually put under cockpit floor, under the wings and sometimes under tanks, with woodwork or joiner work around them.
Q. What kind of tanks are these as to material of which they are constructed?
A. A majority of them today are iron and steel and copper; I would say that a majority of them are copper.
Q. As far as access for physical inspection is concerned, does it make any difference whether they are copper, iron or steel?
A. No, it makes no difference about examining them.
Q. Have you had any experience previously with a can similar to that which was produced here this morning, which has been marked Exhibit 137?

A. Yes, I have had had experience with a can of this type.

Q. Do you own one?

A. Do I own one?

Q. Yes.

A. No, I don't own one.

Q. What has your experience been with cans of that type?

A. There have been several of these cans used by boats in my vicinity, in the vicinity of my shop, and they have very short life.

Q. What happens to them?

A. They very soon rust out.

Q. Do you know why that is?

A. Well, it is a straight steel tank that is not protected with any galvanizing or tinibg or anything.

Q. Soldered?

A. I don't believe these are soldered.

Q. Are they caulked?

A. I don't know what the construction of the tank is at all.

Q. Are they galvanized?

A. They are not galvanized; just plain steel, black steel.

Q. If you were going to provide gasoline on the Seminole for priming the motors and contemplating using cans of that type, what would you have to consider in determining how many of these you got?

A. Depending on how long you were going to be away from the supply of gasoline.

Q. How many times you might have to prime the motors?

A. Yes, how many times you might have to prime the motors.

Q. You might have to have a great many?

A. Yes, considering the fact that you use about a quart of gasoline to prime both motors each time you start.

Q. Now you were asked whether you could see any evidence that the lower crown of the gasoline tank which you saw had been at one time removed and replaced. Could you see anything that indicated that it had not been removed?

A. No.

Q. In other words, could you tell from anything you saw whether it had been or had not been?

A. I had no way of telling whether it had been removed or not.

Q. You were asked whether the heads of the rivets could be taken off by chiseling; do you know whether they could have been burned out?

A. Burning them out would have been a very poor way, considering the tanks had gasoline in them at previous times.

Q. Could they have been burned out with an acetylene torch?

A. Yes, but it would have been very poor practice to try it.

Q. Getting back to these draw-off valves, is it your opinion that the hazard, to use Mr. Botts' word, incident to drawing off gasoline with drawoff valves greater or less than the hazard of doing it otherwsie?

A. I don't believe I get quite all of your question.

Q. I will try to rephrase it: which in your opinion is the greater hazard, whatever hazard there may be in drawing off gasoline, from the draw-off valves or arranging to get the gasoline in the engine room in some other way, such as a tank on deck or a number of these cans such as Exhibit 137?

A. I consider the use of draw-off valves as being the lesser hazard.

Q. Now do I understand that you are at the present time proprietor of a repair yard?

A. Yes.

Q. When did you begin to run that repair yard?

A. About 1932 or 1933; I have forgotten the exact date.

Q. What association did you have with it before that time?

A. My father opoerated it before that, and I worked for him.

Q. What was the nature of your responsibility with your father; who operated it; who was in charge of the repairs?

A. My father really had the final say-so, but long in the latter part of his ownership of it, I really did most of the work and he merely backed me up on it, you might say.

Q. In other words, by a gradual process you took over your father's business?

A. Yes, I gradually took over his business.

Q. From that time on, Mr. Munroe, will you tell us whether the repairs done there have been made under your supervision?

A. Well, ever since I have had anything to do with it at all, ever since 1932, all the repairing that has been done has been under my supervision.

Q. Has the work done at that yard included repairs to motors or replacing motors or anything of that sort?

A. It has been replacing or repairing of motors, installation of new tanks, installation of new motors, and I might say the complete rebuilding of hulls.

Q. Is that the kind of work that has been going on at this yard under your supervision?

A. There has been work of that type, but not all of it.

Q. Has that been a steady business with you or on rare occasions?

A. No, that is a steady business; it has amounted to roughly a gross business of about twelve or fifteen thousand dollars a year.

Q. Have you ever built a boat that was not merely auxiliary but propelled entirely by "motor"?

A. Small launches, open launches, and besides the one that is under construction at the present time.

Q. Did you build a boat called the Grampus?

A. I did.

Q. What was her power?

A. She had a six-cylinder 88-horsepower Universal gasoline motor.

Q. Did she have any other source of power?

A. You mean "compulsion" power?

Q. Any kind; would she sail, in other words?

A. She would sail with auxiliary power. The engine room is also equipped with another motor, though; it has a four kilowatt generator.

Q. How long was she?

A. She was about 60-feet.

Q. What did you have to do with the construction of her?

A. I had complete supervision of the construction; I was on the job from the time her keel was laid until she was delivered to the owner; I assisted in delivering her back to Miami.

Q. Who drew the plans?

A. I drew the plans.

Q. Who decided the layout of the gasoline supply system?

A. I did.

Q. What kind of tanks—who decided that?

A. I decided the type of tank.

Q. Mr. Botts asked you something this morning about steel ships in the course of construction or otherwise. Where were these that you had in mind, those that you looked at; what was your purpose in looking at them, and under what circumstances did it occur?

A. Partly in the plant of the Electric Boat Corporation in Groton, Connecticut where they were building submarines for the United States navy, and also the construction at the Herreshof plant in Bristol, Rhode Island.

Q. What I want to get you to tell us is whether that was idle curiosity or something more; if so, what?

A. While I was at Bristol it was part of my education, because I was then an apprentice or assistant to Mr. Herreshof, Mr. Herreshof, Senior; M. G. Herreshoff, I should say, as there are so many Herreshofs now; and whenever we went through a yard he would naturally explain in detail all of the construction that was going on, explain it in detail to me; he was my instructor.

Q. In your surveying business are you from time to time ever employed by the Marine office of America?

A. I am.

Q. Do you make surveys for them for insurance purposes?

A. I do.

Q. On cross-examination by Mr. Matteson in October you said it was not good engineering practice to have a feedline run from a port trap over to an auxiliary; do you remember that?

A. Yes.

Q. From what standpoint was it not good engineering practice?

A. Because you would be feeding your auxiliary motor with the refuse that would be caught in this trap.

Q. Is there any fire or explosion hazard involved in that type of connection?

A. No, none whatever.

Q. Now when you are designing boats, Mr. Munroe, and considering what ventilation you shall provide for her in the way of windows, portholes and otherwise, I would like to know whether you make any calculations as to the amount of gasoline vapor that has to be removed by that natural ventilation?

A. No, sir.

Q. Do you assume any leakage in tanks or gasolines in order to determine how much ventilation an engineroom ought to have?

A. No, we don't determine that.

Q. What is the purpose of providing ventilation?

A. The main purpose of supplying ventilation in the engineroom or any other part of the vessel is to protect it against condensation on the inside in the case of a steel vessel, and in the case of wood to keep it aired out to prevent rotting of the timber, and in the engineroom to supply the required amount of air for the motors; motors have to have a supply of fresh air in order to run, and if it is a large engineroom there is an engineer stationed in there and it is necessary for him to have air, fresh air.

Q. Now considering the Seminole's ventilation as confined to the engineroom, the two windows on the port side, the one window on the alleyway on the starboard side, two cowl ventilators, the hatch and the skylight,—in your opinion is that adequate ventilation for all ordinary purposes?

A. That is quite sufficient.

Q. Considering that the ventilation of the tank compartment consisted of the four filler holes in the top, the four feedline holes towards the bottom of the bulkhead, the square opening below and the space around the pans,—in your opinion is that adequate ventilation for all ordinary purposes?

A. It is.

Q. In order to tell whether the natural ventilation that I have just asked you about is enough to take care of any seepage or leakage of gasoline creating vapor, what more would you have to know?

A. You wouldn't have to have "any".

Q. My question is, this, Mr. Munroe: assuming the sources of natural ventilation that I have just described

to you, the windows and the cowls and the skylight and so forth, in order to determine whether or not those openings would provide enough air to remove any gasoline vapor that might get in there, what would you have to know about the quantity of gasoline vapor and any other factors?

A. I am afraid I don't quite understand your question.

Q. Maybe I can put it more clearly in another way: if you drop a teasponful of gasoline on top of one of the motors in the engineroom, can you tell whether the natural ventilation from the sources I have mentioned would vaporize that and carry the vapor away and not permit it to get down into the bilge?

A. Well, there would be plenty ventilation to carry away any small quantity of gasoline vapors.

Q. Suppose you upset a 55-gallon drum of gasoline in the engineroom and let it all run out, could you tell me whether the natural ventilation provided from the sources that I have mentioned would carry away the vapor in any particular length of time?

A. I don't know as there is any way of actually measuring that; it could be measured, I suppose; it depends on the length that the ventilation is there.

Q. What in your opinion does that depend upon: you say time is one factor?

A. Yes; it depends on the pressure of the air entering the cowl or ventilator.

Q. In other words, how strong the wind was?

A. Yes; how much disturbance is caused in the engine room to dissipate the fumes, or dilute them.

Q. I suppose the quantity of gasoline or vapor is a factor?

A. Yes, indeed.

Q. How about lapse of time?

A. Yes, lapse of time is a factor.

Q. Bearing these things in mind, in your opinion would any dangerous accumulation of gasoline vapor occur when you draw off gasoline out of these draw-off valves into a can of the type before you on the floor there?

A. Not in my opinion; there would be plenty of ventilation there to carry off any fumes.

Q. How about filling the squirt cans for priming?

A. It would even be less in that case.

Q. There has been some talk of rust inside of these tanks in the so-called "V" at the bottom; can you tell us a little bit about rust; as I understand it, it is a process of oxidation, is that right?

A. Yes, it is.

Q. Does that mean that there is a certain affinity between steel and oxidation that results in rust?

A. In any ferrous metal oxidation is called rust; it occurs much more rapidly in the presence of air; the amount of rust that would be deposited would be determined by the quality of the steel or of the ferrous metal that was used; when it was covered by a liquid, such as water or gasoline, there would be a very, very small portion of rust appearing.

Q. Well, assuming that there was water in the "V" at the bottom of the Seminole's tank due to condensation inside of the tank, would you say that any process of oxidation down there in that "V" would be a rapid or slow process?

A. It would be a very slow process of rust in there.

Q. Why?

A. Because it is sealed by the water and the only oxidation that could take place would be the amount of oxygen obtained from that water that is there; after that had been used up, there would be no more rust.

Q. From your observation on the Seminole of the pans under her tanks, can you tell whether they would shift or not?

A. From my examination of them I would say that they have not shifted any at all.

Q. Are they solid and secure?

A. To all appearances they are solid and rigid.

Q. Did you step in them?

A. I have stepped in them; there is no indication of them having moved at all.

Q. About this hydrostatic test just one more question: is this hydrostatic test recognized as a proper test for leakage?

A. It is.

Q. I think you say, in answer to one of Mr. Matteson's questions, that you would not prefer to install a glass gauge six feet long. What have you in mind about that; what is your reason or what have you assumed about such a gauge?

A. I assumed that that was a gauge that would be unguarded, and it is perfectly possible to put in a tube that long—

Q. How about seven feet?

A. And protect it; yes, even seven feet, and protect it; it would be just as safe as the one six inches long.

Q. Mr. Munroe, I show you Libelants' Exhibit No. 6, a photograph, and ask you to tell me whether or not the holes at the top of the bulkhead between the tank compartment and the engine room, and the holes at the top of the bulkhead at the forward part of the tank compartent, indicate anything to you; if so, what?

A. Those holes indicate to me that there was a beam across there at sometime that that plate was made fast to.

Q. Would such beams across there serve any purpose in stiffening the bulkhead?

A. Yes; they would assist materially in stiffening that bulkhead.

Q. You see the same holes in Exhibit 112 at the top of the bulkhead, between the engine room and the tank compartment, do you not?

A. I do.

Q. They are in line across there?

A. I judge they are; the top is pretty well destroyed now.

Q. Do these vertical angles that appear on the engine-rom side of the bulkhead coming to the engine room tank compartment shown on Exhibit 6 serve any purpose for stiffening?

A. They add considerable to the stiffness of that bulkhead.

Q. In your opinion is that adequate stiffening for such a bulkhead?

A. It is quite sufficient.

Q. Could that bulkhead do any weaving under ordinary circumstances with these stiffeners in it?

A. I don't see how it could. I think these same frames were there when that was a coal bunker, and coal was laid immediately against that bulkhead.

Q. Mr. Munroe, you were asked by Mr. Matteson whether you would pass at the present time this connection between the valve marked Crane 150 and the union which form a part of Libelants' Exhibit number 11, the drain valves, and you said that you would not. What did you have in mind about that connection that you would not pass at this time?

A. At that time I was judging from the fact that this nipple was not the full length.

Q. Do you refer to the nipple between the union and the valve, Crane 150?

A. Yes.

Q. Is that right?

A. That is right.

Q. Can you tell at this time whether all the threads on that nipple were used up in making that fitting at the time of the fire?

A. No, I couldn't say that they were all used up at the time of the fire.

Q. Can you tell whether or not it would leak today?

A. Yes, I could tell whether it leaked today or not.

Q. How?

A. By blowing through it or sucking through it, when it is set up tight. This has been apart—

Q. I don't think the union has; I have never seen it apart, have you?

A. No.

Q. Now, will you see if you can suck through there, covering up two of these opening, and see if you can get any air through there?

A. I can't get any air through there.

Mr. Underwood:

Let the record show that in making that little test I have removed the valve marked Crane 125 from the exhibit, and also the plug, and removed the seat of the valve marked Crane 150, and that the witness blew or sucked, rather, on the end that makes contact with the valve, Crane 125, after covering up the other two openings and holding them tight with his hand.

Q. Suppose you light a cigarette and see if you can blow any smoke through it; take a mouth full of smoke and blow it at the same end, and hold the other two connections.

Mr. Underwood:

Does your Honor see that no smoke, cigarette smoke, comes through there? That is all.

Re-Cross Examination.

By Mr. Matteson:

Q. Mr. Monroe, you were saying that tanks in modern boats are sometimes installed under the cockpit floor or

wings where they can be equally examined in place. What type of boat were you talking about?

A. I am speaking of a great many of these stock boats as manufactured by Chris-Craft, Wheeler and Matthews.

Q. Cruisers and auxiliaries?

A. They are strictly power vessels.

Q. What size are they?

A. Up to fifty feet.

Q. What size would the tanks be?

A. The tanks would probably hold—the total tank capacity—not more than three to four hundred gallons.

Q. How many tanks?

A. Usually about two tanks; 150 to 200 gallons apiece; that all depends on the size of the motor that is installed in the boat.

Q. Such tanks could be disconnected and removed readily, could they not?

A. Yes, I believe they could be; those under the cockpit floor could be removed, yes; you might have to remove the motors first.

Q. Now take engines of the type in the Seminole, do I understand you to suggest that it would take a quart of gasoline to prime them?

A. That is my opinion; I believe it was testified by Schlappi—

Q. I am not asking you about the testimony of any witness; you testified that it would take or you intimated by your testimony that it would take a quart to prime the motors. Now I want to know what you base that on; are you basing that on Schlappi's testimony?

A. No, not entirely, except that he made the same remark.

Q. Are you suggesting that it would take as much as a quart of gasoline to prime the motors of the Seminole?

A. In my opinion it would take a quart to prime both motors.

Q. The purpose of priming is to get enough gasoline into the various cylinders for the initial explosion?

A. That is right.

Q. That is one revolution of the engine?

A. Yes.

Q. These engines at full speed made about 450 revolutions per minute?

A. I don't know what the r. p. m. was; somewheres in that neighborhood; not over five hundred, I don't think.

Q. Can you tell us the gasoline consumption per hour of one of these engines?

A. I don't think I can give it to you exactly; I believe it is in the vicinity of maybe twenty to twenty-give gallons an hour.

Q. You are talking about two engines?

A. I think so.

Q. You don't mean that it would take that much for each engine, do you?

A. No, for the two engines; that all depends on the speed that they are running, of course.

Q. Can you tell us how much gasoline would be consumed in one explosion of one cylinder?

A. No, I couldn't; I could tell you maybe by figuring it backwards.

A. It wouldn't be very much, would it?

A. No, it wouldn't be very much in actual raw fluid.

Q. Can you tell us how much gasoline vapor is produced by a given quantity of fluid gasoline?

A. No, I don't know that offhand.

Q. There is considerable degree of expansion in gasoline fluid by reason of gasoline vapor, and gasoline vapor gives a considerably greater amount of space than the gasoline fluid; is that a fact?

A. Yes.

Q. Still, do I understand you to suggest that it would take a quart of gasoline to prime six cylinders on two motors?

A. Yes, because you always use more raw gas in priming than you would while your motors are running; after the motor is warmed up it wouldn't require the amount of raw gas it would in starting.

Q. Of course there would be a disadvantage in putting in too much gasoline in that it would interfere with the lubrication, is that correct?

A. You would consider that, yes.

Q. What you would do in priming the motors would be to put in the minimum amount that you could to start them, would that be true?

Mr. Underwood:

I object to this; what this witness would do is immaterial; what was actually done is the question, and he doesn't know.

The Court:

It is just another way of asking him what his opinion is. I will overrule the objection.

A. I would say that the amount of gasoline would be determined by practice and use of the motors, and as you use the motors you would know more or less what the amount of gasoline is that would be needed.

Q. Of course, Mr. Munroe, it is also true that there is an upper explosion limit where you get too much gasoline in the cylinder and you get no explosion; is that true?

A. Yes, that is true.

Q. In other words, if you flood a cylinder it is difficult to start it as if you didn't have enough gasoline?

A. You would have to expel a certain amount of it before it would explode; but these were very large cylinders and had considerable capacity. I don't know what the displacement of the motor was for each cylinder.

Q. That was just about what I was going to ask you. Do you know the displacement?

A. I don't know the displacement of the motor offhand.

Q. You were asked a double-barreled question as to whether you would consider a draw-off valve in the engine room a lesser hazard than a can, such as Exhibit 137, or an auxiliary tank on deck, and I think you answered that question by saying taht you considered the draw-off valve the lesser hazard. Will you tell me specifically whether you had reference to an auxiliary tank on deck as being a greater hazard than draw-off valves in the engine room?

A. Taking into consideration the same statement that I made at a previous time, concerning the going on deck to get it, I consider that it would be a greater hazard.

Q. Well, there would be no fire hazard in having an auxiliary tank on deck as a supply, would there?

A. There could be.

Q. Well, of course I suppose there is a fire hazard wherever there is gasoline, but the handling of gasoline on deck would be of very much lesser hazard than handling of gasoline under deck, is that true?

A. I believe you could say "yes".

Q. You don't have any doubt about that, do you?

A. Well, I have seen some pretty terrible things occur out on deck.

Q. I think the vessel called the Grampus was referred to; was that a wood vessel?

A. Yes.

Q. What sort of tank did she have?

A. Tin lined copper tanks.

Q. Of what size?

A. To the best of my recollection they were about 150 gallons apiece; they were molded into the shape of the vessel.

Q. What type of vessel was the Grampus?

A. She was an auxiliary ketch.

Q. Did she have an engine room?

A. She did.

Q. Did she have a draw-off valve in her engine room?

A. No, sir, and the motor had no way of being primed either.

Q. You answered another question, and I am not sure that we got the full implication of it. You were asked about the ventilation of the tank compartment, the four filler holes at the top and so forth, and you were asked if that would be sufficient ventilation for all ordinary purposes. What do you mean by ordinary purposes?

A. I mean the ordinary circulation or ventilation of that compartment.

Q. You mean if there are no leaks?

A. Even if there is a minor leak.

Q. Do you contend that those openings would create any circulation through the tank compartment?

A. I do.

Q. Do you think that would be quite adequate to air it out if there was a leak in the gas tank?

A. A minor leak in the gas tank, yes.

Q. That compartment under the tanks went down to the skin of the ship at the bottom, did it not?

A. That compartment?

Q. I mean the space under the tanks.

A. Yes.

Q. And the engine floor was, I think, about seventeen and one-half inches above the skin of the ship, was it not?

A. As I recall it, that is the measurement; yes, sir.

Q. And this square opening in the bulkhead, the lower part of it was on the level of the floor of the engine room, wasn't it?

A. It was.

Q. Then for seventeen and one-half inches below that, the space below the tanks, that space would be below the level of the lowest ventilation in the engine room, would it not?

A. It would, through that hole.

Q. What circulation do you think would take place that would induce gasoline fumes out of that lower level to—

A. Any movement of air across the top would have a tendency to circulate the air, even down to the bottom of the bilge.

Q. What was over the tank compartment on the deck above; can you tell me that?

A. I don't know.

Q. Do I gather it is your opinion that ventilation of a vessel of the type of the Seminole was principally for the purpose of keeping moisture and mildew out of the vessel?

A. That is the purpose of putting ventilation in a boat.

Q. On a boat that is equipped to operate on gasoline fuel do you say that it is not necessary to plan your ventilation to take care of accidental leakage of gasoline or fumes into the bilges?

A. Why, it is not necessary to figure any accidental leaks.

Q. In other words, you are going to plan your vessel on the theory that there will be no accidental leaks, is that right?

A. That is correct.

Q. And you are going to assume that all of the tanks and fittings will at all times remain tight?

A. Reasonably tight, yes.

Q. And you would plan a gasoline propelled vessel on that principle?

A. I certainly would; I certainly wouldn't make any ventilation sufficient to carry off five hundred or two thousand gallons of gas.

Q. I haven't suggested that, Mr. Munroe. That is all.

Mr. Underwood:

That is all, Mr. Munroe; thank you.

3581 Thereupon, R. C. ALLEY, a witness in behalf of the Respondent Phipps, resumed the stand and was examined and testified further as follows:

Direct Examination.

By Mr. Underwood:

Q. Mr. Alley, do you recall the testimony of Mr. Anderson of the Palm Beach office that certain entries in the books of the Seminole Boat Company were allowed to accumulate for a time before being posted in the books?

A. I do.

Q. Do you recall the fact that that occurred?

A. It did occur.

Q. Are you in a position to tell the reason for that?

A. Yes.

Q. Was it done under your direction?

A. It was.

Q. What was the reason for that?

A. Following the fire which consumed the Seminole the expenses incurred in connection with it were of more than one class; there were the ordinary corporate expenses, and in due course we began to have a lot of litigation expense and, as you know, the suit here now is brought against Mr. John S. Phipps; it is not brought against the Seminole Boat Company; so the question came up as to which expense was chargeable to the corporation

and which expense was a part of the expense of the litigation. We adopted the practice of allowing them to accumulate in a suspended condition in the Palm Beach Company's office, and then periodically separating them into two classes; the latter was done largely by Mr. Underwood. These separations took place at various intervals; I forgot just how many different times we went through the process of separating them, and when that was done the journal vouchers were made up for the corporation, and expenses of the other character were charged to the proper account.

Q. The purpose was to obtain legal advice as to which was properly chargeable against the company and which against others?

A. That is correct.

Q. Do you recall for what purpose—I think it has been offered in evidence or marked in some way—the release that Mrs. Abel gave?

A. Yes.

Q. I think there has been some comment on the fact that that release is of the Seminole Boat Company. Who prepared that release?

A. You or your office prepared it; whether you did it personally or not, it came from your office.

Q. Did John S. Phipps have anything to do with the preparation of that release?

A. No.

Q. Or with reciting what names of persons to be released should be inserted in it?

A. No.

Q. Now in your position as Vice-President of the Seminole Boat Company have you had anything to do with the payment of taxes by your company, in the making of returns, tax returns?

A. I had this to do with it: it is my custom to see to it that the corporation files the various classes of returns which it had to file; there were a number of them.

Q. What can you tell us, first, about the Federal Income Tax Returns?

A. It naturally had to file a Federal Income Tax Return.

Q. Do you know of your own knowledge if that was filed each year since the corporation was formed?

A. I do.

Q. How about the Florida Capital Stock Tax?

A. Well in the early days of the corporation that was not required, but I think since 1931 it has been required; it has been filed since 1931 regularly. There was no Capital stock Tax prior to 1931.

Q. From the time the Florida Capital Stock Tax became effective as a tax has the Seminole Boat Company made a return and paid that tax?

A. It has each year.

Q. How about the Delaware Capital Stock Tax?

A. I didn't have very much to do with that excepting to know that someone was attending to it.

Q. How about the Federal Capital Stock Tax?

A. Since there has been a Federal Capital Stock Tax returns were made and filed.

Q. By the Seminole Boat Company?

A. Yes. I don't recall the exact year that began; I think it was 1933.

Q. Were they made and filed by the Seminole Boat Company?

A. Yes, by the Seminole Boat Company.

Mr. Underwood:

That is all.

Re-Cross Examination.

By Mr. Matteson:

Q. Mr. Alley, at the time this release that you speak of was prepared by Mr. Underwood's office, was Mr. Un-

derwood's office representing John S. Phipps in this litigation?

A. Well, I don't recall whether there was any definite arrangement at that particular time that he was employed specifically by John S. Phipps; I don't recall the date of the release or the date of the litigation against him.

Q. Mr. Underwood's office has been acting for John S. Phipps ever since this litigation against Mr. Phipps has been instituted?

A. I assume that probably he has been acting for John S. Phipps and all others connected in any way with his corporation since the first time he was employed. Wherever there is a loss there is usually a lawsuit and usually they pick out the party who has the most money; so naturally anybody that was remotely or directly connected with the Seminole Boat Company, you might say, would be protected.

Q. Now, when you said that Mr. John S. Phipps knew nothing about this release, I take it that you meant simply that as far as you know he knew nothing about it?

A. That is right; I didn't tell him anything about it.

Q. You mean that you yourself never discussed it with him?

A. I never discussed it with him, no.

Q. Who was it that paid this Delaware Capital Stock Tax; you say some one else was taking care of that?

A. That was delegated to Mr. Weiss in the New York Office, or Mr. Ruelbach Anderson; I think his exact function was to see that it was filed; he did not prepare it.

Q. It was taken care of by someone in New York?

A. That is right; he mailed it here for signature.

Q. These expenditures that you have spoken of that were held in suspension, they were made in the first instance by the Palm Beach Company, I take it?

A. Yes; I think most of them were made by the Palm Beach Company; I don't recall that the Palm Beach Com-

pany paid anything directly to Mr. Underwood's firm; there may have been something at that time—

Q. Between the time that these items were disbursed by the Palm Beach Company and eventually allocated, how were they charged on the books of the Palm Beach Company?

A. They were charged in the expense account; some of them may have been charged directly to the Seminole Boat Company, because obviously they were expenses of the Seminole Boat Company; to a large extent they were suspended, as I recall.

Q. They were not charged to any other account?

A. Simply to expense account.

Q. I think you said you consulted Mr. Underwood and you made a division on several different occasions?

A. Yes. In a number of cases there were journal vouchers made up subsequent to the fire, I believe.

Q. Journal entries were made up for each year?

A. No, I think they were more than that; I have them here before me, however.

Q. They were made up in any event yearly or—

A. Yes.

Q. I take it that these allocations were made after consulting Mr. Underwood within these periods?

A. That is right.

Mr. Matteson:

That is all.

Re-Direct Examination.

By Mr. Underwood:

Q. I take it that your employment of my firm, from what you say, was for the benefit of "To Whom it May Concern"?

A. Yes.

Mr. Underwood:
That is all.

Mr. Matteson:
No further questions.

(Witness excused.)

3587 Thereupon GEORGE W. GIBBS was called as a witness in behalf of the Respondent Phipps, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Underwood:

Q. Where do you live?

A. Jacksonville, Florida.

Q. What is your business?

A. I am an engineer.

Q. What is your principal business or occupation?

A. Manager of the Gibbs Gas Engine Company of Florida.

Q. Is that company named for you?

A. Yes.

Q. How long have you resided in Jacksonville?

A. Since 1911—since about 1910.

Q. What was your education, if any, along engineering lines?

A. The Georgia School of Technology; I hold a degree of B. S., Batchelor of Science, in the art of mechanical engineering.

Q. Do you know what year you got that?

A. 1908.

Q. How long have you been in the engineering business?

A. Since the day I left school; and before that I was employed as an engineer while at school in my senior year, and since that time I have been continuously in business.

Q. What type of engineering work have you done over the years?

A. Worked very largely in connection with internal combusion engines and hulls of vessels.

Q. Hulls of ships?

A. Yes, which includes fire fighting apparatus, the design of fire boats, stationary fire fighting apparatus such as used to protect municipal docks, warehouses and things of that kind. I have also acted in a consulting capacity in the past with such people as Mr. Louis Shane of the Southeastern Tariff Association, the engineer in the south who determines rates or rates reflected by risks; have consulted with Mr. Booth, president of the National Underwriters Association—I believe that is the correct name—in connection with the conversion of submarine chasers into fire boats for the protection of harbors.

Q. What type of equipment does your company have for the construction or repair of vessels?

A. We have a drydock that cost $100,000.00, one hundred ton capacity; a marine railway, and drydocks sufficiently large enough to lift almost any yacht that floats.

Q. Does your company have facilities for construction of vessels?

A. Yes.

Q. How many at one time?

A. Eight or ten.

Q. Have you built any vessels?

A. Yes.

Q. When did you personally begin to have supervision of the construction of vessels?

A. Along about 1911.

Q. What type of vessels have you constructed at that yard under your supervision?

A. At that time we designed them and had them built in other peoples' yards.

Q. When you say you designed them, can you tell us whether they were designed under your supervision?

A. They were.

Q. You had other people build them?

A. Yes.

Q. When did you begin building them yourself?

A. In 1916 or 1917.

Q. Will you tell us approximately how many vessels over the years have been built under your supervision?

A. Several hundred.

Q. What types of vessels do they include?

A. Include what I would say are the finest types of hulls; we don't do any work that goes into the low price work; the work is for the government; 95% of our work is for the government, the oil companies or the rich yacht owners; I mean the yacht owner who will pay, for instance, one hundred thousand dollars.

Q. Have you built any gasoline propelled vessels?

A. Yes.

Q. What types of gasoline propelled vessels?

A. We built submarine chasers, 110 feet in length; sixteen.

Q. Sixteen of those?

A. Yes; ten for the American government and six through the American government for the French government.

Q. What type of motive power did they have?

A. They had 220 horsepower Standard gasoline engines; three in each hull.

Q. What was your personal connection with the design or construction of those vessels?

A. I made the estimates of cost, with the assistance of an able staff, and personally looked after the details of the construction and had charge of the organization of the personnel.

Q. What other types of vessels propelled by gasoline have been constructed under your supervision?

A. We have built more boats for the Coast Guard, Army, Navy and other branches of the United States government than any builder in the southern states, and perhaps the fourth builder in America.

Q. That your company is the fourth largest builder of vessels?

A. Of small vessels, meaning up to 110 feet.

Q. Have you built any tankers?

A. Yes.

Q. What types of tankers?

A. We built tankers for the Standard Oil Company of New Jersey, for the Gulf Refining Company, for the Seaboard Oil Company—they have three or four names; I think it was the Pure Oil Company we built them for; we also built a great many for Cuba for carrying sugar; these Cuban boats were intended to carry sugar, and they were quite large vessels.

Q. In the construction of tankers do you have to consider the hazards of inflammable oils?

A. Yes.

Q. I noticed out of my hotel window a little gasoline supply station off to the side; did you have anything to do with that?

A. We built that, and also the Texas Company, the boat that was used here by the Texas Company.

Q. The one I speak of is for what company?

A. The Standard of Kentucky.

Q. You said something about building fire boats. Can you tell us something about that?

A. We built a fire boat for Galveston, and as I remember it the price was $208,000.00; it was a steel fire boat.

Q. Did that construction consist solely or only partly of steel hulls?

A. Entirely steel construction with gasoline engines.

Q. I mean all of this construction you have just spoken of; was it all steel hulls?

A. Yes.

Q. Have you built any wooden hulls?

A. Yes.

Q. You have?

A. Yes; the "Miller" was a wooden tanker and, as I remember it was about 150 feet long.

Q. Carrying fuel oil and gasoline?

A. Yes; she had tanks inside of her.

Q. By the way, are you building any ships today?

A. Yes.

Q. What kind of ships?

A. We are building some ships for the army—we have just completed—the contract is not exactly finished because there are some drawings to be submitted; we built 16 rescue boats for the Coastguard; just before that we built, I think, the finest ships that the Coastguard owns; five of the 30 mile boats, 80 feet—

Q. Are these boats capable of 30 miles—

A. 1600 H. P. cruisers, 80 feet, 30 miles.

Q. These 16 boats for the Coastguard—

A. They were just delivered.

Q. Are they to be gasoline propelled?

A. They are gasoline propelled.

Q. In addition to ship construction, does your company do any repair work?

A. That is the bulk of our business.

Q. Have you had occasion to repair yachts from time to time?

A. A great many.

Q. Gasoline propelled among others?

A. Yes.

Q. Have you seen them yourself?

A. Yes, sir.

Q. Been down to their engine room?

A. Yes.

Q. Are you familiar with the general type of construction and layout of engine rooms of gasoline propelled yachts?

A. Yes.

Q. Gasoline line fittings and so on?

A. Yes.

Q. The type of gasoline tanks they have?

A. Yes.

Q. Are you doing any work on any yachts now?

A. Yes.

Q. How many in a general way and briefly what sort?

A. We usually have from two to nine at the yard.

Q. How many are there now?

A. There are two there today.

Q. Two yachts?

A. That I know of, and I think there were three others on the way. How many are there today I don't know; I do know there are at least two there today.

Q. They were there Saturday when you were last there?

A. Yes, and I hope they are gone.

Q. Now, Mr. Gibbs, have you been aboard the Seminole since the fire?

A. Yes, sir.

Q. Do you remember ever being aboard her before the fire?

A. Yes, sir.

Q. When was that?

A. When she was at our yard when we did extensive work on her.

Q. Do you recall when that was?

A. Before her gasoline engines were put in her; it was when she was a steam yacht; I think it was about one of her first trips to Florida.

Q. That was a number of years ago?

A. Yes.

Q. Since the fire you have been aboard of her here at Miami?

A. Yes, sir.

Q. On two or three occasions?

A. Yes.

Q. To what extent have you examined her?

A. Well, I have examined her to see if I could find what her construction was, what the installation of the gasoline power consisted of, and to find if I could any cause for the catastrophe, and I have hunted for such things as I thought might be of interest in determining whether the boat was faultily constructed or not.

Q. Have you been down in the engine room?

A. Yes.

Q. Looked in the tank compartment?

A. Yes.

Q. Looked over her hull forward of the tank compartment?

A. Yes, but not to any great extent. I didn't understand that there was anything up there in question.

Q. Have you looked at her hull abaft the engineroom?

A. Yes, but not in much detail. I did observe where the gasoline engines probably were.

Q. Did you observe where they are now in the engineroom?

A. Yes.

Q. Where the windlass is up forward.

A. Yes.

Q. The location of the auxiliaries in the engine room?

A. Yes.

Q. Have you observed what remains of the gasoline feed-line system?

A. Yes.

Q. The manner in which the gasoline tanks were constructed, in a general way?

A. Yes, sir.

Q. How they were situated in the tank compartment?

A. Yes.

Q. You understand that the gasoline tanks had inverted crown bottoms and could not be entirely drained?

A. Yes.

Q. In your opinion is that a proper or improper condition under the circumstances?

A. I think that is entirely a proper condition; I don't see how it could have been done any other way.

Q. There has been some suggestion in the case that water condensing in the tanks will settle in the bottom and possibly cause corrosion. In your opinion would that process occur in any substantial degree in these tanks?

A. No; the corrosion would be absolutely negligible from any such cause.

Q. Why do you say that?

A. In the first place, practically every tank of that type in a yacht is installed exactly that way; in the second place, the amount of corrosion is caused by oxidation knitting with the metal, causing rust, and you have various stages of the process. The water which would undoubtedly come from the atmosphere on condensation would sink to its lowest point, and then it would become a protective fluid preventing further corrosion; it would have a very minute amount of oxygen in it free; that is a very great distance from any place that could have ever been affected by air in the fluid, and the water itself, which I believe and in fact know, would have been as high as the drain close to it, and with the amount of oxygen that got up in there, it would have been almost negligible. I would expect to see almost a shiny surface it was if blue-black steel.

Q. Let's assume a particular square inch of that surface in the "V" at the bottom of the tank does become rusty due to oxidation down there, is that process a continuous one?

A. No.

Q. What happens to it.

A. If the air is held away that becomes in itself a protective coat.

Q. What?

A. Rust.

Q. Can you give us any example of that?

A. Well, red lead itself that you put on bridges, some forms of it, is ground rust and linseed oil.

Q. What about red lead that is put on ships?

A. The same thing.

Q. You mean in effect?

A. I mean in effect that there is a form of paint that is ground rust that may be produced in a chemical way, but in fact it is rust with an oil holding it together.

Q. The purpose of red lead is to prevent rust?

A. That is right. It is like—metal will only yield so much oxidation, provided it is impervious below; water, for instance, cannot burn. The reason water cannot burn is because it has already burned; it has oxidized; water is oxidated hydrogen; hydrogen and oxygen unite and you have hydrogen and oxygen; H_2O is water, that is, ashes of water; water is the ashes of two other substances which combine, and having combined they cannot combine further, and on that theory one of the best things you can do to a plate is to clean it and let it rust, with a fine coat of rust, and then cover it and keep air from it.

Q. Did you observe the filler pipe of the Seminole, or do you understand that the filler pipe of the Seminole was a two-inch pipe and vented by the use of a half-inch pipe?

A. Yes.

Q. In your opinion is that a proper or improper condition?

A. I believe those are about the right sizes; I believe if I had been doing it I would have made an even smaller pipe as a vent.

Q. Is there any disadvantage in having the vent pipe smaller than the filler pipe?

A. On the contrary it would be very much a disadvantage if you had your vent pipe a larger pipe.

Q. If your vent pipe is large, what is the disadvantage?

A. Then you have convection setting in to change the nature of the air that is on top of the top portion of the tank.

Q. Does that mean it facilitates the evaporation of the gasoline?

A. It would facilitate the evaporation and tend to cause condensation under certain conditions. The airplane, for instance, the minute she lands they immediately fill her tanks, the idea being to prevent water from getting into the tanks through the tiny vent that the airplane tank has and to prevent excess condensation where that water might get in; it might get in the carburetor.

Q. Assuming that the filler was a two inch pipe with a half inch vent, in your opinion was that sufficient to take care of the outward movement of the air from the tanks?

A. I think it would be quite sufficient. Of course you could deliberately slow the gasoline going into your filler pipe, and you might, under high pressure, put it in faster than you could vent it, but it would have to go in very fast—too fast for the venting of air. Air travels with very little friction; it comes out of a hole in almost no time as compared to the time required for a liquid to go through the same passage.

Q. Now did you see any pans under the gasoline tanks?

A. Yes, I saw them.

Q. How many did you see?

A. Two pans; two under each tank.

Q. You mean two tanks under each pan?

A. That is right.

Q. Did you observe in a general way the size and shape of these pans and the material of which they were constructed?

A. Yes.

Q. Did you observe any overboard drain from these pans?

A. No.

Q. Did you observe any fittings from which they may have been drained?

A. No; I heard there were; I regarded the pans as so much unnecessary construction. I thought I would be in a position to remember what they were like; anyway, I wasn't much concerned.

Q. From your experience with vessels burning gasoline for fuel was it reasonably necessary to have any pans at all under those tanks?

A. They were the first pans I have ever seen in my life, and I have perhaps seen as many ships as any living person, with the possible exception of an insurance surveyor.

Q. Have you ever installed any drip pans on any gasoline tanks for the Navy or Army or oil companies or anybody else?

A. Never. I would as soon drink water with a big glass to catch the drip off my lips as a little glass. I can't conceive of any justifiable purpose of these pans there.

Q. Did you observe how the gasoline tanks themselves were bedded in the pans and secured?

A. Yes.

Q. What did you observe, in a general way, as to that?

A. That, in my opinion, was a most excellent job; I think that that was even done better than anything; I can conceive of no load on these tanks that would ever have made it necessary to fit wooden supports up to the shape of the concave and convex parts of the tanks; convex and concave must be construed from the viewpoint of where the tanks are; concave with respect to the bottom, the fitting of the wood to the bottoms of those tanks was a very careful job, and in itself practically would have prevented any shifting.

Q. In your opinion?

A. Yes, forward or aft.

Q. In your opinion were they adequately secure?

A. They were. All that you could see; I saw a splendid fastening at the bottom of the tanks, as well as a splendid fastening about 15 inches up, and then the columns were burned off. I think that one might assume, from what existed, that those columns were joined continuously up to the top of the tanks, tending to hold the tanks rigidly. I don't know that those things were there, because they were burned up; at least we could so surmise—

Q. From your experience in ship construction is it a fact that what you saw leads you to believe that they were there?

A. Yes. I would say that half of that amount of stiffening would have been quite sufficient for that job.

Q. Did you observe that the tanks rested on wooden bottoms?

A. Yes, sir.

Q. Anything improper about that?

A. I think that was highly proper.

Q. Considering the possibility of leakage from the tanks, do you think that these wooden bottoms were proper in that construction?

A. I would not have given any consideration at all to any possibility of a leak in these tanks, and I would have put no form of support in with any thought whatever of leakage of fuel out of these tanks.

Q. Did you observe that they fit very closely to the bulkheads in the tank compartment?

A. Yes, I did; the frames to the tanks were grouted and fitted.

Q. Do you understand that it was not possible for a man to circulate freely around these tanks to examine them?

A. Yes, I do.

Q. In your opinion was that a proper or improper condition?

A. With those tanks it was totally unnecessary for them to be subject to inspection.

Q. Why?

A. Because the tanks were good for a hundred years in their present condition, long after many ships of that age would be lost. The tanks were made for some other purpose, and they were very much heavier. Now you have only to look at this gasoline tank to see the gauge of it—

Q. Exhibit 137?

A. Yes.

Q. In your opinion is it necessary for tanks to be installed such as on the Seminole so that they can be subject to visual inspection?

A. It is not.

Q. What has the practice been?

A. In some installations the tanks are subject to inspection, but that is more accidental than by design; it just works out that way; but in the finest ships afloat, many of them, the tanks are put in like the flue in a building; they are under floors, under joiner work, and I myself have just built a boat for Mr. Ellis and the tanks are built with very extensive joiner work, and it is not contemplated that they will ever be inspected; they are covered with a coat of red lead and they are made of steel plate, and I would say that at least 60% of all yachts afloat are built with tanks—built into the ship with no view of ever inspecting them or seeing them again.

Q. Are you familiar with the modern construction of stock boats?

A. Oh, yes.

Q. Are those tanks generally subject to physical or visual inspection?

A. No.

Q. Does it make any difference in your opinion as to the need for visual inspection, whether they are made of copper or galvanized iron or steel or what sort?

A. Well, a tank in a ship is not made because of the need of a "boat"—tanks must be used in places not used for cargo, whether human or dead cargo; it is therefore a most simple thing to design a tank to do almost nothing at all. We design tanks up to three-seven hundred pounds pressure per square inch; the yacht requires a tank designed up to four and five pounds per square inch. It is no difficult engineering job at all to design a tank that should be good for a hundred years in a yacht whose life would be 25 years.

Q. Mr. Gibbs, in your opinion is a hydrostatic test an adequate test for such tanks?

A. Of course it is.

Q. In your opinion would it be necessary in a vessel like the Seminole to subject the tanks to a hydrostatic test at any periodic intervals?

A. I would do that in case of a stray bullet from the gun of a huntsman piercing the hull of the ship, and there was some possibility of an abnormal accident like that causing a leak, or if there had been an accident in which the boat had run into another boat, or came into collision with another boat, in which I suspected that some strain came on the tanks, sufficient to throw the piping out of alignment,—then I would subject these tanks either to a hydrostatic test or I would pull them out; it is no great problem to lift the tanks out and remove a hatch in the case of such an accident. Barring such accident, I would never think of testing something good for eight to twenty times the required load that had been permanently installed.

Q. Now, Mr. Gibbs, remembering that the bottoms of these tanks were inverted crowns and the tops of them were also rounded, which properly would be placed at the bottom of the tanks, installed?

A. They should have been installed as they were; first, because you have your supports as far as possible from the center of gravity of the tanks, which is the law in any structure; the other reason is that that wedge-shaped place that has been referred to in the evidence received the water which in itself was a protection for the rivets.

Q. Which way could the tanks be more readily and better secured against motion?

A. My first answer would cover that, with that support for your tank as far as possible—in other words, if you support it the other way you would only have one point of contact.

Q. It has been stated that the rivets in these tanks were not welded. From your observation can you express an opinion whether they were welded or not?

A. The only place that there is much evidence of welding that I ever observed is where you have an old rivet in a tank that has rusted or reason to suspect a leak. Rivets have been used for a good many years, and there is no reason for a rivet to leak at all.

Q. In your opinion was it necessary to weld the rivets on these tanks?

A. I would object very seriously to having old rivets welded.

Q. For what reason?

A. For the reason that the very nature of the welding operation would have a tendency to destroy the thin edge of the rivet; it might apparently be sound. I have seen welding done in this feather-edge space, and where you have an improper amount of heat you merely create an unforeseen fracture and this feather edge breaks off. A rivet has a feather edge and the applying of heat at that very thin place is a most dangerous thing in my opinion. When the rivet is heated it should be thoroughly covered with the metal; it is almost impossible to make a welding of thin plate where one laps the other.

Q. Could you tell from your observation whether the seams of these tanks were caulked?

A. There was nothing about them to indicate that they were not caulked. A caulking iron is a very narrow tool for that kind of work—practically a square edge—which I could see on the tanks, the bottom portion, where there was room for such an iron. I can see no necessity for having caulked these tanks at all. These tanks, like all other tanks, are a type that are put under a very heavy pressure test, a test of possibly 100 pounds pressure; that determines whether they should be caulked or not; under a pressure considerably greater than the working pressure or working load.

Q. Have you calculated the pressure at the bottom of these tanks when filled with gasoline?

A. Yes, approximately three pounds; I am not giving it to you exactly, but in fluid, any fluid, is about two feet to the pound.

Q. Now in the light of the thickness of the material and the spacing of the rivets, was it necessary in your opinion to caulk these tanks?

A. No. I would like to explain what caulking is: you find a leak and you caulk it; if you do a good job, you may never touch the caulking iron again. The way these rivets are spaced I can conceive of no need for caulking at all. Where we caulk is where the hydrostatic pressure shows a leak, then that part is caulked. You do it that way.

Q. In tanks of this sort for use in containing gasoline, is there any rule for the spacing of the rivets?

A. Oh, yes.

Q. Will you tell us about that, please; what the rule is and why?

A. Of course, in spacing the rivets you must know the purpose for which the tank is built. That is the prime thing. First, to determine the tank's strength you get as efficient joint as it is possible to make, where the

strength is sufficient. If you had, for instance, a single row of rivets you would have a joint that could not be very efficient, because of the holes cut for the riverts—the rivets would go cross-section of the plate and the plate would give in between and crack, in the short distance between the holes in the plate. Now if you have double rows of rivets—sometimes three or four rows of rivets—the distance between the holes is increased, also the required number of rivets; so the rule for the spacing of rivets, where strength alone is required, the pressure is determined by an equation. In the matter of where strength is not the item, where the item is resistance to corrosion and resistance to leaks, there the rivets are placed singly in one row in order that the heads of the rivets almost touch each other or come so close to each other that, acting as a clamp, they then draw the two places or plates closely together and prevent the necessity of caulking or any other means of making a tight joint.

Q. For the purpose of preventing leaks it is desirable, is it not, to have the rivets as close together as possible?

A. That is right.

Q. And yet for strength, if you get them too close you destroy the—

A. —the tensile strength of the plate itself.

Q. By making holes in it?

A. Yes.

Q. Sort of like you would in a perforated piece of paper?

A. That is right.

Q. Considering the weight of the volume of gasoline that could be contained in these tanks and the head of pressure per square inch that would be on the bottom seam, in your opinion was there any necessity for double riveting the bottom seam?

A. None whatever; that would be ridiculous.

Q. In your opinion were the rivet holes unduly far apart?

A. No.

Q. Were they too close together?

A. No; they could hardly have been too close together for that problem; I would say they were spaced about right.

Q. Were you able to form any opinion from your observation as to whether the rivet holes in those tanks were punched or drilled?

A. There would be only one way to do that and that is to cut out a rivet and then make a microphotograph of it or look at it through a microscope. It wouldn't make a bit of difference whether they were punched or drilled for that purpose.

Q. Can you tell anything about any small irregularities in the line of the rivet heads as to whether the holes were punched or drilled?

A. Certainly not. You could take a gang punch and punch a plate like that; where everything is in line you can punch many holes at once; a man could take a punch that had four punches in it and punch four holes at one time, and it would be just as easy to throw the rivets out of line with a punch as it would with a drill. I will say, however, that if the rivets are out of line at all, it is just like as if they were—in other words, it is not a perfectly dead straight line, and that argues the fact that they were probably drilled. I don't believe that any shop today, with any tank of that kind, would permit drilling. The drilling was done with an old Stevens punch and ream or drill. When you take a thick piece of plate or boiler you have a tendency to distort the edge of the plate with this terrific pressure and you are apt to tear the metal apart. That requires that you ream out—you drill the hole and then ream the distorted section of the hole, and in that way you cure that trouble. In the matter of water tanks under these minute pressures, with the size of the height of the head, and the fact that the plate is so thin that you don't injure the metal when you

shear it, shear the hole,—under those conditions I don't think there is a tank manufacturer in the country that doesn't punch his plates.

Q. Can you get just as tight a river whether you punch and ream or drill it?

A. It would make no difference.

Q. Are they equally satisfactory?

A. Certainly, for this pressure.

Q. Looking at these tanks as a whole and bearing in mind the details which we have discussed, in your opinion were they proper tanks for the carriage of gasoline in the Seminole?

A. Entirely proper; much more desirable and much greater strength than was necessary. They apparently were designed for a purpose other than that of holding gasoline, and the purpose for which they were designed had more severe requirements than the purpose for which they were used.

Q. Now, the axis of these tanks was vertical, was it not?

A. Yes.

Q. In those cylindrical tanks were the stresses parallel with the axis of the tanks as great or greater than those at right angles with these stresses?

A. The stresses tend to rupture the tank, lift the top from the bottom, that is, lift one side from the other side; the stresses tend to rupture the tank and if the tank were to burst due to pressure it would burst in one of these two ways; nearly all tanks subject to pressure have two rows of rivets in their vertical seams or more, and half as many in their horizontal seams.

Q. Is that a recognized physical fact?

A. It is as simple as two times two is four; materials are placed to resist strains, and when a structure fails it fails in what is known as its weak section.

Q. Is that something every engineer learns in stresses and strains?

A. Every schoolboy in a technical school learns that; that is the first thing he looks at and he knows it for the rest of his life; it is the ABC's of design; find your weak section and provide for it; determine where it exists.

Q. I call your attention to a valve on a section of pipe, marked Libelants' Exhibit 2. Have you seen that valve before?

A. Yes.

Q. Can you tell us whether or not in your opinion that is a proper type of valve for the gasoline feed-line on the Seminole?

A. Most assuredly. It is like nearly all of them that are used for the same purpose; I will say that 95% of the valves used for that purpose are like that.

Q. Can you tell us whether or not that valve would leak now?

A. I don't think this would leak now under any pressure—of course whether it would leak now or not would be determined by whether it had a composition seat or a ground seat; if it had a composition seat and it is has been through a fire, that is destroyed. If it is a ground seat it would perhaps hold the gasoline pressures, the pressures that would be required in that yacht; this was probably for, in my judgment, around 135 or maybe more pounds pressure, liquid pressure.

Q. Does it make any difference in your opinion whether a valve has a ground seat or composition seat for use in a gasoline feed-line?

A. Very little. The only thing I would be particular about is not to have a rubber seat where gasoline is used, but any other form of composition I think would be all right. We have used them both for many years—in usually what is known as the globe type of valve.

Q. Now on this same exhibit 2, the next fitting beyond the valve, apart from the T, is a union, is that correct?

A. Yes.

Q. There has been some suggestion in the evidence that that union has been expanded. Do you see any evidence of that?

A. To my eyes I don't think it has been; there are some wrench marks on it that would create an optical delusion, but if you will look at the other piece turned to me you will see that that is cylindrical and not tapered. We are usually accustomed to looking at tapered things, and we are so accustomed to looking at things of that kind having a slight taper this way, it would appear as if perhaps this burst out this way (indicating); these are the marks of a Stilson wrench. This one seems to me to have no greater —it seems cylindrical.

Q. Indicating the metal end—

A. I can't see that that has expanded at all; in the first place, if it were expanded I think you would see quite a wide crack—because there is considerable pressure in there, and I don't think you could stretch that and I don't think you would crack it. Even if it were cracked here (and I can't see the slightest sign of it), you could still drive it up tight, because you would have a great deal of metal which acts as a reinforcing agency.

Q. Do you see anything about this union that would indicate to you that it leaked?

A. Nothing at all; there is not a thing about it to show that that is defective at all.

Q. Look at the female part; do you see anything about that which indicates that it would leak?

A. No; I think that would be good for 125 pounds pressure this minute, although it has been through a fire; it looks to be in splendid condition; I can see nothing wrong with it at all, except dirt.

Q. Mr. Gibbs, do you understand that there was in the Seminole a pair of valves for the drawing off of gasoline?

A. Yes, sir.

Q. And as a matter of practice in a vessel of that type is there in your opinion any reason why there should not be such a contrivance in the engine room?

A. No, sir.

Q. What are your reasons for that?

A. The absence of such a contrivance as that would have made necessary, as a practical matter, a procedure which would have been even a much greater hazard to the ship. I regard this as the best solution of the problem.

Q. Now, Mr. Gibbs, before we go further with that, let me ask you a question or two about your familiarity with gasoline engines. Have you ever built gasoline engines?

A. Yes, sir.

Q. Did you design one yourself?

A. I designed several gasoline engines.

Q. Did you develop some new type of gasoline motor?

A. Yes.

Q. Gasoline engine?

A. Yes.

Q. Tell us a little more about that.

A. I designed a seaskiff with a two-cycle engine, similar to the engine now being used on these midget racers, and I designed a heavy duty four cycle engine.

Q. From your experience with motors are you able to express an opinion as to whether or not the motors of the Seminole would have to be primed?

A. I think that that was largely a matter of habit, depending on the skill of the engineer; it relates to the adjustment of the carburetor, the setting of your spark lugs and the "hotness" of your spark and so forth. Certainly engines would have been a very useless piece of apparatus if provision had not been made for priming. I think that the engineer on the Seminole did the wise thing when he provided for priming, and unquestionably he did prime liberally and almost without exception when he started his engines.

Q. From your experience would you say that it was necessary to prime these motors when they were cold?

A. From my experience, and I have owned two of similar engines myself, I think it is very necessary to prime them.

Q. How about when they are hot?

A. Well, sometimes you may have to prime them more then than at any other time.

Q. Depending on some of the considerations which you just recently mentioned?

A. Yes; depending on the fact that you have lost your mixture; it is a very temporary thing—it is governed by the moisture, mixture, heat and other things.

Q. I show you a device; can you tell me what that is?

A. That is a priming cup made for the purpose of priming engines.

Q. It has already been marked in evidence, but it does not bear a tag. Is that a proper priming cup in your opinion?

A. Yes; that is the universal type.

Q. Now considering that it is necessary at least sometimes to prime the Seminole's motors to start them, does that have a bearing upon the desirability of having draw-off valves for gasoline in the engine room?

A. A very great bearing.

Q. Tell us what that bearing is and your reason?

A. From my experience with the operation of gasoline engines, from the time I used to run them as a kid up to the present time, priming of large engines, particularly this type, is quite necessary, especially where the air has been let out. When she loses her air it is a very difficult thing to get it again. In most of the boats, where there has been no provision such as this, the engines have been primed by the breaking of the gasoline line, a most dangerous practice. Of course you might have your priming squirt cans, but it is not always necessary to prime an

engine. Take your automobile, you used to prime those, but you don't have to do it much any more. The grade of gasoline has more to do with it than perhaps anything, but the point is that the operation, one that is not fixed and necessary and variable, calls for being unprepared with a squirt can full of gasoline—for instance, your squirt can may be full and you may use it and you may not; you may think it is full and you rush to it, and you find that you don't have it, or something has happened to it, maybe a neighbor yachtman has come over and borrowed it to get enough gasoline to get him to town, and it is gone. What does he do? He does exactly what Mr. McCoy said he did; he breaks his line to get gas, just as Mr. McCoy said he did, takes the frying-pan and puts it in the line and—

Mr. Botts:

I object to the reference to what Mr. McCoy said he did.

The Court:

Don't refer to any other testimony.

Mr. Matteson:

As a matter of fact, Mr. McCoy did not say that he drew off gasoline in any such fashion.

Q. Mr. Gibbs, in your opinion, in view of the necessity for priming the Seminole's motors, it is better to have a supply of gasoline or place to draw it off in the engine room or elsewhere?

A. By all means it should be in the engine room, where you have a man skilled in its use.

Q. Now assuming that gasoline was drawn off from the tanks of the Seminole and used in a number of fishing boats and outboard motors, in your opinion is it better

that it be done from a drawoff valve in the engine room or elsewhere?

A. It should be done in the engine room.

Q. Why is that?

A. For many reasons. In the engine room is a man who is skilled in the use of gasoline and in the use of tools. That is the place most easily protected and equipped to handle this gasoline, and so long as gasoline must be used there it would be better to use it from one central station by a skilled man than to have it at large on the vessel.

Q. Now can you tell us from your experience with yachts and houseboats in Florida waters whether or not it is customary for vessels to have such a device?

Mr. Botts:

I object to that; what is customary on other vessels doesn't make it safe.

The Court:

Of course what is accustomed is involved in the formation of his opinion. That is part and parcel of it. I think now he is testifying as an expert from a theoretical standpoint as to what is safe. I think you had better confine this and exclude what is the custom on other vessels. Read the question, Mr. Colman.

(Preceding question read by the Reporter.)

The Court:

Now, I am going to overrule you, Mr. Botts. That goes to the quality of the testimony. That is a good question asked of an expert. I think that is all right; you may answer the question.

A. I will say that I have seen it many times. I have had it in my own boats and on boats of perhaps the most

careful operators. I know that they use it in the most expensive boats, and even in those vessels using Diesel engines with crude oil, gasoline has been piped into the engine room so that the engineer could have complete control of the use of gasoline. In the olden days most all carburetors had a petcock built into the bowl in order that gasoline could be drawn off; it is almost a universal practice to catch gasoline in a sponge or rag when you reach around to prime the engine. I personally have done it many times.

Q. Now getting down to these two particular valves themselves, Exhibit 11; did you notice that one is Crane 150 and the other Crane 125?

A. Yes.

Q. Have you examined these valves?

A. Yes.

Q. In your opinion are they proper valves for that purpose?

A. Yes.

Q. What does the 150 and 125 mean?

A. Indicates the pounds of water pressure they carry.

Q. Water or anything else?

A. Yes; possibly not steam.

Q. Roughly, what is the margin of safety on these valves for the comparative head of gasoline on the Seminole?

A. Roughly it is about 3000 per cent; these are three thousand times as strong as necessary.

Q. You mean three thousand per cent?

A. Well, they are required to hold four or five pounds and they hold 125 pounds; say an average of 130 pounds, and four into 130 goes about 30 times, or better than 30 times, so they are better than 30 times as strong as necessary.

Q. Now have you observed that one of these is a ground seat valve and the other a composition seat valve?

A. Yes.

Q. Does that affect your opinion in any way?

A. No, sir. I think if I were going on a long cruise I would take the ground seat valve, if I was at a place where I was apt to lose my source of supply I would take care of the ground seat valve in the field a little better. This is the composition seat, and it is a splendid valve with a floating seat.

Q. Do you see anything about that valve today that indicates any leakage?

A. Of course this will leak without the seat.

Q. Apart from the absence of the seat?

A. Apart from the seat it looks to be in very good condition; it is a first-class valve.

Q. Do you know of any such thing as a valve especially made for gasoline?

A. I never heard of it until I came into this trial, and I don't think I have heard of it since. What I have seen in catalogs would lead me to believe that there was no such thing. I know in filling stations and places like that handling gasoline they have a valve, but never, until I came here, have I recognized that there was a thing called a gasoline valve. Now I am not referring, of course, to throttling valves or so-called plug valves where motor throttling has to be done.

Q. Now, Mr. Gibbs, turning to the connection between the valve marked Crane 150 and the nipple, do you observe the condition of the nipple between these two?

A. Yes.

Q. Do you see anything wrong about that?

A. I would say that the threads are a little too close; seems to be pretty good threads, but the threads are so close that that nipple was a little small to crew this thing, but if it didn't come to the shoulder it could be screwed until the taper goes on across and passes it and becomes tight. Now the engineer, in setting up or using that nipple, had to do one of two things, either to cut this shoulder down so that this could be screwed further up

on the tapering threads, or to see that he had the equivalent of a ground fit; he had a minus edge here and a minus edge here—

A. Indicating the absent edges of the valve and the nipple?

A. Yes; his other edges are simply to tighten that up, to have what is the equivalent of a copper connection which is used in copper tubing.

Q. Do you see any reason why that valve would leak at that point?

A. No; I think we can say that there is no reason for that to leak at all; it makes an excellent job, and I think that would be good for 100 pounds pressure today, which is 25 times more than required. Incidentally, there are two valves on that job.

Q. I am just coming to the next valve now. Turning now to the valve marked Crane 125; that is a ground seat valve, is it not?

A. Yes.

Q. In your opinion is that an adequate valve?

A. Yes; I have examined this carefully and I think it is good for 125 pounds today, and 20 more years of service.

Q. I call your attention to a nick in the plug of that valve. Does that have any effect on the ability of the valve to hold?

A. I don't think that is a nick; it looks a little to me as if that was in casting, that when this thing was in the process of being cast that that was a place where the metal didn't flow at that point, but that has nothing to do with the tightness of that valve, because that is not the seat.

Q. Where is the seat?

A. The seat is the place that attaches on here (indicating)—

Q. Referring to the seat in the valve bowl?

A. Yes; I don't think, just from my eye, that that seat would touch this area at all (indicating).

Q. Referring to the area of the nick?

A. The area affected by the nick, yes.

Q. All right.

A. I get that from the fact that the valve is as tight as possible right now.

Q. How can you tell that the valve is tight now?

A. Have somebody blow in it.

(Thereupon the Court blew through the valve.)

Mr. Underwood:

Did you get any air through?

The Court:

I don't think so.

A. Anyway, I think that will hold 125 pounds just as it is now.

Q. Is there any simple test we could make to see whether or not that nick comes in contact with the seat?

A. Yes, you could take calipers and measure in there; I don't have any with me. You could put a mark—

Q. How about a piece of chalk?

A. I think that would show it. Of course that is a floating seat, too, and the minute it impinges on something it stops, so it doesn't tend to scratch the shoulder any, but when we take it, to where it is supposed to seat, it went right there and stopped short. Now we will take it where it doesn't quite touch; it is tight now; now that is too tight; now take that up a little bit. Now take this and just turn it around, let up on it just a little bit; slack it up; tighten it a little bit—slack it up.

Q. What does that show as to where the chalk is worn off?

A. The chalk is worn off a great distance from where the flow is.

Q. Before you take any of the chalk away tell us approximately what the distance is—

A. Maybe 1 8th of an inch.

Q. Will you indicate to the Court where the contact was?

A. Right here. It will show a little more if we run it around; if you run it around it will show a ring, but you can tell by the eye that the diameter of that nick—that the circle in which that nick occurs, is much greater than the diameter of the seat. That seat is a rather small thing.

Mr. Matteson:

Won't you get a good impression if you screw it down tight?

A. You can; do you want me to do that?

(By Mr. Underwood):

Q. Yes; go ahead.

A. All right; that shows it—you have to give it a little twist; it is pretty hard to twist this thing with your hand.

The Court:

Let me see it.

A. The float is here, sir; it is maybe half an inch away from the area affected.

Mr. Underwood:

May I make a statement on the record?

Mr. Matteson:

Yes.

Mr. Underwood:

The witness marked with chalk the bottom portion of the plug; then inserted it in the valve and made contact

between the plug and the seat, and turned the plug will in contact with the seat to obtain a mark on the surface with chalk to show where the plug was in contact with the seat; having done that, he withdrew the plug from the bowl of the valve, and the whole thing was examined by the Court and counsel. Is that an agreeable and acceptable statement?

Mr. Botts:

No, I won't agree to any statement you make. I won't agree to a thing that you say.

Mr. Underwood:

You do that on general grounds and not on the ground that my statement is inaccurate?

Mr. Botts:

I don't know whether your statement is accurate or not, but I won't agree to it.

(By Mr. Underwood):

Q. Mr. Gibbs, did you hear my statement?

A. Yes, sir.

Q. Is that a fair statement of what you did?

A. Yes.

By the Court:

When you put your finger in there, what part of it did your thumb come in contact with?

The Witness:

Back here.

The Court:

Back of the chalk mark?

The Witness:

Yes; you can see it. That is the only part that you can reach.

The Court:

That is up by the chalk mark?

The Witness:

Yes; the seat is covered. We can take a great deal of chalk and mark it back on there, and then you can crush a ring right down.

(By Mr. Underwood):

Q. Mr. Gibbs, in your experience, where such a device is in the engine room of a vessel, is it customary to have one or two valves?

A. One; I have never seen two before.

Q. Now assuming that the line which led to these valves came out of the feed manifold at the starboard end of the feed manifold and turned back 180 degrees and ran to port, and that it was supported amidships by the sides of the tank; that it straddled the square hole in the bulkhead between the engine room and the tank compartment; that the valves you have before you were a few inches to port of that,—in your opinion was that line adequately supported against the weights involved?

A. You would have to tell me what the size of that line was before I could answer that question, also the approximate distance between—

Q. Assume that the line was of a size that appears in Libelants' Exhibit 2, which I believe is a quarter inch brass pipe.

Mr. Matteson:

Referring to the line that was attached to the drain valves? I don't know that it was that size?

Q. We will start all over again. What size pipe would you say it was that led into the valve marked Crane 150 on Libelants' Exhibit 11?

A. I think that is 3/8ths. I have got to get my own glasses. I can't see anything very well without them; but anybody can tell you that; that maybe half inch; I guess that is half-inch; I would say that is half-inch; yes, that is a half-inch pipe.

Q. Assume that the line that led to these drawoff valves was half inch pipe, that it led from the starboard end of the feed manifold a distance of about six feet athwartships to a point where it passed through and was supported by the two upright sides of the tank, can you tell me whether or not in your opinion that was adequate support to hold that pipe against vibration or leakage?

A. If there was as much as one support about approximately the middle that was more than adequate.

Q. Something has been said about the union between these two drain valves being inserted the wrong way. What is your opinion as to that?

A. I have never heard of a union having a right and a wrong way.

Q. If there is a claim of leakage inside of that line, is the pressure affected more by its moving in one direction than in the other?

A. Not that I know of. You might get some theory of certain projectile equations of current and so forth, but as a practical matter I would say absolutely not.

Q. Now specifically about the angle of the ground seat and the plug of the ground seat valve in Exhibit 11; is there anything wrong about the angle; would an angle flatter or finer be better?

A. No.

Q. Would it make any difference?

A. No. The only effect, with these pressures involved, the angle would have would be to increase its efficiency as a throttling contrivance. In other words, you have an opening of 1/32 of an inch, and with a very sharp angle you could turn this more distance and only slightly increase the opening, whereas, if you had a perfectly flat

seat it would be the other extreme, and to open it the least bit you would practically give it an upright flow, and you would either have your valve running wide open or shut entirely; so a taper is given for two reasons; one, it tends to center itself and to make a wedge-fit, and the other is it increases the throttling; whether it is a fine taper or a flat taper is purely a matter of how much you want to throttle your valves.

Q. Has it anything to do with the tightness?

A. Certainly not in the realm of anything up to 100 pounds or 150 pounds.

Q. Do you understand that there was in the Seminole a glass gauge by which to tell the quantity of gasoline in the tanks?

A. Yes, I understand that there was such a thing.

Q. You have not seen it, of course, because you have not been there since the fire.

A. All right.

Q. Assuming that there was a glass gauge that ran from the feed manifold approximately to the head of the tanks, can you tell me whether or not in your opinion such a device is proper or improper?

A. I think that that is the proper thing, and if properly protected it is one of the most accurate things, and I think that as of that day the only thing that was accurate at all. There are complicated things where you pump air in them to get the pressure head of gasoline, but when you are dealing with such small heads there is not much accuracy in these machines, and it takes a long time to get a reading.

Q. From your experience is that method of telling the amount of gasoline in tanks the customary method?

A. I have seen it done. As a rule, they don't have their tanks right there where it is easy to get at them. This is the method that would suggest itself. Most tanks are covered up, and joiner work is beneath floors—this is a method that would suggest itself; in this way you have a

daily reading on the tanks and it is practically in front of your eyes.

Q. Is there any fire hazard involved in that fitting, if the glass doesn't break?

A. No; you have them on every boiler, steam boiler.

Q. How high pressure do they sometimes use such fittings?

A. They go as high as 330 pounds; 330 pounds—300 pounds.

The Court:

We will stop now.

(Adjournment taken to 9:15 A. M., Nov. 15, 1939—the following day.)

Wednesday, November 15, 1939.
9:37 o'clock A. M.

3629 Hearing was resumed pursuant to adjournment of the previous day; and thereupon the witness GEORGE W. GIBBS was recalled and further testified as follows upon continued direct examination.

By Mr. Underwood:

Q. Mr. Gibbs, in your opinion which would be the better practice in carrying gasoline for use in priming the motors of the Seminole; carrying it in a squirt can that had to be refilled from the gasoline supply system, or to carry it in such a can as this, Libelants' Exhibit 137, I think it is?

A. Well it would be impractical to fill directly from that can, at all, and I would therefore think that it would be a safer thing to get a device which would safely and quickly fill a squirt can. Those things are primed with squirt cans invariably.

Q. Could you fill the priming cup from that instrument, directly?

A. It could be done, but it wouldn't be practical to do it, without spilling a good deal of gasoline.

Q. Will you compare the size of the nozzle of the can with the aperture of the priming cup?

A. Yes, sir; if you lifted that up, these hangers are very high, and if you held this up it would be hard,—and tried to put that over in there, it would,—you would most likely in lifting this heavy thing, being no throttle on it, you most likely would overflow it and flash all over the engine. With the squirt can you can mete a drop at a time, or a small amount; and furthermore, with a squirt can, you know how many squirts to put in the engine where your engine starts best.

Q. Now what kind of a valve does this can have in it?

A. I don't know.

Q. Will you open it up and look?

(Witness removes valve from can.)

A. That is a plug valve.

Q. Is that what is called a rotary valve?

A. No,—it might be called a rotary valve; you rotate it to make the connection; rather, in order to open it or shut it. There apparently is an orifice from here into the body of the tank, which registers with this; and this appears to be a ground joint, and there is a spring there. That undoubtedly is used to hold it down tight and prevent leakage.

Q. What can you say about the flexible length of hose there; is that a satisfactory arrangement?

A. Well our experience with that has been that it is when it is new, but that it isn't a permanent thing at all. It is made out of thin sheets that are formed in that shape; it is like the others I have seen; it has a soft packing of

asbestos or something of the kind,—it is a combination of a fibre and a metal, and usually they break right in here. A thing that isn't flexible at all as a rule, you don't attempt to bend it; where you have something that is flexible, you depend upon the flexibility, and you reach it, and you grab it, and you would have a tendency to top that right here.

Q. Are they satisfactory so far as leakage is concerned, over a period of time?

A. No.

Q. Now Mr. Gibbs, in your opinion is it reasonably necessary to have a shut-off valve in the gasoline feed line at the carburetors, when you also have one, as in the Seminole, just below the feed manifold?

A. That is largely a question of taste, or the wishes of the operator. I myself prefer one valve to do one job. One might think that one valve is shut, so he wouldn't have to shut the other; but where there is one definite valve to shut; it would be more definitely used.

Q. Assuming in the case of the Seminole there was in each feed line, just below the traps, which in turn were just below the manifold, a stop valve, in your opinion was it reasonably necessary to have another stop valve in the feed line at the carburetors?

A. No.

Q. What in your experience has been the purpose of having another stop valve at the carburetors, in installations where that is the case?

A. Well you put the stop valve at the carburetor, it is usually a little nearer to the engineer; he can shut it off without walking back, a very short distance he would have to get at that valve?

Q. Is there any fire or explosion hazard in not having such a stop valve at the carburetor?

A. No.

Q. And when, as in the case of the Seminole, the stop valves below the traps, which is below the manifold, were

shut, was there any substantial head of gasoline in the carburetors?

A. No.

Q. In your opinion, was it necessary to have drip pans under the carburetors on the Seminole?

A. Drip pans have certain advantages, but the construction of those carburetors, where the intake came out of a clutch housing, I would not say that it was necessary.

Q. What is the ordinary capacity of a drip pan under a carburetor?

A. They usually are about fourteen inches by five, by five-eighths, in size.

Q. What is the depth?

A. Five-eighths.

Q. And do they serve any purpose whatever if there is no leak in the carburetors?

A. Where you haven't got a manifolded—where there is no leak in the carburetor? They would serve none, where there is no leak in the carburetor,—no leak anywhere else.

[Q.]A. Do back-fire arrestors serve any purpose so far as fire and explosion is concerned, except when the motors are running?

A. No.

Q. Mr. Gibbs do you understand that the feed line,—gasoline feed line system was made up of brass pipes and fittings, from the tanks?

A. Yes, sir.

Q. To the main motors?

A. Yes.

Q. In your opinion is that a satisfactory, sufficient arrangement?

A. Yes.

Q. Something has been said in this case about the use of copper tubing. In your opinion, does either have any marked superiority over the other?

A. I think the brass pipe has a marked superiority over copper.

Q. And what are your reasons for that?

A. It is harder, more susceptible to what I would call a practical joint. A thread cut in copper is not a good thread, you can twist it off or mar it. The brass pipe makes practical fittings, universally used. The thin copper, of course which is used for this purpose, cannot be used with a thread, without some form of adapter. The copper tubing is used largely in the interest of cheapness; stock boats and boats that are originally planned and constructed; but not, as a rule, in converted boats; it is a very difficult thing to take a copper tube and run it around other obstructions that exist in the boat at the time of the installation of the new machinery. Copper mashes when you try to bend it, it becomes flat; and when it becomes flat, it restricts any little sediment or dirt that might come through. The operator will try to relieve that restriction, he will step on the tube, he might drop a wrench on the tube, and he tries to make the tube again round, where it has been flattened or dented, and that is a very dangerous thing to do, to a thin tube.

Q. Which is stronger, brass pipe such as in the Seminole, or the ordinary copper tubing that is sometimes used?

A. Brass pipe.

Q. And can you get a satisfactorily tight joint in brass pipe fittings?

A. Certainly.

Q. In your opinion, which is the better for use on such a vessel as the Seminole?

A. Screw-type fittings, such as were used in the Seminole, in my opinion are better than such fittings as are normally used in copper tubing.

Q. Does the possibility of injury from vibration have any bearing upon which is preferable,—brass pipe or copper tubing?

A. I would not say that the copper tubing would lend itself,—that there is any advantage in the use of copper tubing; for the reason that copper tubing, you can usually go over great distances without separating. You have a long thing which has a tendency to vibrate. In installations of copper tubing we often provide for the joining two points, for instance, the tanks and the carburetor, and then you use this rather flexible thing, to lay where it will, reeve it inside and out, in making your turns, by bending the tube. And as a that job isn't as securely fastened as where you take the rigid, heavy pipe and make your turns with L's and fittings.

Q. Is brass pipe any more susceptible to damage by vibration, than copper tubing?

A. No.

Q. Assuming that vibration has an effect on brass pipe, to loosen up fittings, would you anticipate any such loosening during a period when the vessel was laid up, in storage, and motors not running?

A. No.

Q. Could you tell from your examination of the Seminole's gasoline feed system, whether the joints were tinned or soldered?

A. No.

Q. And why not?

A. Either solder or tin has a very low melting point, and the presence of any heat,—appreciable heat, would melt it off.

Q. Is it necessary in brass pipe installations such as on the Seminole, to provide coils to absorb vibration?

A. I have seldom seen them in connection with copper pipe installations.

Q. You mean, brass pipes?

A. I mean, with brass pipe installations.

Q. How long has copper tubing been in use, in your experience?

A. May I go back to that other question?

Q. Certainly.

A. The only place there are coils being put in engines with all classes of piping now, where the engine is mounted in rubber, and where the entire engine shakes, and floats,—such as a Plymouth floating power there is some confusion as to the presence of a coil; that is not due to any vibration in the pipe line, or in the ship; but you have a fixed point, and an engine that is joined to it; and the engine moves, and the distance between the engine and that fixed point varies; therefore taken up in coils.

Q. That is because of the movement of the motor itself on its rubber seat?

A. The motor itself. It has nothing to do with the normal alleged vibrations of the ship; and we could name a great many instances of modern installations where rubber is being used, in what you call floating engines, or floating power. But aside from that, very seldom that the coil has ever been used with brass pipe. However it has been used with copper tubing, due to the fact, as I have previously stated, that copper tubing is more a connection between one point and another; more like a line, a piece of wire, and very, very flexible. The other is more of a rigid, fixed installation.

Q. Well how long has copper tubing been available for general use?

A. Well there is nothing particularly new about it; it has been available for many—before I was born; a great many years. The fittings, there are modern fittings that have brought it into a little more general use, that is, more practical to be used by an amatuer. In recent years it has come into greater uses because of the fittings an amatuer can use, than it was in the past, when it called for either brazing or soldering. Its use is very likely with stock boat job, where cheapness is the prime factor.

Q. Well which is more expensive, brass pipe—

A. Brass pipe is much more expensive.

Q. And which is more expensive so far as the labor cost of installation is concerned?

A. Brass pipe is much more expensive.

Q. Did you observe the holes in the bulkhead between the engine room and the tank compartment from which the filler lines ran?

A. Yes, sir.

Q. And through which the lines to the feed manifold ran?

A. Yes, sir.

Q. The square opening below?

A. Yes, sir.

Q. And the spaces around the tanks?

A. Yes.

Q. And at either end?

A. Yes, sir.

Q. Between the pans and the bulkhead?

A. Yes.

Q. Taking those apertures into consideration, in your opinion was that tank compartment adequately ventilated?

A. It was well ventilated.

Q. Then what is your view as to the need for ventilation in such compartments?

A. Well there was certainly no necessity for the degree of ventilation that existed there. There is no objection to it. The only need for ventilation was to probably prevent dry rot of the wooden bracing members that were inside.

Q. Well in your experience Mr. Gibbs, in the design and construction of ships which are propelled by gasoline motors, is provision for ventilation made in view of potential leakage in the gasoline system?

A. No.

Q. What are the purposes for ventilation?

Mr. Matteson:

Excuse me, may I have the last question?

(The preceding question was read by the reporter.)

(By Mr. Underwood):

Q. What are the purposes for providing ventilation?

A. Primarily in order that people in the vessel could live and breathe. Other reasons are the providing of air for the motors,—the gasoline engines, internal combustion or steam engines; boilers; air is required wherever combustion exists. Also for the comfort and for the preservation of cargoes. Without ventilation you would have great heat,—or uncomfortable heat, and destruction of cargoes of perishable nature. The ventilators as are normally known are not provided with a view to saving a ship in the event of gasoline leaks.

Q. Well now would there be, in your opinion, any circulation of air in this tank compartment, having in mind the apertures that I described to you a moment ago?

A. Yes, they have; and very small ones, quite large enough, high, and there were larger holes low, in this tank compartment; and wherever there is a difference in temperature there is a movement of the,—whatever the gas was whether it was air, which is a combination of gases, or whether it was a vapor of any kind.

Q. Well now turning to the engine room, do you have in mind the two cowl ventilators, and the skylight, the engine room hatch, the window on the starboard side of the alleyway, the window on the port side through the hull of the vessel, and the window in the engineer's room: In your opinion, was that adequate ventilation?

A. Quite.

Q. And what would be the effect of ventilation, natural ventilation, through those sources?

Mr. Botts:

I object, on the ground that this witness is not qualified as an expert along those lines.

The Court:

I think that goes to the quality of the answer. I overrule the objection.

A. Will you read the question?

(The question was read by the reporter.)

A. The effect would be to completely relieve that engine room of all gases that might exist in it; whether it be nitrogen and oxygen, the principal component parts of air; or any other gas.

Q. Do you understand that the cowl ventilators extended only a few inches below the raised trunk of the engine room, and did not extend into the bilge?

A. Yes.

Q. In your opinion was it necessary, to obtain adequate ventilation of the bilge, to have ventilators run down into the bilge?

A. No.

Q. Why is that?

A. For this reason; such ventilators would have tended in no way to bring about a more rapid discharge of the gases. In mentioning gases, I mean not necessarily gasoline fumes. I mean such gases as compose the air, and that might be in the engine room; but gases, not liquids or solids.

Q. Well, in gases, do you include gasoline vapor?

A. As a gas.

Q. Have you made any experiments to satisfy yourself on that point?

A. I have.

Q. Will you describe that to us?

A. I have taken a container,—two containers of like size, deep pots, and have put known quantities of gasoline in those pots. I have put in one of them, ventilators extending to within one-half diameter of the surface of

the liquid; that is the pot where the draft enters. The other, one diameter from the surface of the liquid. One ventilator faced the air,—the current of air; the other ventilator was against the current of air, tending to cause a vacuum in that ventilator. I have observed the flow of air through the intake ventilators, to a point where a very distinct and continuous ripple occurred on the surface of the raw gasoline. The gasoline evaporated faster in the copper pot without the ventilators, than it did with the copper pot with the ventilators.

Q. When you performed that experiment with the two vessels holding gasoline, how far apart were they?

A. Side by side; eight inches apart.

Q. And were they equally close, or not, to the source of the breeze?

A. It was in a tunnel, or rather in a hall, in which there was a stiff breeze such as the breeze that you have today; and at one time it blew a note book off of the shelf. There was free opening.

Q. Were the two vessels of equal size?

A. Of exactly the same size.

Q. Did they have the same quantity of gasoline?

A. Exactly the same quantity.

Q. Which one evaporated faster?

A. The one without the ventilators.

Q. Those ventilators that you speak of, in what shape were they?

A. They were made of the general shape of the cowl ventilator; they were made up of pipe, which we had a street L,—rather a straight L; and to them was screwed two pieces of three-eighths inch pipe. Of course the opening of the air was much larger than the size of the pipe,—quarter inch pipe,—three-eighths; and the two containers were two ordinary drinking glasses; identical drinking glasses.

Q. Now in your experience Mr. Gibbs, in the design and construction of vessels propelled by gasoline motors,

is it customary for the architect or anybody else to sit down and assume an amount of leakage of gasoline and provide ventilation for the removal of the vapors?

A. No.

Q. Is that factor taken into consideration?

A. No.

Q. If you were considering provision for ventilation to care for possible leaks in a gasoline line, what factors would you consider?

A. I would want a provision for a cross-draft, above all forms of ventilation.—Will you read the question again?

Mr. Underwood:

Mr. Bryant, will you read the question?

(The question was read by the reporter.)

A. I would like to have my whole answer withdrawn.

The Court:

You don't think your answer is in response to the question?

A. I didn't understand what the question was.

The Court:

It will remain in the record, but it will remain with your comment. Now you may proceed.

A. Now will you read the question to me?

(The question was re-read by the reporter.)

A. I would consider the close connection of the gasoline lines to cross-drafts, such as windows. The primary factor that would be foremost in my mind would be taking advantage of convection. I am convinced that the most effective method of ventilating a ship is by means

of large openings high in the ship which enable cross-drafts. I have previously described an experiment which I made. Contrary to what one would suspect, the vessel with no assistance towards ventilation was a more thoroughly ventilated vessel than the vessel containing artificial assistance to ventilation. This experiment has convinced me that natural ventilation, which will occur in an engine room by the finest number of baffles,—in the presence of cross-drafts, is ideal ventilation.

Q. Mr. Gibbs if you were asked to provide ventilation to remove gasoline vapors from the engine room of the Seminole, would you have to know, or would you not have to know, the quantity of gasoline vapors that you were going to have to remove? In other words, does the amount of ventilation to remove gasoline vapors, depend upon the quantity of the vapor?

A. It does; and the time in which you have to remove it.

Q. Well suppose the—assume that the gasoline system of the Seminole leaked gasoline at the rate of a teaspoonful a day; would the natural ventilation through the sources that we have discussed, carry away such vapor?

A. In my opinion, unquestionably.

Q. Well suppose you spilled the contents of a 55 gallon drum of gasoline in the engine room, would natural ventilation carry away the vapor from that?

A. Unquestionably, in time.

Q. Can you give me any idea as to how long that time might be, or what does that depend upon?

A. It would depend upon the cross-draft.

Q. Does it depend upon how fast the wind blows?

A. To some extent.

Q. Does it depend in any measure upon the change of temperature over the day and the night?

A. Exactly, the length of the day, summer or winter, with long days or short days; or, the moisture in the air,—the humidity.

Q. Now you have spoken of convection; will you tell us how this convection operates, with particular reference to an engine room such as the Seminole?

A. Convection refers to the movement of gases as the result of the specific gravity of the gases or weight per unit volume; or, by differenee in temperature of the gases. Practically wherever gases exist, there is continuous and violent movement. Where this continuous and violent movement exists, it is only necesasry to take time, with a cross-draft, to sweep them from the vessel; whereas you might have a certain gas in one section of that vessel, if movement is continuous and universal, that gas must reach the place where it is affected by the cross-draft. Therefore the cross-draft is the essential thing for the removal of a gas from a containe.,—engine room, or bottles. There would be only one way to hold a gas in a bottle, that is by the application of a tight stopper.

Q. Well now, assume you have got a quantity of gasoline vapor in the bilge of the Seminole, laid up under a shed, such as you have described; what would be the effect of convection on such gas vapor?

A. Will you repeat the question?

(The question was read by the reporter.)

A. With a quantity of gas vapor in the engine room—

Q. Or, the bilge?

A. Or, the bilge. Convection would cause all gas, wherever it exists, where it is free to move, to move to a position where it would mix with the incoming and outgoing air in the boat. Even where there would be, no wind; convection would cause a general intermingling of the gas inside of the engine room, and when the inside gas gets hotter than the outside air, the expansion of that gas would cause some portion of that gas to leave the engine room. Where the temperature of that gas inside of that engine room was colder than the air,—than it had

been previously, it would contract and cause the air to enter the room through whatever opening there happened to be. And that new air would mingle with the gas within the engine room, and when expansion set in, by the difference in temperature, and increase in temperature of the engine room, then there would be pushed out of those orifices the gasoline or vapor, plus even some of the air that had been just recently brought into the engine room, and that would go out. However, the cross-drafts, or the convection currents, which not only exist in the engine room but at all places where there is an atmosphere, would cause drafts to hold the process back, much more violent than the processes due merely by the expansion and contraction of the gases in the engine room.

Q. Assuming you have spilled a quantity of gasoline, we will assume a quart, and to begins to evaporate and forms a gasoline vapor; do you know whether that vapor remains static, or whether it in turn continues to dilute?

A. It continues to dilute.

Q. To what extent?

A. To an extent dependent upon the laws of convection, and the—that is the answer.

Q. What becomes of it finally?

A. It finally is dissipated into all sections of the atmosphere.

Q. Does it remain as a gasoline vapor at all?

A. No. It may reach a cold place and under certain conditions become a gasoline again.

Q. You mean it could be precipitated again?

A. Oh, yes.

Q. By becoming colder?

A. When it goes below its point of saturation, or dew point, and hasn't already mixed with—become so diluted with other gases, which of course it probably would.

Q. Do you understand that the switchboard of the Seminole was made up of open knife switches?

A. Yes, sir.

Q. In your opinion are they proper switches for a vessel propelled by gasoline motors?

A. Yes. That opinion is based on the fact that it is practically universal practice, or was at the time; no switches known to me that were as good, as of that date.

Q. Are they in common use today in such installations?

A. Yes.

Q. In your opinion, is it proper to have the main switchboard composed of such switches in the engine room itself?

A. Yes.

Q. In closing,—in your experience in closing such switches where the voltage in 110, is there any spark?

A. No.

Q. When do you get a spark on such knife switches, if you ever do?

A. You get a spark when you broke a switch, if at all. It would be only—if you had a current which would tend to burn the carbon, gasify it, and leave it as a gaseous conductor, it would become brilliant in the burning, and there a thing that was very minute would affect the nerves of the eye in a way that would look like a very violent spark.

Q. How big a spark do you get when you open such a switch, ordinarily?

A. Well a good clean switch, it is usually visible to the eye,—usually isn't, but I have seen them.

Q. How big is it?

A. It is extremely small, with 110 volts.

Q. Compared to a pencil or a pen?

A. I would say about the head of a pin, would be a large spark.

Q. What becomes of it when you close the switch,—that kind of a spark?

A. When you open the switch?

Q. No, when you close the switch. As I understand it, you don't ordinarily have a spark when you close such a switch; is that correct?

A. That is correct.

Q. When you do get such a spark, as when you open a switch, does the spark last long enough to go any place, or does it stay there, or what becomes of it?

A. It is almost instantaneous; it isn't nearly as long in duration of time as it appears. The persistence of vision is a factor. I have never known of a measurement of that; it would be almost measuring the speed of electricity.

Q. It is as fast as that?

A. Quit as fast, and then some.

Q. Have you had any experience in getting vessels ready to be laid up for a time,—vessels propelled by gasoline?

A. Yes.

Q. In your experience, it is necessary to remove the gasoline from the gasoline tanks?

A. No.

Q. And is it customary in these waters to do that?

A. It is sometimes done that way, and sometimes done other ways.

Q. What is the reason for your opinion that it is not necessary?

A. There are many catastrophes that can happen to plants in Florida, where they are subject to hurricanes and fires. On the same principle that you take your automobile to a storage lot or garage, and you don't take the key with you; you give the operators the full chance to maneuver your automobile out of danger. And there is considerable advantage in having it in ships, so that she can be taken out of danger, and quickly. We have done it both ways. The time of lay-up has a good deal to do with it. If the boat is to be laid up for several years, or indefinitely, a good thing to do is to take the engines

heads off and cover the parts with vaseline, in order that the parts don't become what you call frozen, or rusted.

Q. Assuming that the Seminole was to be laid up for a period of months, in your opinion would it be necessary or required to remove all the gasoline from the tanks?

A. No. We have such a yacht into storage now, and they are requiring us to turn the engines over at periods, to avoid the necessity of what it known as this freezing process, or any rusting that might get under those valves, by the mere presence of atmosphere.

Q. Does the fact that the Seminole had batteries which had to be charged from time to time, have any bearing on this point?

A. As I say, that is more or less a personal equation. If you wanted your batteries charged, of course you should have had gasoline, some gasoline in the boat; at least I would have wanted it. I don't know whether there was any there or not.

Q. Now assuming that the Seminole had been laid up for a period of two months, under a shed, and that June 24th, 1935 two men went aboard, passed through the alleyway from the after deck, forward to the engine room, and that one of them entered the engine room through the alleyway window and walked back to the switchboard, and that there was no odor of gasoline; is there any reason why he should not have closed the switch on the switchboard?

A. None whatever.

Q. Why do you say that?

A. For the simple reason that that switch was made for service, to begin with. The modern houseboat, or houseboat of that day, the day that she left the shipyard, used equipment available which made it a usable piece of apparatus.

Q. Now assuming that—

A. And the owner's representative certainly had the right to believe that it was a normal piece of machinery.

Q. Assuming that the Seminole had been in operation up to the 15th of April, and was laid up on the 15th or 16th of April and that during that period of operation, no leaks had developed or were apparent in the gasoline system, anywhere; and then two months later, approximately, during which she had been laid up under this shed, this man went aboard and went into the engine room and threw these switches to get light; in your opinion, should he anticipate the presence of gasoline vapor?

A. No.

Q. Why do you say that?

A. Well because, with considerable experience of many years, I have seen and known men who have gone aboard vessels and done that very thing, just as they would go into their house that they hadn't been into for a long time, and strike a match, even in the kitchen, where the gas it quite as dangerous as any gasoline fumes, exists, strike a match or put on a switch which might start up the electric refrigerator, which would be the same thing. I do not believe a man could be expected to assume that there is a defective situation, under those conditions. I also know, in my experience in this line of business, of almost no case where a boat has ever caught fire in the midst of a lay-up due to any gasoline fires. I have made investigations with people who have operated many, many boats, such as government agencies, the Navy and the Coastguard, to find that nearly every fire ever known to exist as the result of a gasoline explosion, has been at the time of the filling of the gasoline tank, or, when a boat is in service: Practically never at a time when she is laid up.

Q. Now Mr. Gibbs, if you don't have any leaks in operation, is it reasonable to expect any leaks when she is laid up and not being operated?

A. Certainly not.

Q. Now turning to another subject, I show you Libelants' Exhibit 97, the so-called regulations governing marine fire hazards, put out by the National Fire Protection Association. Are you familar with those rules?

A. I don't know what they are, sir; I can't tell you. I familiar with most accepted practices in the construction and repair of boats.

Q. Well, do those rules represent an accepted practice in ship-building and ship keeping down here?

A. I haven't read them. I may have read them somewhere else.

Q. In your experience in the construction and repair of ships, are those in common use down here?

A. Not that I know of. A great many of the people that have yards today,—men that work in them, work in our yard; I don't think that I have ever been in a shipyard in Florida that I haven't had men that were trained in our yard, which has been in existence almost twenty-eight years.

Q. Have you ever used those rules as a standard of practice?

A. No. I may have used something that may be in this book, but I have no knowledge that the causes that actually did our work, is embodied in this book.

Q. You mean you may have done some of the things that are suggested in that book, but not because the book said so?

A. Well I haven't seen the book so I don't know.

Q. You can't say. Now I show you Libelants' Exhibit 24, which is called Regulations for the Prevention of Explosion and fire on Motor Boats, by the Bureau for the Prevention of Explosion and Fire on Motor Boats. Did you ever hear of those before this case came on?

A. No.

Q. Have you ever used those as a standard of practice in your work?

A. No.

Q. Do you know of anybody else who has?

A. No.

Q. Now I show you Libelants' Exhibits 101 and 101-A; Lloyds Rules and Regulations for the Construction and Classification of Yachts. Have you ever used those as a standard of practice in the construction and repair of any vessels?

A. Only where an owner would specifically want his stuff done according to those rules, would we do it. I think we have possibly done that; that is, have taken sections of those that the owner wanted done in accordance with Lloyds; and I have understood at the time that he wanted to take out insurance, where the job should be done in accordance with Lloyds specifications.

Q. Are they a commonly accepted standard of practice down here?

A. It is practically never that we have referred to them or have been asked to.

Q. Did you observe from your examination of the Seminole, the condition of the wooden timbers in the floor of the engine room?

A. Yes.

Q. What did you find that condition to be?

A. They would indicate that there was not much heat down in the lower part of the ship; because wood acts—

Q. First let's get the condition as you observed it, of the wooden members, the foundations of the engine and the stringers across the ship, and so on.

A. Well the wood was intact.

Q. Was it burned up?

A. Not that there was any quantity of it. Of course there were charred pieces, there were cinders; where they came from I don't know.

Q. Did you observe the wooden supports on which the tanks rested?

A. Yes, sir.

Q. Were they consumed or affected by fire?

A. No. You mean by that, those pads that go underneath the tanks?

Q. The 4 x 4's, if that was their size, on which the tanks themselves sat?

A. Yes.

Q. Were they burned at all?

A. Not that I know.

Q. Are you able to form any opinion, from the condition of those wooden pieces, as to the extent of fire in the bilge?

A. Those things, the wood which burns readily, and which did burn in the—for instance in that tank compartment the charring seemed to be the result of intense heat in the higher portion of the ship. You could see a stanchion, the top burned off and the bottom in perfect condition.

Q. How about in the bilge of the engine room?

A. In the bilges in the engine room, would indicate to me that there was no fire down there; in fact I am almost certain that there was no fire in the bilges.

Q. Assuming that the tanks, gasoline tanks of the Seminole, were partially filled with gasoline when the fire occurred on June 24, 1935, what would be the tendency of the heat to which those tanks were subjected, as to its effect upon the gasoline in the tanks?

A. The heat would tend to vaporize that gasoline and send it through the openings—

Q. You mean, the vents?

A. The vents.

Q. Assuming that the tanks were, say, less than half full of gasoline, after such a fire of three or four hours' duration, would you expect to find any gasoline there at all?

A. No, if it lasted three or four hours I would not.

Q. From your examination of the Seminole did you see any evidence of a violent explosion?

A. No I didn't. I have seen explosions.

Q. Did you find any structural plates that were ripped or torn apart?

A. Not as you would see in an explosion. I found tears, but they would be accounted for; one particular tear, by the wrecking crane that picked up the top of the house.

Q. Did you observe the condition of the bulkhead between the engine room and the alleyway?

A. Yes.

Q. And how do you account for that?

A. Well if the roof were fastened to that bulkhead, and if that bulkhead,—if that roof fell, in the general debris it would have bent that—if it was anything like that, and the roof was up here, it would have bent the top in, and then when the wrecker came and lifted the roof, it would have bent it back at the place,—at the deck line.

Q. In order to shorten this, can this condition be accounted for by heat during the fire, or the removal of the steel deck head, as well as by explosion?

A. Of course the heat, all of those parts were possibly red and soft; the heat would have had very much to do with the appearance, because they were quite soft.

Q. Did you notice any substantial distortion of the after bulkhead of the engine room?

A. No.

Mr. Underwoood:

That is all.

(Brief informal recess was had.)

Cross Examination.

By Mr. Matteson:

Q. Mr. Gibbs, at the very first, the vent pipe that was used to vent the gasoline tanks on the Seminole,

which I think was half-inch pipe, I think you said that that would offer very little resistance to the flow of air through it?

A. Yes.

Q. And the fact there is little friction involved in the passage of air through a pipe; is that correct?

A. Yes, sir.

Q. So that with a half inch vent you should have a ready and quick adjustment for variations of temperature between the tank and the atmosphere; is that correct?

A. Due to the variations of temperature—yes, sir.

Q. You don't subscribe to the theory then, that a vent pipe of that size would restrict the passage of air from the atmosphere to the tanks, or vice versa?

A. Yes, the smaller the pipe, the greater the restriction to the passage of—to the interchange of air from the tank to the atmosphere, due to convection.

Q. Well, I gather from what you said that any restriction would be negligible.

A. No; the restriction in the positive pressure of the piston, gasoline piston, we will call it,—the displacement of the air by the filling with gasoline, the restriction under those comparatively high pressures would be negligible in that size of pipe. That size of pipe, however, would be of an appreciable size when it came to the slow interchange of air from the tank to the atmosphere, due to the convection of currents.

Q. You agree that there is practically no friction to the ingress and egress of air afforded by that pipe?

A. At those velocities yes, sir.

Q. Or, at any velocity?

A. Any velocities considered, no, sir; at very high velocities the friction becomes quite great.

Q. At low velocities it would be negligible?

A. Yes, sir.

Q. And any velocities—

A. That we are considering.

Q. Any velocities arising out of gradual changes in temperature, would be very low?

A. That's right, sir.

Q. And in such case the resistance to the passage of air, would be negligible?

A. Yes, sir.

Q. Are you familiar with Kent's Mechanical Engineers' Handbook?

A. I know what it is.

Q. Do you regard that as a standard work?

A. I regard that is a very excellent note book. I don't subscribe to everything that is in it; but there is much in it that serves as a good guide to an engineer.

Q. It is recognized as a standard work on the subject, is it not?

A. Oh, yes; he is recognized for exactly what I have just stated.

Q. And you don't know of any other work that is better, on the subject, do you?

A. Well I know of many articles that are written by engineers, as those articles are written, that are more to be relied upon than the articles in that book.

Q. On special subjects?

A. Well on the subject of general engineering; the modern—I mean new discoveries and applications that apply to general principles. As a matter of fact the book is made up of such research, and it is a very good book; very good guide.

Q. Now with respect to the subject of ventilation in a gasoline boat, you have given us certain views with respect to it. Have you ever written any articles or published any books or discussions with respect to the subject of ventilation of gasoline vessels?

A. I have not.

Q. Can you refer us to any standard works that support your views with respect to the necessity of ventilation in a gasoline vessel?

A. Well I could refer you to the trade journals I keep up with, and the articles there are based on practical experience, and written as a rule by architects and engineers that I regard of great capacity. I have employed a great many architects, who have discussed those things with me, and I have—could refer you to a number of those magazines, those trade journals, as the source of much of the information that I have got. Of course as a student at the Georgia School of Technology, we had a thorough course in ventilation, and in the internal combustion engines, and all fundamental laws that affect it; design and operation.

Q. First of all, the trade journals that you refer to, what trade journals do you refer to?

A. I refer to Motor Boat, Motor Boating, or any of the current journals. I could not tell you that I read an article on ventilation in Motor Boat, it might have been in Motor Boating, it might have in the Rudder, or it might have been in Diesel Progress, Pacific Motor Boat; but those various technical journals, I read; it might have been even in some civil engineering journal, that often takes up those discussions.

Q. Now can you refer us to any particular articles that have appeared in these journals, that are the source of your views?

A. No.

Q. Or, that support your views?

A. No, I don't know that I could refer you to any article specifically on those subjects, that I read monthly, —as to the date and the name of it. I could refer you to some articles written by Mr. Taylor in Ships Lines; but I don't know the month or the magazine that it came in, except it was a technical magazine.

Q. Of course we are not particularly interested in Ships Lines here. Can you refer us to any articles relating to ventilation of motor driven vessels?

A. Perhaps if you would tell me what phase of that, I might be able to recall some person who has written on the subject.

Q. Well, any phase of ventilation in a gasoline driven motor vessel?

A. Well, I can recall one article, was once read on ventilation through a fan, a Sirocco fan, to be built in the fly-wheel. I regard that article as of no particular value, but it had in interesting study. The man who wrote it I don't know.

Q. And where did that article appear?

A. In some one of these trade journals.

Q. You spoke of the name of one of these trade journals, and at one time I understood you to say Motor Boat, and the other, Motor Boating. Are they two magazines, or are they the same one?

A. They are two different magazines.

Q. And do you include them both in the trade publications that you refer to?

A. Yes. The articles in them are usually written by naval architects, some of them by engineers; the most enlightening articles I have read in sometime, by a Mr. Max Angas, Captain in the Navy, in Motor Boating.

Q. And you regard Motor Boating as a reputable, reliable trade paper, do you?

A. Well, I do regard it as a very valuable paper. I don't subcribe to all articles written in the paper; but I regard it as a source of valuable information.

Q. And why would you pay any particular attention to an article in such a magazine? Is that because articles appearing there are selected by competent editorial staffs for publication?

A. Well I would pay attention to them, because nearly everybody, a great many people rather, connected with my profession, which is a small one, are men known to me; their backgrounds are known to me; their work is known to me; their successes are known to me, and their

failures are known to me. And I have myself an experience which would enable me to form some judgment as to the value of the articles. I particuarly am interested in these magazines, that might be called popular magazines, and not quite such technical, although I read them too as engineering; some of the papers from the Mechanical Society of Naval Architecture, or the American Society, at 41st Street, New York,—or several of those purely technical journals.

Mr. Underwood:

That is a reference to the American Society of Mechanical Engineers?

A. American Society of Mechanical Engineers; or the papers of the American Society of Marine Engineers and Naval Architects. I am particularly interested in these so-called popular magazines, because they carry as advertisements, the modern devices obtainable on the open market, such as ventilators, and ventilating devices, with discussions of the valves of those devices, by their own engineers; and I consider the source of such information as more up to date, out of those places, than you would get out of papers and discussions from the engineering societies; which are usually discussed quite sometime after they are put in practical use.

Q. You would regard an article appearing in Motor Boating, for instance, as prima facie entitled to weight, would you not?

A. Absolutely not. I would have to know who wrote it. It might be a good article, and I might not read it, might not know the man,—it might not attract me. But motor boating, as those popular magazines, are quite apt to write articles on spectacular things, like submarine battleships, and things of that kind. But one of the most valuable articles that appear in those magazines, are discussions of new devices that are in the magazines, written

by the manufacturers of the devices, on the engineering part of it.

Q. Do you find that a magazine such as Motor Boating, we will say, publishes unreliable articles?

A. Oh, I think it publishes many articles of impractical things. I won't say particularly, Motor Boating, but I think all of those popular magazines do. You see them this month, and you never see them again; but they are interesting at the time.

Q. Now I want to get back to my first question. Can you refer us to any specific article in any of these trade papers, having to do with ventilation of gasoline driven vessels?

A. Not from my memory. I could go over my files and look up things that I know about.

Q. Well I would be glad if you would do that for us Mr. Gibbs.

A. Well I haven't even got them here.

Q. Could you obtain them by communicating with your office?

A. I might and I might not. We subscribe to the Rudder and the Motor Boating, and the Motor Boat; and there is another journal that we subscribe to. Sometimes we keep them, sometimes we don't. But I will say briefly, that my knowledge as an expert is the result of 28 years of application to my business. What I have learned has been by frequent visits to my fellow boat builders, to other yards, to the factories; DeLavergne Machine Works; the engineering departments of manufacturers for many classes of goods that our company has sold. These matters of discussion on ventilation are common with us, just as cancer would be common with a group of doctors. To tell you that I read a certain article entitled a certain thing, by a certain man, dealing with a certain thing,—I have read many such articles, but I don't recall at this time just what the article was. I regard myself as a trained engineer who has applied himself to his business;

and my source of information is the result of that application, and construction of considerable articles that have been successful.

Q. Are you through?

A. Yes, sir.

Q. Well now you have told us that, I think, in substance, before Mr. Gibbs.

A. Yes, sir.

Q. But it still does not get to the point that I have in mind. I want to know if there are any published articles, books, or any authorities to which we could refer, on the subject of ventilation of gasoline boats, that you can tell us about?

A. You mean a treatise on ventilation?

Q. A treatise,—whatever you want to call it?

A. Well I know of no book that I could recall by name, or authority on the subject of ventilation.

Q. Now you spoke of studying—

A. Except the general books, such as physics; a treatise on thermo-dynamics; and the fifty-four subjects, some of which bear direct on the principles controlling design of ventilation.

Q. Now Mr. Gibbs you spoke of studying ventilation at Georgia Tech; can you tell us what text books you used there on the subject of ventilation?

A. By name I probably could not. I can tell you there are fifty-four subjects, and I can tell you what all of them had in them. But the name of the professor, or the man who wrote them, I couldn't give you instructions to wire and get a book. But there were some fifty-four different subjects,—even articles in French, on ventilation, that I have read; the ventilation of trains, in Paris,—or rather, in France.

Q. Well we are interested to get as much light on this subject as can. We appreciate your experience, and all, but we would like to know what authorities there are in this field that we can refer to, aside from Georgia Tech.

that you can't remember the text books you used there. What text books are there on the subject of ventilation for gases?

A. All right, sir, I will refer you to a book which you can get very quickly right in Miami,—the Encyclopedia. Look up the question of convection. You will there learn that all gases—

Q. I don't need you to tell us what we will learn there?

A. You will see it is fully discussed, and the explanation to such facts as I have expounded,—in that one paragraph; the cause and theories.

Q. You refer to the Encyclopedia Britannica, on the subject of convection?

A. The encyclopedia that I looked up in Mr. Anderson's office; I can't tell you whether it is the Encyclopedia Britannica or not. I was not concerned with the man that wrote the book, or anything; but the definition of convection, there I found a full treatise. In Mr. Anderson's office there is such an encyclopedia.

Q. When did you look that up?

A. I looked that up while I was waiting in his office to be called.

Q. And the article that you refer to contains merely a definition of convection?

A. It contains a very thorough discussion of the process of convection as applied pretty generally in the world; showing the causes of winds and so forth and the movement of atmosphere. Distinct application here.

Q. Will you obtain that book and bring it back after recess this afternoon so that we can look at it?

A. Yes, sir.

Q. Now is that the only text book or treatise on the subject of ventilation that you can refer to?

A. No, sir.

Q. All right what else?

A. I can refer you to physics,—a treatise on physics.

Q. What treatise on physics?

A. Any that has ever been written, providing it dealt with the question of heat.

Q. Well can you find such a book and bring it here so that we can examine it this afternoon?

A. I don't know whether I could this afternoon. I have no source of getting a Physics, unless I go to a book store.

Q. Well I would be very interested, Mr. Gibbs, to examine any article or any authority that you say supports your views of ventilation and convection; and I want to give you the opportunity to produce any authorities of that kind whatever, that you think will be helpful on this subject?

Mr. Underwood:

If your Honor please, I don't think it is up to the witness to go out in the open market and produce books, even at counsel's request.

Q. Or if you will refer us to one, a specific one, we will try to get it?

A. I refer you to the encyclopedia, that I will bring, which covers the basic principles on which ventilation in this ship depends.

Q. And you think that will be all that is necessary to support your views?

A. No I do not.

Q. —on the subject?

A. I think that a lifetime of application to my business, such as I have applied, will give you the ability to exercise the judgment,—or any other person, with my facilities, to exercise the judgment which enables me to make my statements.

Q. Of course we will have to give you credit for that, Mr. Gibbs; but of course in every field of science there are standard works, and I would like to know whether there are any standard works that you refer to in this field?

A. I will tell you that I am not much concerned with remembering the names of the authors of articles that I read; too much to think of, to do it. I am able to retain those articles that I have read, and what is in them has been of more interest to me than the exact date on which they were published.

Q. Now can you tell us what the vapor density of gasoline vapor is, with respect to air?

A. At the same temperature, gasoline density is greater than air.

Q. Can you tell us how much greater?

A. I think, slightly.

Q. When you say slightly, you mean ten per cent or fifty percent or—

A. Possibly ten per cent; you could probably find it in decimal points, depending upon the quality of the gas. There is a gas that would have a certain density, and another that would have a different density, depending upon the gasoline. The variations are extremely slight; we are splitting hairs. But I will tell you that gasoline vapor is heavier than the gas composed of nitrogen and oxygen, which is air, which is the combination of those two gases. That your gasoline vapor is heavier, and for purposes of this analysis I would be willing to concede that it is appreciably heavier.

Q. Well now I don't want a concession, Mr. Gibbs; I want your view—your facts.

A. Well I state definitely that the gasoline vapor is heavier than the air.

Q. How much: Is that difference slight or great or appreciable? How much?

A. It's—the exact amount I do not know. I don't recall those figures.

Q. Well now something was said about—

A. But as I have looked it up and as I remember it, it must be about, some ten per cent heavier; that is as my memory serves me. But anyway, heavier.

Q. As I understand convection, convection is an effect, —a rising effect of gas produced by heat; is that right?

A. It is produced by the difference in specific gravity, which is usually produced by heat.

Q. That is if you have a mass of gas that is homogeneous, and the bottom part of it becomes heated, the—

A. It becomes what?

Q. The specific gravity becomes less?

A. Per unit of volume.

Q. Per unit, and consequently it rises in the mass?

A. Yes.

Q. And other gas falls to take its place?

A. Yes.

Q. And that creates a circulation; is that right?

A. Yes.

Q. And whether any gas will rise—

A. You said, if it is homogeneous.

Q. Pearhaps—I meant, all the same, a single,—I am supposing that this gas is the same gas and the same density?

A. Remains intact. We will say, if it is in that shape, it holds that shape.

Q. Let's assume, just to be theoretical, suppose we have a cube, a cubical container, that is absolutely tight, on all sides, and it contains a perfectly pure gas?

A. Yes.

Q. So that it is exactly alike inside?

A. Yes.

Q. Then as I understand it, the definition of convection is that that is the effect produced by heat, which causes the gas at the lower part of the container to become less dense and rise in the container; the denser gas is taking its place?

A. Yes.

Q. And that causes circulation?

A. Yes.

Q. Is that the theory?

A. Yes.

Q. Now whether any gas rises with respect to another one, depends upon its relative density, does it not?

A. No.

Q. Assuming of course that there are no extraneous forces acting on it?

A. Well, it might if there are no other extraneous forces, or other conditions.

Q. Speaking purely from a theoretical point, the rising of one gas with respect to another, is caused by their relative density; the lighter gas rising and the heavier gas falling; is that right?

A. Yes; and assuming there is no such thing as what we know as a mixing.

Q. You have told us, Mr. Gibbs—before I get to that, what is the flash point of any liquid? Can you tell me that?

A. Yes.

Q. Can you define that for us?

A. What is that?

Q. Just define it for us.

A. The flash point is the point at which ignition occurs—the temperature at which ignition occurs.

Q. Well if you have gasoline vapors with a mixture of air, so that it can burn, do I understand you to say that the flash point is the temperature that you would have to reach to cause the burning? Is that right?

A. That is what is commonly known.

Q. Now I would like to ask you if you consider flash point and ignition point, identical?

A. That is what I would consider it.

Q. Well what would you say of this definition of flash point: "Flash point of a liquid is the temperature at which it gives off vapor sufficient to form an ignitable mixture with the air contained in the vessel used"?

A. Well that is as I was trained, a highly different thing. That might be considered a point at which a liquid becomes a gas, which is known as the point of evaporation. In steam it is 212. Now you might speak of throwing the water on a stove, and it will flash at 212, if you call that the point of flash. The flash that I have been familiar with is the point at which it will explode,—or it will ignite. But what is commonly known in our text books, the point of evaporation,—the point at which a steam or any other gas changes place from a liquid to a gas,—evaporating.

Q. Now, the definition which I read to you, of flash point, is the one which appears in this Libelants' Exhibit No. 136, a publication—

Mr. Underwood:
For identification?

Mr. Matteson:
It was offered in evidence, but it is only for identification so far.

Mr. Underwood:
I have objected to it.

Mr. Matteson:
Entitled, Fire Hazard Properties of Certain Flammable Liquids, Gases and Volatile Solids, published by the National Fire Protection Association; and I show it to you here and ask you if that is the correct definition of flash point, or if it is not?

A. It might be. It might even be that in some accepted interpretations of the word, flash, that don't use the commonest expression. It could well be said that a point of evaporation might be classed as flash, by—in that paper.

Q. Well I call your to the definition of flash point, which appears in Kent's Mechanical Engineers' Handbook at page 4-45?

Mr. Underwood:
What edition?

Q. The 11th edition; which reads, "Flash point is the temperature at which oil must be heated to give off sufficient vapor to form an inflammable mixture with air". Do you say that is not a proper definition?

A. That is—whoever wrote that particular article, it is what he has called a definition of flash point. Flash is an English word, that may mean several things. You know a flash, when you throw a match on a piece of gunpowder, there is a flash. The flash point of gunpowder is the point of ignition. My definition of flash, is the point of ignition. Kent, or whoever wrote the article, can say the point at which the liquid changes place from the liquid to the gas. But I will say that as far as the infallibility of one man's nomenclature, that any gas, gasoline, turned into a gas, with the proper combination of air and heat, is explosive; but I don't see where temperature has got a thing to do with it except with ignition considered.

Q. Well Mr. Gibbs, you have told us here that you have been educated as an engineer, in a highly reputable technical school; that you have been practicing as an engineer for some twenty-eight or more years; that you are a builder of vessels, a builder of gasoline propelled and gasoline carrying vessels. And what I want to know is, after all this experience whether in all of it you have ever heard this definition of flash point to which I called your attention, before?

A. I have heard of flash point of lubricating oils; flash point of all kinds of oils.

Mr. Underwood:
May I look at that definition?

Mr. Matteson:
Have you a different one, of the older edition?

Mr. Underwood:
Yes.

A. Mr. Matteson, in my profession there are English words that have all kinds of application. The broadest sense of flash, means fire,—ignition. There are other kinds of flash, but if you want to know what I know about fuels, and would tell me what you meant by flash, I could tell you whether I knew anything about fuels.

Q. Let me ask you this Mr. Gibbs: Isn't it a fact that all inflammable oils are rated by flash points?

A. They have either that, or points of evaporation, points at which they change.

Q. Well now just let me get this straight. Throughout your profession, wherever you have to deal with an inflammable oil, inflammable oil is rated by its flash point, in those words, is it not?

A. Those are manufacturers' terms, that concern the quality of the oil. You get them mostly from oil salesmen, that would come in, to describe an oil for a promoter, for me, and I would ask him questions about it. If he used flash point in that form, we would probably understand each other. But—

Q. Isn't it true, Mr. Gibbs, that when you have to comply with government requirements with respect to different classes of inflammable oils, that those requirements are based on the flash point tests of the oil to be used?

A. Oh sometimes they tell us that the oil by a test must be of such and such a description; they will give us the specifications of the oil. We turn it over to the oil company.

Q. You say it is only a sales term?

A. No, no; that is unquestionably a technical description of the evaporating points, as given in that definition of oil,—of a fuel; and not intended to be the ignition point.

Q. I can't say whether it is a definition of an ignition point or not, Mr. Gibbs; but you are qualifying as an ex-

pert here, and I want to find out whether you know the meaning of technical terms in your profession. If you were called upon to install a fuel oil installation for the use of oil with a flash point of not less than 150 degrees, what would that mean to you?

A. A flash point of not less than 150 degrees? Do you mean that the liquid would remain? If I saw those low numbers, I would ask for a more specific definition of the word, flash. It would mean that was the point at which the liquid evaporated, or went into a gaseous form.

Q. You say if you saw the term, you would have to inquire—

A. Identify it, with 150 degrees, I would instantly know that they meant the point of evaporation. We have many new terms in the oil profession; cracked oil,—we have all kinds of new terms as in the manufacture of oil, which haven't concerned me, because I can get the information from time to time.

Q. If I understand it, Mr. Gibbs, this is your field?

A. Right.

Q. Building vessels for carrying of oil?

A. Right.

Q. And propelled by inflammable oils?

A. That is right.

Q. And do you mean to tell me that never until today have you seen this definition of flash point that I have given you?

A. Yes I have heard the flash point discussed, and I have heard it discussed by reputable engineers, as the point at which conflagration takes place.

Q. And you say that if you saw in a technical work or in a set of governmental regulations, or anywhere else, the term, flash point, that you would not instantly know that it meant exactly the definition that I have given you?

A. I will say this Mr. Matteson, that the characteristics of a fuel,—a manufactured fuel, that there is little oc-

casion ever for any expert on ventilation to know of a manufactured fuel put on the market.

Q. You say there is no occasion,—

A. There is little occasion for a man to know those specific technical specifications.

Q. Now you have built tank vessels, subject to the rules and regulations of the United States Department of Commerce have you not?

A. Yes.

Q. Built them to conform to those specifications?

A. Yes.

Q. How recently have you done that?

A. Well, we have been converting them, changing them over; we do that all the time.

Q. Well now I have here the United States Department of Commerce, General Rules and Regulations prescribed by the Board of Supervising Inspectors of Tank Vessels, and I call your attention here to page two, the regulation under H, subdivision 2; there is a regulation preceding it, and this number 2 describes the type of tank to which it is applicable, and it says,—a tank either empty or used to carry a liquid having a flash point of 150 degrees or above,—what does that mean to you?

Mr. Underwood:

Just a minute please. I don't want to object to the question, I just want to make it clear that the reference is to page 2 of the general rules and regulations prescribed by the Board of Supervising Inspectors, Tank Vessels, November 10, 1936.

Mr. Matteson:

I have already stated that.

Mr. Underwood:

I didn't so understand it.

A. Well, that would mean to me that at that point a gas would become—a liquid would become a gas.

Q. Well why would it mean that to you, if you don't so understand the meaning of flash point?

A. Because that would immediately identify those low terms. I know the properties of fuels,—combustion—basically. I know that those temperatures are approximately the temperatures of evaporation of such an article.

Q. Well now this does not say anything about what kind of an article it is. It simply says, to carry a liquid having a flash point of 150 degrees Fahrenheit, or above; it does not refer to gasoline or molasses, but I just says, a liquid?

A. Well, any liquid that I am familiar with, there is in it a gas at temperatures around that, or slightly higher. That in the range of evaporation temperatures. And I can conceive the word flash meaning a news item over the radio; a conflagration; or anything.

Q. We are all familiar with quite a number of uses of the word flash, Mr. Gibbs.

A. That's right.

Q. But what I want to know is, how much you know about the technical terms of the profession in which you claim to be an expert?

A. Perhaps many of them, terms of the profession, that the use I would give to you would not be the use that you would find in a paragraph of some man's article.

Q. Now as a matter of fact, I call your attention to the fact that right in these same regulations, you go farther down the definition of flash point appears; it reads: The term, flash point, indicates the temperature in degrees Fahrenheit at which a liquid gives off an inflammable vapor when heated in a Tagliabue tester. Now you say that you are not familiar with that definition of flash point?

A. I have another interpretation. I am thoroughly familiar with what it is,—the point of evaporation. The

term I was taught was the point of evaporation, the point of boiling, it is known in physics; it is known in Kent's as the boiling point of liquids. That is the flash point, as that definition says, is the boiling point of liquids; the transfer from a liquid to a gas. The name that an engineer knows, the boiling point.

Q. I see, and you don't know it as the flash point?

A. I did not recognize that as the flash point.

Q. May I look at the early edition of Kent that you have?

Mr. Underwood:

Yes, in a few minutes.

(By Mr. Matteson):

Q. Now what is the flash point of gasoline, can you tell me?

A. It varies, depends entirely upon what the gasoline is.

Q. Well within what limits does it vary?

A. Oh, it will run from 90 to higher, run lower than that.

Q. What is the lowest flash point of gasoline that you know of?

A. Well, others might run as low as 50 or 60.

Q. Well, I am not talking about ethers.

A. Well, other gasolines.

Q. Petroleum ether you are talking about?

A. Well, the various forms of petroleum products have various names, but as a matter of fact they vary; the points at which they become a gas, varies from one temperature to another. Now I don't know the temperature of that which becomes a gas at the lowest temperature, and I don't know the temperature at which is the highest temperature; I do not carry such figures in my head.

Q. Well; I appreciate you can't carry specific figures in your head, but you must have a pretty good idea about

these things, I should think, within reasonable limits. Petroleum ether is another name for benzol, is it not?

A. Dozens and dozens of names of liquids kindred to gasoline and kerosene.

Q. Now I am talking about gasoline, and it is your understanding that the petroleum product that is ordinarily known as gasoline, has a flash point of around 90 degrees?

A. It has various temperatures.

Q. What would you say would be the lowest? What is the range?

A. I would be guessing, in any event.

Q. You suggested 90 degrees; do you want to change that or correct it?

A. I say that there could be a gas that would have a boiling point of 90 degrees.

Q. Well what would you say would be the lowest that you would expect to find?

A. I wouldn't say.

Q. Well, 75?

A. I wouldn't say.

Q. You have no idea?

A. Oh yes, I have ideas?

Q. What is it?

A. I have ideas that gasoline could have what you call a flash point, which is not the accepted term,—the boiling point, of as low as 75 degrees.

Q. You think that would be the lowest?

A. No I don't it might not be the lowest.

Q. Well what would you think would be? You have been building tank vessels and gasoline engines?

A. The builders of tank vessels have practically no requirement to know the exact time at which a gas goes into a liquid, within any such margins as those, unless it was a special job.

Q. Do I understand that you want us to understand that you have no technical knowledge of the qualities of gasoline?

A. No, sir, I don't want you to understand any such thing. I have a very fair knowledge of all the properties of gasoline and fuel oil.

Q. Well now we have determined what flash point is; I want your idea of what the flash point of commercial gasoline is?

A. I will—it is somewhere around the atmosphere, as a rule, in order that it be a fuel that is applicable to internal combustion motors. If the temperature is quite low, we will say 75, it would evaporate very quickly and would tend to make a quick starting motor; it is used in airplane motors and things of that kind. There are many newly developed motors that—some for quick starting, with various characteristics. In my profession, if I were designing a motor for any particular thing,—purpose, I would call in the oil man and make known my requirements.

Q. I don't want to interrupt you, but we seem to be taking a lot of time by going off with explanations here. What I want to know is this: What, as a man dealing with gasoline, is your idea of the flash point of gasoline?

A. Well my idea of the flash point of gasoline was, as stated,—was the point at which combusion took place.

Q. And where is that?—No, eliminating that. Now we get back to the technical definition of flash point that I have shown you here in three different places. Now let's use that. Now what is your idea—

A. What I have been taught, is boiling point, what I know as boiling point, or point of evaporation.

Q. You can call it anything you like, I have given you the definition of it. What is it with respect to gasoline?

A. It varies.

Q. What is your idea of it?

A. I have ideas that it varies around atmosphere, above and below; temperature of the atmosphere, above and below.

Q. And you say that would be around 75 to 90 degrees?

A. And higher; with particular—with the low grade of oils.

Q. And you wouldn't expect to find it any lower?

A. Flash point? Why I might find it as low as—away lower than that, very much lower, maybe 22 below freezing.

Q. Now we seem to be getting somewhere, Mr. Gibbs.

A. It depends entirely upon what it is offered and called as gasoline.

Q. We seem to have gotten from 75 to 90, and down to 22?

A. I say it is possible. I am not a manufacturer of oils, but I say that it is conceivable to me that oils could be made with a very low flash point.

Q. Again I refer to this book which has been marked for identification as exhibit 136, a publication of the National Fire Protection Association; Fire Hazard Properties of Flammable liquids, containing a tabulation of the properties of various liquids; and under Gasoline, on page 27, you see a column, Flash point; and you see under that, several figures, each with a reference which I can tell you refers back to the authority from which that flash point is taken; and I call your attention to the fact that flash point of gasoline is rated anywhere from minus 45 degrees, to zero by these authorities?

A. I think I told you it may go [illegible]y down below freezing.

Mr. Underwood:

Let it also appear that the definition of the gasoline referred to is C5H 12, to C9H 20; gasoline made up of five parts of carbon and 12 parts of hydrogen, to gasoline made up of 9 parts of carbon and 20 parts of hydrogen. That is my understanding of those chemical terms.

(By Mr. Matteson):

Q. And I call your attention to the authorities to which this refers back, Nos. 2, 22, 26 and 28, which I refer to over here. No. 2 is Interstate Commerce Commission Regulations, Bureau of Explosives—pamphlet No. 9 of 1922. No. 22 is Underwriters Laboratories, Inc., Report SI 528, on propagation of flame in pipe, and effectiveness of arrestors; 1919. No. 26, entitled Factory Mutuals—Properties of Flammable Liquids, Gases and Solids—April 1, 1930. And No. 28, publication entitled, Underwriters Laboratories, Inc.,—Method for the Classification of Hazards of Liquids—1929. Now in view of this have you any doubt now that the flash point for gasoline is somewhere between minus 45 degrees and zero?

Mr. Underwood:

If your Honor please, I want to put in a qualified objection to that question. I have objected to the introduction of this document in evidence on the ground that it is not properly proved, and not proof of the facts therein contained. I merely want to state that I stand on that objection, and I don't want to, by not objecting to this question, be in the position of allowing what Mr. Matteson proposed to draw from this document, to come into the record as proof of any fact.

The Court:

All right, let the witness answer.

A. These authorities quoted here, I have not read them. I therefore am not in position to tell you what is the lowest point at which a gasoline will become a gas,—the lowest temperature; but as I have said, it might be something extremely low, even below the freezing point of water.

Q. You have told us that you know quite a bit about gasoline, here, and the point of evaporation seems to be

quite an important point that is involved. You started out as high as 75 or 90 degrees, and now we seem to be down quite a bit. I want to know what your idea of the evaporation point of gasoline is,—the flash point of gasoline?

A. It depends entirely upon the gasoline.

Q. You say there is no—

A. You might as well say, how tough is steak,—about the same question.

Q. You say there is no recognized standard for the flash point for gasoline?

A. No, I say there is a definite and a specific point of evaporation on any fuel sold, with a certain chemical composition, which is invariable.

Q. And what is the flash point of kerosene?

A. I don't know; it would be considerably higher than gasoline.

Q. Have you any idea what it is?

A. No.

Q. Now, Mr. Gibbs, I think we agreed that outside of physical forces, the cause of one gas rising with respect to another, is relative density. When you say that relative density of gasoline and air is different by approximately ten per cent, that means that they are not very far apart, is that right?

A. Well that is very far apart, as far as one being heavier than the other.

Q. Well you have spoken of a tendency which you say there is for gasoline vapor to become dissipated by contact with air?

A. Yes.

Q. Now is that fact, that there is no more than a difference of ten per cent in their relative densities, a factor involved in that?

A. I wouldn't say so.

Q. Well of course if on the other hand gasoline vapor was three or four times as heavy as air, that tendency

would be reduced to a minimum if it didn't actually disappear, wouldn't it?

A. It would never, in my opinion, disappear, for the reason that you can take a very narrow test tube, a long cylinder column, where the process of convection would be greatly retarded, and put gasoline in it, however small, and smell it, instantly.

Q. What I am getting at is this: if you had two gases that were as far separated in their relative densities as three or four times, you wouldn't expect them to mix readily, would you?

A. It would be a factor of the speed at which they would mix; yes, sir.

Q. You wouldn't expect one gas, three or four times as heavy as another, to mix readily with the other gas, would you?

A. My judgment would be that it would not mix as readily.

Q. You wouldn't expect it to mix readily at all, would you?

A. Yes, sir.

Q. But that tendency would be greatly reduced if there were that difference between their densities?

A. I have never performed any experiments, or read of any, but I would suspect that that would retard the tendency to mix.

Q. Now as a matter of fact do you know that relative vapor density of gasoline vapor to air is three to four times?

Mr. Underwood:

If your Honor please, I object to that unless the density of the gasoline vapor is included in the question.

The Court:

I will overrule that objection; I think the witness is able to take care of himself. If there is any wanting ele-

ment in your question, why let the witness call attention to that.—If you can't answer the question, you think there is some necessary element that you ought to have incorporated, why then you call attention to it, Mr. Gibbs.

A. Yes, sir. This is one continuous sheet, isn't it,—all these pages?

(By Mr. Matteson):

Q. Yes.

A. Will you explain it to me, what the meaning of the table is?

Q. Well we will go back to the beginning of the book, and it defines vapor densities. Vapor density is the relative density of a vapor as compared with air, a figure less than one, indicating a vapor lighter than air; a figure greater than one, a vapor heavier than air. Vapor density figures in the table have been calculated:

A. That then describes the—

Q. The relative density.

A. When it says, vapor density, I couldn't understand that without this definition.

Q. Well you know generally the technical terms of your profession?

A. I know generally this book in which that is given as the rule for that column—what that column means.

Q. Vapor density does not mean anything to you as a technical term in your profession?

A. Oh, yes.

Q. What does it mean?

A. Density—it could mean a specific gravity.

Q. Isn't vapor density—

A. It could mean, it could be a coefficient; it could mean, with respect to some other thing. It could mean—in this instance it is told to mean with respect to not water—air, probably at the same temperature, at sea level.

Q. Isn't that the way all gases are rated in your profession?

A. What?

Q. Density, with respect to air?

A. It could be.

Q. You don't know whether it is or not?

A. Oh yes, I do.

Q. Well, is it?

A. In this particular thing that seems to be a common use of it.

Q. Isn't that generally so in your profession?

A. I wouldn't say so. I would say that that would be the logical description of it; but just given this column, "% in air ref."; I would need more—well I know now what vapor density is given.

The Court:

Let's get back to taw; what is the question?

(The last question was read by the reporter.)

A. This wouldn't mean much to me, when it refers to a gasoline that must evaporate at minus 45 degrees, which is—have you got one that would show it at normal temperature, of a more commonly used gas?

Q. Let me put it this way. The gas which would evaporate at the lower temperature, you would expect to be a lighter gas, would you not?

A. Not necessarily; I don't know that.

Q. Wouldn't you expect that to be so?

A. Well that refers to your—you mean, the gas itself?

Q. Yes?

A. I wouldn't necessarily think that would follow.

Q. Well now the question I asked you was, is it not a fact that gasoline vapor is actually three to four times the density of air? Now I have shown you this book?

A. With this table, that very low flash point, what you term flash point, states definitely that it is from three to four; that is in this table. My own knowledge, I did not know that exact point, for that exact flash point of gasoline.

Q. If as a matter of fact gasoline vapor, instead of being ten per cent above the density of air, is three or four hundred per cent above the density of air, that would have considerable to do with your theory with respect to the ventilation of gasoline vapors, would it not?

A. No it wouldn't affect it in any way at all; because the principles do apply today, and have always applied, and a denser article might work slower than a less dense article, with a relative mixture, and difference in weights. At the same time, as I told you, any figure of density that I might give, would be purely a guess, and a guess of ten per cent greater specific gravity, as I told you, which of course was a guess at the liquid gasoline, is—

Q. You don't consider the difference between ten per cent, and three or four hundred per cent, a material factor?

A. Liquid gasoline of course is a very different thing from the gas that comes from gasoline.

Q. Naturally, and we are talking about the gas that comes from gasoline?

A. Well my supposition of ten per cent is, as I remember it, from having seen it, was the gasoline.

Q. Well Mr. Gibbs, you are a technical man, and this publication that I have shown you seems to indicate the density of gasoline vapor is three or four times that of air?

A. I think that is probably true; I don't think there is any question about it,—what you have shown me; that the other gas which I confused with the liquid, either in your question or my memory, that I think it is probably three or four times as heavy per cubic foot as the same of air would be; I think that is probably true: Could be.

Q. Well now when you first told us that the difference was only ten per cent, do you say you had something else in mind?

A. I had the specific gravity of gasolines; just gasoline as against the water, for instance, as a standard.

Q. What is the specific gravity of gasoline, with respect to water?

A. I would think that gasoline is heavier than water, by a little; somewhere between one and ten per cent. Very slightly.

Q. Now Mr. Gibbs, we went over this very very carefully together, and I don't see how there is any misunderstanding. Isn't it a fact that when you told me the difference in specific gravity between gasoline vapor, and air, was ten per cent, that that is exactly what you meant?

A. I meant—I told you that I did not know; that my general guess was; and the general guess was based unquestionably on what—the figures I had recalled on the liquid, rather than the air, and vapor.

Q. Now again, speaking from the purely theoretical point of view, we agreed that one gas would rise against the other, when one was lighter or less dense than the other. We agreed as far as that, did we not?

A. If you could hold the two gases together,—I mean if you had a thin membrane that you could hold one,—a balloon, for instance, you could put your gas vapor in one, and the air vapor in the other; and this one was filled with gas vapor, and you brought a balloon in here filled with air, it would rise, the air would rise; and if you could hold them so they didn't mix with each other, that would—your gas vapor would stay at the bottom forever, and would never move, if you could keep the intermixing or any exterior force from causing that to rise.

Q. Right. Now whether one will rise with respect to another, then, depends on their relative densities?

A. And their ability to remain intact.

Q. Yes. Now if you have a gas that is three to four times as heavy as another, you have the heavy gas in a lower layer, the lighter gas in an upper layer, you will have to heat the lower gas sufficiently to expand it three or four times before it would become equal in density to the gas above, if the gas above remained at the same temperature; would you not?

A. You would have to heat it enough—I don't know what the relative rates of expansion of the gas vapor to the air, are, but I think they are the same; but for the purpose of this question—

Q. It doesn't make any difference what the temperature is; you have to expand it three or four times before you get it to the same density as the lighter gas?

A. Assuming it remains intact.

Q. That's right?

A. That is right.

Q. And you would have to assume that the temperature of the lighter gas, during the process, remained the same?

A. What is that?

Q. In order to make the denser gas of the same density as the lighter gas, you would have to expand the heavier gas by heat, three or four times its original volume, while the temperature of the other remained the same?

A. That is right.

Q. Now that fact alone, if you had a layer of dense vapor below, and a lighter vapor above, would tend greatly to restrict the tendency of the two to mix, would it not?

A. There is a tendency to separate them—the difference of specific gravities; that tendency exists, with other tendencies.

Q. Well now do you say that the lower gas would rise above the lower level of the upper gas, before it had been expanded to a point where their densities were equal?

A. Some of it would, yes; eventually, all of it.

Q. And what would cause all of it to do it?

A. The mixing with the other gas.

Q. Well, the heavier gas would have no tendency to rise in the air with the lighter gas, at all, until it had been expanded three or four times, would it?

A. Oh, yes it would. It would become—every carburetor that operates, takes from—takes in gas vapor and air.

Q. By power suction, does it not?

A. Oh, it sucks air, free to get at, and it could take the air alone,—if this question of specific gravity was the controlling factor; you have air—gasoline vapor created in a tiny point; and you have in a great area, air; and as this suction occurs, or absence of pressure, air goes up thoroughly mixed, becomes what is known as a good mixer,—a homogeneous mixture. It is the property,—it is the mixing—

Q. Now will you explain to me,—eliminate outside air currents, or forces,—how the heavier gas—why the heavier gas would rise into the area of the lighter gas before it reached the density of the lighter gas?

A. Very well, sir. There is a tendency in all gases, to mix,—all fluids; just as you would put a tiny bit of litmus on one side of a car tank; and in almost no time, the other side of the tank,—you can pull a test tube full of liquid out of the other side of the tank and it is colored; meaning that this tiny speck of litmus,—a well known experiment in physics. A bit of musk may be put over there, and almost instantly it is mixed thoroughly and has come away over to this place here. Any moving picture theatre you go into, if you will merely gaze in the lighted portion where light hits the dust, and all air is filled with dust, otherwise there would be no light except in the direct ray,—you will see a tremendous turbulence in there,—in the moving picture auditorium; showing that rapid currents of the air, the motion of the air. There are in the bottom portions of the theatre, all kinds of gases,—those breathed from the audience,—of various densities. But

there is a general mixture of all of these things; and as one body, the air currents rises, due to convection.

Q. Just a minute, Mr. Gibbs, I am perfectly willing you should go on indefinitely.

A. I thought you asked me to explain it.

Q. In a moving picture theatre such as you have been talking about, you have ventilation of course, do you not?

A. Well it rises and falls.

Q. Yes; to begin with, you have induced ventilation, of course?

A. Not all of them; some of them do,—most of them.

Q. You have to have some in all of them?

A. Well that is just one general—the moving picture relies on the principle of convection, in the design of its ventilators.

Q. And you don't suggest that there is any serious difference in density between the various gases that are in the air in the moving picture theatre, do you?

A. Why I think there is some, the exact amount I don't know. But I do know this, that if you put a few drops of gasoline in a bottle and smell it, that that gasoline has left its condition of a liquid, gotten out of that bottle, it has become a vapor, it has mixed with air, and has arrived at your nose almost instantly, and it came from the bottom of the bottle.

Q. Do you know the reason for that?

A. Yes, sir.

Q. What?

A. I know that as those gases rise in that gasoline, as they become a gas, that there is also air, and that there is no sharp disaphragm between them, and that there is a mixing; and I know that the difference in temperatures that exist caused the air to pick up, with its affinity of one gas for another,—causes them to circulate in that bottle. The smoke, it is coming out of your cigarette, you can see

it, but you can't see smoke still in this room; and you could not see the air in the bottle still, because of convection. The difference in,—we may say that one bit of the air,—forgetting the vapor, is slightly different in construction from the other bit of air; and that as both are heated below, the lighter one rises, and this turbulence—

Q. Are you assuming that heat is applied to the bottom of this bottle that you are talking about?

A. Yes, sir, heat is applied by the changes of temperature,—I mean, by heat, temperature that exists in all places on earth. There is probably different heat here, from here; but as air moves without friction, or almost without friction, you have it in a state of instability. To prove that, I performed an experiment as I have described. What happened is, that ventilators did exist in the glass without ventilators; that the air established itself, the colder part probably by the outside of the glass; the colder area, perhaps went in, and the hotter part came up in a natural ventilator in the middle, with no obstruction. As this turbulence, like the foam on soda water, for instance,—as this turbulence went over the top of the glass, the draft or air swept that away; and as air and gaseous vapors do not occupy themselves in straight lines that are fixed, but they mix with each other, due to the fact that convection causes them to mix. There is convection going on at all times in gas vapor alone. If for instance you had a bottle with gas vapor in it, subject to heat, maybe the coldness of this table now, and the heat of the table later, and could put smoke or some dust inside of that, it would be very turbulent, due to convection. Now if you had turbulence in a liquid, we will say, assume a condition where two inches of the bottle was gasoline vapor and three inches of the bottle was air, you would have rapid turbulence in each one of those two strips, and there would be a mixture where they would go together. And with the mixture, which is recognized fact, that gasoline vapor mixes with air, otherwise you couldn't run an engine.

Q. Well of course your gasoline vapor and your air are mechanically mixed in an engine, are they not and they remain mechanically mixed for an appreciable period after mixture, so that this revolution or turbulence of the air operating under this principle of convection, and your gas operating under the principle of convection, where they do mix they remain mixed for an appreciable time, as is proved by the presence of the mixture from the carburetor to the engine. If they did not remain mixed for some period you couldn't go to an engine that had been suddenly stopped, and apply a spark, as much as an hour later, and have an explosion. When you once mix vapor with air, you have something that is fairly stable. I don't mean to say that they won't dissociate themselves, although I don't know that they will to any marked degree, —quickly.

The Court:

I think we had better deal with solids a little bit now, get away from gases.

(Thereupon hearing was adjourned, to be resumed at 2:00 o'clock P. M. of the same day.)

Miami, Florida, November 15, 1939, 2:00 P. M.

Afternoon Session.

3698 Thereupon: GEORGE W. GIBBS a witness in behalf of the Respondent Phipps, resumed the stand and was examined and testified further as follows:

Cross Examination (Cont'd.)

By Mr. Matteson:

Q. Mr. Gibbs, you were saying this morning that a mixture of air and gasoline vapor in a cylinder of a motor

exploded by the carrying of a spark an hour later, is that what you said?

A. I said approximately one hour later; I have seen it done.

Q. If that were so, the car would start when you turned on the ignition, wouldn't it?

A. It is possible for it.

Q. You never knew one to do that?

A. I say I have known motors to start like that.

Q. You were also saying something about the affinity of air for gas; do you say that there is such a thing?

A. I say that in the presence of a turbulence at any time there is a mixture which remains to some extent—which remains to a large extent stable, not permanently stable, but for a period of time.

Q. If you had such a mixture of a heavier gas and a lighter one, if you left it awhile, it will settle out?

A. Not always; for instance, oxygen and nitrogen remain stable.

Q. Instead of making the question general, with reference to gasoline vapor and air, if you have a mixture of the two, the gasoline vapor will gradually settle out of the air, will it not, if there is no turbulence?

Q. Yes.

A. If there is no turbulence?

Q. Yes.

A. And no convection operating?

A. It may.

Q. Well it would, wouldn't it?

A. My experience shows that if it does, it is a very slow process; I have no experience that would indicate that it would.

Q. You spoke of some gases that had exploded in a gasoline motor after it had been standing for an hour; you have never seen such a thing to occur after it had been standing twenty-four hours, have you?

A. The reason—no—the reason would not be the lack of instability; it would be the fact that the piston rings changed the conditions in the engine; allowed the mixture to run out.

Q. Unless there is some fluid in the motor, the piston rings won't leak, will they?

A. There is practically no such thing as a tight piston ring; there are piston rings which produce tightness. One of the claims of the piston ring manufacturers is that after a long period of time the engine will suddenly stop, due to the fact that the piston rings were alleged not to leak.

Q. Getting back to this question of affinity; do you say there is affinity in air and gasoline fumes?

A. Under particular conditions there is a tendency for a diffusion of gases, which are within the same walled vessel.

Q. And that, however, is a mechanical mixture, either through convection or some other cause, is it not?

A. Probably; I am not chemist enough to tell you.

Q. You do not suggest there is any affinity between air and gasoline fumes, do you?

A. You mean any chemical affinity? Would you give me your definition of the word "affinity".

Q. As you use it; you suggested that there was some affinity between them; what do you mean?

A. I mean a tendency for the mixing of them for some reason.

Q. And that to which you refer is a mixing through mechanical means?

A. That is my opinion; it is either through mechanical means or maybe through some chemical process, of which I am not familiar; some chemical process that might set up. I do know that gases do mix.

Q. Of course it is true, is it not, that the explosive range of gasoline vapor mixed with air runs from about one and one half percent to six percent?

A. Six and one half percent.

Q. Yes.

A. Depending somewhat on the gasoline. You mean explosive mixtures?

Q. Yes.

A. Yes.

Q. And consequently diffusion up to the point where the mixture becomes leaner than one and one half percent, makes the combination more dangerous, does it not?

A. Not if it is too lean.

Q. Perhaps I don't make myself clear: pure gasoline vapor not mixed with air, is not explosive, is that right?

A. No, but to answer that I will have to have your definition of the word "explosive". It is combustible and will burn, but it will require a mixture of oxygen to have it turn rapidly enough to call it explosive, what is known as explosive.

Q. Let me get this right: if you had in a container, say in a cylinder of a gasoline engine, gasoline fumes with no air at all, pure gasoline fumes, and you set a spark to that mixture, would anything happen?

A. It would be fire-proof and nothing would happen.

Q. In other words, you would have to have some air present in order to have any burning at all?

A. You would have to have the oxygen that is in the air in order to cause combusion.

Q. So that as you add oxygen in the air, in mixture with gasoline fumes, the more air you bring in the more dangerous it becomes, until it passes the limit of one and one half percent?

A. Ninety-eight.

Q. Of ninety-eight?

A. Ninety-eight one half percent.

Q. Yes, if you look at it from that way; if it gets to be more than ninety-one and one half percent air, it becomes progressively more dangerous as you add air to it, is that right?

A. Yes, but you would have to have up to ninety-three or ninety-two or ninety-one and one half percent.

Q. When you reach ninety-three one half percent?

A. To ninety-eight and one half percent.

Q. In that range you get a violent explosion?

A. You get a most explosive mixture.

Q. Below the ninety-three one half percent you get a burning, is that right?

A. Not burning. I refer to the burning as a slow combusion, based on the rapidity with which oxygen can be supplied; for instance, if this were a solid tank of gasoline vapor and we applied a match here, that would burn as fast as the oxygen in the air could reach it, and finally burn up slowly; in order for it to explode, the oxygen must be there ready for oxidation at all points within the wall.

Q. Now we were talking about the mixture of gases where the air is mixed with gasoline fumes. In such a case, the oxygen would be present all through the mixture, would it not?

A. You mean for a homogenous mixture?

Q. Yes.

A. If it is homogenous there is the same amount in one tenth of a cubic inch as there is in the whole business.

Q. Of course; this sort of situation we are talking about is where the two gases become mixed, is that right?

A. Yes.

Q. Now the extent of the burning will depend upon the amount of oxygen available in the mixture?

A. You mean the violence of the explosion?

Q. No; I say the extent of the burning; I am talking about a situation where you have less than ninety-three percent of air. The extent of the burning will depend upon the amount of oxygen present?

A. Where you have less than enough oxygen.

Q. Less than enough for an explosion, but you still have oxygen in the mixture?

A. No burning at all in that instance.

Q. Let's talk about a situation where we have a mixture that consists of ten percent gasoline fumes, gasoline vapor, and ninety percent air; do you say there would be no burning at all in a mixture of that kind?

A. No.

Q. No burning at all?

A. You might possibly get some burning if it were hot enough, but in an open room there would be no burning.

Q. In other words, if into a container that contained ten percent gasoline vapor and ninety percent air you introduced a spark or flame, you would have no burning at all?

A. No.

Q. Why is that; how do you account for that?

A. By the very nature of the answers to the first question; the range between ninety-three one half percent and ninety-eight percent is the only explosive range.

Q. I am not talking about explosions at all; I am talking about burning. You say that if you had a mixture of ten percent gasoline vapor and ninety percent air introduced into a flame or spark, you would have no burning?

A. I would say there is no burning, but if you had some form of mixing or burner that would add oxygen to where you get in that range, it would burn; it throws it back into the same range to where it is diluted or overrich, and in neither of these situations is there danger of burning or explosion.

Q. Neither burning nor explosion?

A. No.

Q. Do you understand, Mr. Gibbs, that I am talking about a mixture of gasoline vapor and air which contains oxygen, all mixed up together, so that it is, as you call it

a homogenous mixture, and you say that a spark or flame will have no effect whatever on a mixture of that type?

A. No.

Q. Can you refer us to any treatise or text-book that would give us any information on that subject?

A. Merely the information brought out in the definition or description of the explosive points of the mixture.

Q. Do you recognize no difference between explosion and burning?

A. Oh, yes, I can; the burning is the application of the right amount of oxygen to cause combustion; burning is slow where the air can't get at it; you may take a room full with that rich gas and pour it out to where the proper amount of oxygen could get it, then it would burn; but if you only poured it in the presence of heat, with no better mixture than you had, you would not get burning in my opinion. I never performed the experiment; I am just giving you my opinion.

Q. Would your answer be any different if you had this mixture and it was open to the air, so that air could be admitted gradually?

A. If the air could be admitted, I think it would soon reach the place where explosion or burning would be possible.

Q. In other words, if you had the bilge of a boat filled up with a mixture of ten percent gasoline fumes and ninety percent air, and a spark or a flame were intrcduced into that mass, what would happen then?

A. Nothing.

Q. Nothing at all?

A. If it was out of that range.

Q. You understood my question was referring to an open bilge, did you not?

A. Yes, sir.

Q. So that there would be air within the mixture I am talking about?

A. That would be a homogenous mixture, ninety percent air and ten percent fumes.

Q. I understood you this morning to say that the only purpose of ventilation in a gasoline vessel in the engine-room was to furnish air for the men and air for the engine, is that right?

A. Well, it has, of course, general purposes, allied purposes; if there is some disagreeable odor of gasoline—in other words, the sole purpose of ventilators is to change the air, cool the air or settle the air in a vessel. That is what I am trying to say.

Q. Could you see any purpose in applying ventilators to a gasoline boat for the purpose of removing gasoline fumes from the lower parts of the vessel, or in the bilges?

A. I assume that it has windows—ventilators are the result of earl use, even long before the use of power inside of boats, internal combustion engines, before the days of internal combustion engines.

Q. You say that such things are no longer used?

A. No; I say that they are used for a very important purpose. They may assist slightly in some cases, but as a means of removing gasoline fumes, cowl ventilations are not as effective as people think they are; they are most inefficient, but assuming you have windows now—if you have no windows, then they are essential; you must have openings.

Q. Now do I understand you, Mr. Gibbs, from the point of view of a designer, that it would be impracticable to design ventilators for the purpose of removing gases from the bilges, because you couldn't determine how much gas you might have to remove?

A. No. I don't remember that I said that. I can tell you my opinion about that.

Q. You were asked some questions by Mr. Underwood and you answered them, and the effect of your testimony seemed to have that import, as I gathered it. Now, Mr. Gibbs, I want to be sure we understand each other on it.

Do you say that it would be impracticable to design ventilators for the purpose of removing gases from the bilges and lower parts of a gasoline boat, because it would be difficult to determine how much gas you might have to remove in a given time?

A. I would say that it would be impracticable to desgin a ventilator that would remove an abnormal condition, of gas inside of a boat.

Q. What do you call abnormal; what is that?

A. Like in the case of a collision or where some heavy piece of machinery is dropped on the gasoline line—a condition like that; you might have a leak that might dump the contents of a container into the bilge of your engine room; force-draft ventilators in my opinion could be designed which would be much better than windows—if you have no windows you could use what is called a ventilator.

Q. I think we can readily agree on that, a condition could arise which would precipitate the contents of one of these five-hundred gallons tanks in the engine room bilges,—nothing would take care of that. I am not talking about a case of that kind. I am talking about a case that might arise where there is a slow leak in a gasoline tank or feed line or some connection resulting in gasoline fumes settling in the bottom of the ship in a determinable quantity: do you say that it would be impracticable to design ventilation to take care of a situation like that?

A. I think that you could design ventilation which would aid the situation if such a situation resulted, but that a designer would not contemplate, in the design of his ventilation, such an accident, because the amount of it is undeterminable. The assumption that you are going to have gasoline leaks in a boat assumes that you don't know how to design a boat or can't properly construct it to start with,—except in the case of an accident—

Q. Your rule of design then is to make your tanks and your connections and your gasoline lines so perfect that

throughout the life of the boat that there will be no possibility of any leaks occurring, is that right?

A. Yes. Of course you provide windows and other means of ventilating such things.

Q. Now as a matter of fact, Mr. Gibbs, you know that there is no gasoline boat in existence that does not sometimes have leaks in her feed line connections or somewhere in the gasoline system?

A. No, I don't know that at all.

Q. Did you ever know a boat throughout her life that you never had to tighten a connection to take care of a leak in the gasoline at any time?

A. I know of a great many boats that I don't think ever had a wrench on that important thing known as the fuel line.

Q. You suggest that such a hazard is so uncommon that a good designer would not take it into consideration at all?

A. I think that a good designer would take it into consideration and he might try to apply a remedy for any normal thing that could happen.

Q. What do you call normal?

A. It may be that in fueling they failed to shut the gas off and it might slip down and jamb through the window or in some way get in the boat. I think that can happen. I think you want a system of ventilation that tends to keep the air cool; maybe that is your point, or my point; to keep the boat cool and supply the air for the engines, and I think that is a far greater service than the clearing of the room of fumes; I might say that the ventilation system is not ordinarily designed with the view of taking gasoline fumes out of the boat. In recent years there has been considerable work done on power methods of clearing a boat under the circumstances that you say might happen—leaks—but the ventilation I am referring to is non-mechanical not power driven ventilation.

Q. Of course there are other ways besides leaks that you might anticipate that gasoline would get into the bilges of a gasoline boat?

A. Yes.

Q. You referred to the practice of washing down engines with gas?

A. Yes; a bucket turns over.

Q. Or the bucket turns over?

A. Yes.

Q. The handling of gasoline in an engine room may create fumes?

A. Yes, sir.

Q. For instance, you referred to this five-gallon can—if it were repeatedly filled under this drawoff line and discharged outside of the boat, you would have a discharge of gasoline fumes in the engine room every time the gasoline can was refilled?

A. If that was filled outside of the engine room?

Q. I said if it were filled repeatedly in the engine room?

A. In the engine room?

Q. Yes.

A. You mean from the drawoff cock?

Q. That is what I said.

A. Yes.

Q. If there had been times that this gasoline can were placed under the gasoline drawoff and filled with raw gasoline, which was delivered outside of the vessel, and the can brought back and put under the valve again, you would have repeatedly discharged the gasoline fumes in the engine room each time that process was completed?

A. Where from?

Q. From the can itself?

A. No.

Q. You say no?

A. Yes.

Q. If you filled a can like that with gasoline and poured the gasoline off and put the can down on the floor, you would have a can full of gasoline vapor?

A. That depends on where you pour that gasoline off. Do you mean that you pour the gasoline off inside of the engine room?

Q. No, outside the engine room.

A. If you pour the gasoline can outside of the engine room you would put the bottom of the can higher than the top of the can in order for it to pour off, and gas vapor being heavier than air, it would pour out and the air would take its place, so you would carry back into the engine room a can filled with air.

Q. Pure air?

A. There may be in that case some intermingling, but it would be pretty pure air; that is, if there is anything to the weight theory.

Q. I am ready to assume with you, Mr. Gibbs, that when you pour off the contents of a can full of gasoline, that the whole contents of the can goes out, including any vapor in it at the time, but you do have that can and though you empty it, you do have that moisture of gasoline, do you?

A. Not very long, if you carried it outside and dumped it; you might have an odor, but it does stay long.

Q. It doesn't stay long because it evaporates?

A. Yes; it evaporates very fast.

Q. Evaporates inside of the can, doesn't it?

A. It evaporates while it is going out and while the air in coming in; as that stuff flows out it is followed in with air; it is just this turbulence right over the top of the can; the air rushes up over the top and replaces it. Now there is some intermingling of the stuff, but the air would go in through the top, would go in through the top of the stream of the gasoline, and would dry it up. I don't think you would carry back even a moist can, probably not even a damp can.

Q. Then I take it, according to you, that after you had discharged the contents of the can of gasoline and turned it upright again, it would be perfectly safe to drop a match in it?

A. That depends on the interval; it might be perfectly safe; it would in a very short time be perfectly safe.

Q. Mr. Gibbs, would you be willing to take this can down to the gasoline station around the corner and fill it with gasoline, and then empty it out and let it stand for one hour and then drop a match in it?

Mr. Underwood:

I object to that, if your Honor please; I don't think that Mr. Matteson—

The Court:

Overruled. Answer the question.

A. Would I be willing to do that? I think I would.

Q. I hate to ask you to do it, Mr. Gibbs, but—

A. I will state that I have already done it, but it was after a little longer period than an exact hour.

Q. Then if a gasoline tank has been open to the air through one or more of its openings for a reasonable length of time, I take it that it would be perfectly safe to apply a spark to it without any particular preparations at all?

A. Did I say that?

Q. I am asking you.

A. No.

Q. Why not?

A. In the handling of a case like that you exercise every known precaution, in fact, in all cases; and a shop like ours, like any other good shop, takes no chance on leaking gases. I can conceive of conditions that would cause a gas to be non-homogeneous, where one little section of the gas is all right and the other isn't. You might walk in an underground cellar that has been closed up, and walk

all around, and then all of a sudden certain conditions arose which would get to a narrow range of explosive mixture which accentuates the rest of it. Now in a large ten thousand gallon steel tank that they wished to use for gas, green gas, we were asked to make it gas free in order that certain repairs could be done, and the rule for that is to run steam through it 24 hours; after that we fill it completely full of water; when that is done we put a heavy pressure on it, and if leaks show up anywhere, we caulk the leaks. We have just caulked some oil leaks in a very expensive steam yacht, and that has been done by filling the compartment with water completely, and the leak has been repaired below the surface of the water; in other words, the void where the gas or fuel was has been displaced by water or by something else, and when you do repairs you take into consideration the fact than an explosive mixture might be lurking at some point, and when confined it is pretty dangerous.

Q. Then you don't thoroughly trust your theory of ventilation through convection, do you?

A. I do trust it in a given element of time. In a given length of time all gas would eventually leave; practically all gas would eventually leave a pace that wasn't confined.

Q. What element of time would be required?

A. What element of time would I require?

Q. Yes, what element of time would you require?

A. Depending on the amount of the leak; if it was the kind of gas that would come off of that—I don't know how it is referred to—but with these drain cocks the element of time would be very, very little, because the small amount of fumes that would come out of that tank would practically mix with the air and be wafted out like smoke coming off of a cigarette.

Q. I think you must be talking about something different from what I said. I am talking about a tank that has to be worked on, not any valves anywhere.

A. Oh.

Q. You said that any gasoline fumes in a tank that had been used for gasoline would be dissipated under your convection theory?

A. In time. But vents in a gasoline tank are extremely small at the top—sometimes at the bottom—the holes in the average gasoline tanks are extremely small.

Q. Now you have got holes in the tanks of the Seminole that have been open for a period of three or four years; would you consider it was safe to work on those tanks without preparation of the tanks?

A. Did you say for a period of years?

Q. For the period from 1935.

A. I think it would be perfectly safe. I know as a matter of routine that we wouldn't allow it done in our plant and I don't think any other boatyard would.

Q. Why?

A. Because when we permit it to be done today on my judgment, and tomorrow, 20 minutes after the gas left the tanks or the Seminole's lines—we have rules and fire drills.

Q. What is the purpose of these rules?

A. These rules are to leave nothing to the judgment—nothing of that nature—to anyone, but to go through the motions of complete inspection through displacement and steam them for a great period of time.

Q. You have described to us the method of preparing a tank for heat work by the application of steam for 24 hours?

A. Yes.

Q. That is the usual requirement for such work, is it not?

A. Yes, 24 hours is the usual requirement.

Q. You would not work on a tank such as one of these in the Seminole in your yard without having gone through that process of steaming it for 24 hours, is that right?

A. No, I would: it depends on the element of discipline and routine; I would not hesitate to work on that tank

after we had done two or three other things to it, which would not take us as long as 24 hours; the 24 hour period was in order to make it more than sufficient. Where human life is at stake, with the abnormal things—putting this intense heat in a *vented* surface. Now we put water in the tank and work on it below the level of the water, and that is in order to prevent us from burning through and getting a flame inside the tank. It is only for the outside crevices that we heat.

Q. You caulk a tank that is partly filled with water, do you?

A. Oh, yes.

Q. You wouldn't burn out a rivet with that method?

A. No, sir. If there was water in it you couldn't because the water would—you could get intense heat enough to do it, but that is not normal shipyard practice, at least none that I am personally familiar with.

Q. Now I think that you said engines of the type of the Seminole, as large as the engines of the Seminole, require priming?

A. It is possible to start them perhaps without priming, if you have enough air, but the practical thing is to prime them.

Q. As I understand your testimony, Mr. Gibbs, you said that in any vessel where you had gasoline engines as large as those in the Seminole, that it was necessary to make provision for priming the engines, is that right?

A. Oh, yes; it is a practical operation and an engine builder builds them that way.

Q. And that is true of engines built today as well as of engines of the age of the Seminole's engines, is that right?

A. Yes, every internal combustion engine may be primed. They are not primed as much as they were for certain mechanical reasons I will explain, if you wish me.

Q. Don't bother about that. Wherever you have engines of the size of those on the Seminole it is necessary to make provision for priming the engines?

A. You are entirely right.

Q. I think you said that you built a number of vessels in your yard, gasoline propelled, with engines as large of larger than those in the Seminole?

A. Yes.

Q. You say provision was made for priming with respect to those engines?

A. Yes.

Q. Well, what vessels have you built up there recently with provision for priming?

A. Well, the vessels that we have built recently are Diesel engines; in fact, nearly all "engines" that we are building is Diesel, but we are building a tugboat with a hundred horsepower gasoline engine with provision for priming it. I don't know the name of it; the owner will give it its name.

Q. Why is it that Diesel engines are coming into more common use than gasoline engines?

A. Because they run on a cost of about—anywhere from about one-fourth to half the cost of the gasoline engine, and because they are more free from fire hazard.

Q. Why is that?

A. Because they burn oil which is hard to cause to burn when it is locse.

Q. Why is there this difference in burning quality between the oil used in a Diesel engine and gasoline?

A. One is more volatile, and the other is the tendency for the gas to get away. I have known ships with oil in the bilge, heavy oils, where people are smoking and where there was a Scotch boiler running, as a matter of fact.

Q. The fire hazard is substantially less with a Diesel boat than with the gasoline boat?

A. Yes, sir.

Q. What is the flash point of the oil used in the Diesel engine; can you tell me?

A. I don't know; I know generally that it is higher than that of the gasoline and the more volatile fuels.

Q. About what is the flash point?

A. I don't know that: I am not a chemist; I do not know their chemical contents, but I know their general properties, and for the specific figures applying to those properties I would ask a chemist or the man responsible for its manufacture, regarding those things.

Q. Of course if a gasoline engine were perfect in all its parts there would be no fire hazard in connection with a gasoline engine, would there?

A. You mean even in the filling of the tanks? If there were no possibilities of any leakage of gasoline in a gasoline boat, there would be no fire hazard.

Q. And if a gasoline boat is properly—

A. Just a minute; I would like to correct that. She might get into a general conflagration, in which case she would be more dangerous than any other type of boat from outside sources.

Q. You were speaking of filling; the filling pipe is, of course, a part of the general installation, is it not?

A. I wasn't referring only to that. I have had a great deal of experience with the operation of boats for both pleasure and commercial purposes, and very often a man will go to a filling station or depot and get a can of gasoline and put it down in his boat, and kicks it over and drops it; so with the Diesel job, if it was Diesel oil, and you kicked it over in the bilge, you would have very little danger of fire or explosion in the room. You might be working on your gasoline and had one of these big cans and you might drop it, one of these square cans; I have known this thing to drop and crack a soldered seam and you put soap on it to stop that leak. If you are handling gasoline aboard a gasoline boat, you have a boat that is more dangerous, more suseeptible to fire hazards; than one handling something which has a very low volatile point.

Q. Below the deck, I take it, there would be no difference in the danger between the Diesel boat and the gasoline boat?

A. Assuming there were no leaks?

Q. Yes.

A. Yes, if there were no leaks.

Q. I gathered from your previous testimony that leaks in a gasoline boat were so unusual that it wasn't necessary in the design of a boat to make any provision for removal of fumes that might come from that source. Do you adhere to that testimony?

A. I think you gathered something that I didn't intend to testify. I said that the lines could be made tight, but that it would be impossible to anticipate just what kind of a leak would occur, and that ventilation provided for air to the engine, which is many millions of cubic feet, and that it is quite sufficient to do that with ventilators of the non-power type.

Q. Now, Mr. Gibbs, isn't it a fact that the possibility of leakage from gasoline lines or connections below deck is a well recognized and serious hazard in gasoline vessels?

A. Well, it does happen in vessels, but not in good ones, but there is no apparent need, no need, to be apprehensive for leaks in lines that are properly designed and installed. Some vessels are like junk automobiles and fires occur from things of that kind.

Q. If a gasoline did occur in a vessel would you call it a junk vessel?

A. I would have to know the cause of the leak.

Q. Well, in the ordinary course that is nothing extraordinary to understand?

A. Well, it would not be an unknown case. We could drop a hatchet or hammer on the line, and you could go there tomorrow or any other day and rap on a pipe and cause a leak, but at that time you could take a pump and dry your bilge out and repair the leak. One of the most dangerous things known to life is a gas stove, and those lines are put in where even they can't be inspected and they never leak; if they are tight to start with, they remain tight. There are cases where perhaps that doesn't

apply, but no one ever thinks to have an inspector come out to see whether their gas pipes are leaking.

Q. Would you call seepage from such connections such an extraordinary hazard that it doesn't have to be anticipated at all?

A. It is a most unusual hazard; in other words, the primary purpose of the ventilator would take care of any seepage that occurred, and you wouldn't add additional ventilation to take care of such leakage; if you had a major accident which created a leak, it could be corrected by the repair of the leaking part, but a ventilator—oh, I think what I have said covers it.

Q. Do you build gasoline pleasure vessels?

A. Oh, yes.

Q. Name one, for instance?

A. The Fortuna is one.

Q. What size is she?

A. 80-foot houseboat, similar to the Seminole.

Q. What sort of engines has she got?

A. Murray & Tregurtha.

Q. Do you build any stock type of pleasure vessel?

A. We built a great many—our only stock boat today is a steel tug which may be operated with either gasoline or Diesel, at the option of the buyer; and a power seaskiff which we make in great quantities, which are gasoline driven.

Q. Are those vessels piped with brass pipe?

A. The little engines are practically without piping; they only carry a gallon, and they have a small copper tube from the top of the carburetor.

A. I didn't ask you that; I asked you whether they vessels are piped with brass pipe.

A. They are little one-horse seaskiffs, and the whole thing is built in that—there is a small copper tube that goes from the tank to the carburetor.

Q. On the gasoline tug boats what do you use?

A. On the gasoline tug boats we use brass pipe, and in the Diesel iron pipe.

Q. Iron pipe?

A. Yes.

Q. Of course there is considerable distinction between Diesel oil and gasoline as to the pipe to be used, is there?

A. Yes.

Q. What is the difference?

A. The difference is in the corrosive action of the two. Diesel oil is very bad for copper tanks.

Q. Why is that?

A. Probably due to the presence of sulphur in the oil.

Q. And you get sulphur in gasoline to some extent?

A. I think some of it does have it; it is not supposed to be there, but some of it has it but nothing like the extent to which it is in the crude oils.

Q. You will find some of it in all gas?

A. I think it is possible to find some small quantity in gasoline, but very small.

Q. Has the Fortuna got copper tubing or copper piping in her?

A. I don't remember that detail, but unquestionably she would have had it and brass pipe when she came from us.

Q. Do you know where she is now?

A. No.

Q. Can you tell us the name of her owner?

A. Her owner is dead; it was Mr. Richmond Talbot of the Port of New York.

Q. Have you belt some gasoline propelled tank vessels?

A. We built the Leslie, at least it was built under our supervision, and she had large Palmer engines with brass pipe; I remember that distinctly.

Q. Was she a tank vessel?

A. Yes.

Q. What size?

A. 110 feet or thereabouts.

Q. Who was she built for?
A. Built for the Gulf Refining Company.
Q. When was she built?
A. As near as I can recall, about 1914 or 1915.
Q. Have you built any tankers recently?
A. With gasoline engines?
Q. Or steam.
A. Nearly everything we have built has had Diesel engines, passenger or otherwise, with the exception of government vessels, and we have built a great many of those.
Q. What government vessels have you built with gasoline engines recently.
A. We built 16 rescue boats of 200 horsepower Kermath gasoline engines.
Q. What size were they?
A. 30-foot boats, about 26½ miles.
Q. Are they open vessels?
A. They are semi-open; the engines are under cover, sort of a box, and the pilot steers from the semi-open house and the forward part of her was closed, where he can go in and sleep.
Q. Have you built any larger vessels than that for the government?
A. Yes, we built some 80-foot, 30 mile boats, 1600 H. P.
Q. Were they gasoline driven?
A. Yes, sir.
Q. They were for the costguard, I understand?
A. That is right; they were for the Coastguard.
Q. How recently did you build those?
A. Just a little while ago; just a little bit prior to the last contract on the rescue boats.
Q. Are these 80-foot boats in service now?
A. Yes.
Q. Any of them in this vicinity?
A. I don't know.
Q. Do you know the names of any of them?

A. They only have numbers; they have no names. They are known as 80-foot, 30 mile boats; I don't think there are any others; I think we are the only ones that built them.

Q. They have an engine room, do they?

A. Yes, they have an engine room.

Q. And their engines require to be primed, do they?

A. Oh, yes; no, they don't; there is provision for priming but they don't—none of these boats would I say would fail to start unless primed.

Q. But, as I understand, it was necessary in connection with them to make some provision for priming?

A. That is right.

Q. What make of engines were they?

A. Vimalert. Mr. Matteson, may I make a statement about priming and avoid a great deal of discussion later on.

Q. I think we understand each other, however, I have no objection.

A. What?

Q. I have no objection, but I think we understand each other.

A. Well, priming and choking are the same thing, answer the same precise purpose; you may either take gasoline and pour it in the head or you may, if you have enough electricity, cause a vacuum, a high vacuum, in your intake line and increase the suction on your gasoline and take a very rich mixture into the head of your engine, which serves the purpose of priming, however, all engines that act through a choke, as does the automobile, have means of priming, including the present day automobile.

Q. I am not sure that I can understand you. I understood you to say that all engines of this size required priming, and we are talking about only one thing and that is priming through a petcock; for instance, take these engines here, the Vimalerts, is there provision made there for priming through the petcock, a petcock?

A. A provision for supplying gasoline through the heads with a choke, which is the same general thing; it would seldom be done.

Q. Nevertheless, provision was made for priming through the petcocks, if that were necessary?

A. On that big engine it was necessary then and would be today if such an engine were built.

Q. And there was provision for that on these 80-foot boats you spoke of?

A. Yes, sir.

Q. How were the gasoline tanks located on those 80-foot boats?

A. The exact detail of that I don't remember.

Q. What kind of tanks did they have?

A. They were of an everdura metal, a metal thought to be the very finest form of metal, but a metal that I understand today is not so highly considered as it was then.

Q. That is a non-ferrous metal?

A. It is a combination of silicon and bronze; it is called silicon bronze.

Q. That would be non-ferrous?

A. That is true.

Q. What shape were those tanks?

A. I don't offhand remember that.

Q. What was their capacity?

A. I don't remember.

Q. What kind of piping connections were there in the tanks and the motors?

A. In those 80-foot boats, as I remember, was tubing.

Q. Copper tubing?

A. Yes, rather heavy copper tubing.

Q. They were built according to the Coastguard specifications, were they?

A. Yes.

Q. And the specifications called for copper tubing, did they?

A. In that instance they were built according to the Coastguard specifications. We had nothing to do except carrying out the specific specifications.

Q. Did they have drawoff valves in the engine room?

A. Those particular boats, I don't think they did.

Q. What provision did they have for ventilation in the engine room?

A. They had mechanical blowers; Yes, I know they did.

Q. How were they installed?

A. Through a row of conduits and electric meters; the entire ship was mechanically ventilated with force-draft.

Q. And these blowers; where did the gas go; go to the bilges?

A. That detail of those boats I don't recall, but most likely they did. The floor part was very high, and the engines sat up on beams and carried the—

Q. To the best of your recollection they had forced ventilation to the bilge?

A. I am not prepared to make any statement on that at all; I don't recall the arrangement.

Q. Could you give us the specifications of those boats?

A. I don't think there would be any objection to it, but we are not giving out any specifications without permission of the government at this time.

Q. I understand that you have not built any gasoline tankers lately?

A. Not within the last few years have we built any.

Q. So far as conditions in the engine room are concerned in a gasoline driven motor tanker, do you say that the requirements for ventilation for safety are any different than they were on the Seminole?

A. You mean installation, complete installation?

Q. Yes.

A. I would say entirely different.

Q. Why would there be any difference?

A. In the first place, a tanker has but one duty to perform, and the Seminole had many duties to perform; the tanker has a skilled crew, with no passengers, and the Seminole had passengers and a crew that was unskilled and undisciplined, as well as a crew that was under no supervision of the government in any way.

Q. I gather from that, Mr. Gibbs, that the requirements for safety in construction would be higher in a vessel of the type of the Seminole than there would be in a tanker, for the reasons that you have given; is that correct?

A. In which would be higher?

Q. In the Seminole than in the tanker?

A. Yes, they would be different; the question of that drawoff valve I think was peculiarly essential in the Seminole as compared to a gasoline tanker, although in that particular thing a drawoff valve would have been all right there, in fact, in any boat with gasoline engines, if it were for priming alone I think that would be a good thing.

Q. And you would say that a drawoff valve would be as proper in a tanker as it would on the Seminole?

A. If there were a danger at all in connection with it, with the drawoff valve, it would be less indicated in a tanker than in the Seminole, because you don't have to handle gasoline for purposes other than the priming of the engines. I think that there is some slight danger to the drawoff valves for gasoline in the engine room, provided you could completely do away with it. Now you could put enough batteries in a tanker to speed the engine so that the inefficient method of choking would give you your gasoline for priming. These engines that were air-cooled—and that was the only way at the time that was developed—had a very limited amount of air; it is not practical to have much, and they had to start, without the necessity of the slow process of fueling, which involves a large amount of machinery and air compression in order to suck up a little richer mixture than is otherwise used.

With the tanker I would probably go to the expense of installing the engines and eliminating what you might say was the smallest hazard, because when a tanker explodes in a congested area it explodes many thousands of gallons of gasoline, of fuel; it is carrying a much more dangerous cargo, than the human or just pleasure passengers.

Q. I take it that you agree that there is some degree of hazard about a drawoff valve; is that right?

A. Oh, yes.

Q. And in your opinion that hazard, if it existed, would be greater on a yacht than on a tanker because you don't have this experienced personnel on the yacht as you do on the tanker?

A. Not only that but as a practical proposition a tanker is a valuable thing, earning a great deal of money, and goes far more than a yacht, and under such an arrangement you could go to the electrical device which would perform the operation of priming.

Q. Assume for the moment that we have drawoff valves in both of them.

A. If you had the same kind of an engine I would say that even in the tanker a drawoff valve would have been a satisfactory way of getting that priming fuel.

Q. As I understand it, the Seminole customarily carried fuel in her tanks, not only for herself but for the purpose of supplying gasoline to other vessels that might be in her company?

A. She was a mother ship of a fishing fleet, as I understand it.

Q. In other words, she carried fuel not only for her own consumption but for the consumption of other vessels?

A. Yes, sir.

Q. And to that extent she might be regarded in the sense of a tanker herself, is that right?

A. Well, no; she carried a small; we know what she carried and we know what a tanker carries; a tanker car-

ries her entire displacement with fuel, every available inch of her is tanks.

Q. 2000 gallons of gasoline is a very substantial quantity of gasoline, and if it is set free and on fire by explosion or other accident—

A. Well, it is not as great a quantity as ten times that; it is a considerable amount of gasoline, but nearly all yachts carry that much. The Seminole is not materially different from other yachts; the Seminole had no range, no distance to go; the average yachts takes fuel to carry it for a great distance where gasoline cannot be obtained, so that she can return.

Q. The hazard to lives on board and property in the vicinity, you would not minimize in the case of an accident to a vessel like the Seminole?

A. I would not minimize it.

Q. You would not?

A. She would be like any other yacht lying at a dock; her fuel would be less than in some yachts.

Q. You were drawing a distinction between a tanker and a yacht like the Seminole, as I gather it, based on the degree of hazard in the presence of a relative quantity of inflammable oil carried on board?

A. Yes, I would say the greater the weight of the amount of combustible fluid the greater the hazard.

Q. By the same token, Mr. Gibbs, you would not say that the amount of gasoline carried on the Seminole was a negligible hazard, would you?

A. Well, it was the same hazard that would exist in any yacht of her size, no greater.

Q. Is that right?

A. Yes; most of the oil, as I understand it, was for the use of outboard motors which would take as much as two gallons at one time, maybe five, the big ones ten.

Q. Are you familiar with the government regulations with respect to the construction of gasoline propelled tank vessels?

A. No; I know generally some of them.

Q. I gather from your testimony that you would not hesitate to install on a tank vessel a drawoff vessel.

A. I would hesitate if the Department of Commerce refused to let her sail if I didn't obey one of its rules, and the first thing I would do would be to get the requirements, providing that the oil company giving us the contract asked us to do it, but in all our work, in nearly all of it, we merely work to blueprints, and those things are looked after by the designer. Where we design a ship, or collaborate with the architect employed to design a ship, we find out what the requirements are, whether it is Lloyds, the Department of Commerce or the Republic of Honduras.

Q. Isn't it a fact that is respect of tank vessels the Department of Commerce has made regulations prohibiting the use of outlets for drawing gasoline from the engine room compartment?

Mr. Underwood:

I object to that; that is the same thing we had yesterday. I object to it on the further ground that the proper way to prove such regulation is not out of the mouth of this witness.

The Court:

Let me hear the question read.

(Preceding question read by the Reporter as above recorded.)

The Court:

Isn't that the same question we had yesterday, Mr. Matteson?

Mr. Matteson:

I think it comes in a different way, because this witness has testified as to the relative hazards between tank ves-

sels and a vessel of the type the Seminole was, so that we have a standard of comparison between them. He has also represented himself here to be a competent builder of tank vessels, and such vessels would have to be built subject to these regulations. I am asking him about his knowledge with respect to those regulations. It seems to me that this is a different question than we had before.

Mr. Underwood:

In the first place, this witness has not said that the hazard is greater on the Seminole than it would be on a tank vessel. He said precisely the reverse; in the second place, this doesn't go to the question of the witness' qualifications, because he said he has not built any tank vessels in recent years, and it is in the record that these regulations are dated 1936. On neither of these two grounds is this admissible. It calls for a comparison between two vessels of totally dissimilar construction and use. He refers to regulations not in force at the time this fire and explosion occurred. Moreover, it is a matter of proof and government regulations ought to be proved properly and not proved by this witness. It is the same thing we had yesterday when your Honor sustained our objection.

Mr. Matteson:

I am questioning this witness with respect to his knowledge of the accepted practice in a field with which he is supposed to be familiar.

The Court:

Gentlemen, I want to limit the inquiry as much as possible, in order to complete the case, but notwithstanding the desire of the Court to limit the inquiry as much as possible, I don't think the cross examination should be unduly limited. I think we ought to try to confine the inquiry as to what was required in good construction of the

Seminole, and then next inquire as to vessels of that type. We have gone considerably into other character of vessels. It may be that this has some relevancy. I am not going to sustain the objection as excluding it entirely, but I make these remarks to indicate the views of the Court. I doubt that it has much relevancy, but there is a possibility that it has, so I will let it go in. You may answer the question. Read the question.

(Preceding question read by the Reporter as above recorded.)

A. I don't know.

Q. Now, Mr. Gibbs, I think that you have testified that you make it a practice to keep abreast of the literature dealing with the field of boat building that you are particularly interested in?

A. Yes.

Q. Are you a member of the National Association of Boat Builders?

A. No.

Q. You know that organization?

A. I have been invited to join it, but it is so far away, where we can't get any benefits, that I have declined the invitation, this year in writing.

Q. What is that association?

Mr. Underwood:

I object to that; it is utterly immaterial.

Mr. Matteson:

I am developing the source of information available to this gentleman.

The Court:

All right; I will overrule the objection.

Mr. Underwood:

No; that is not the purpose of the question. It appears that the National Association of Boat Builders is a subscribing member of the National Fire Protection Association which has made some rules, and what Mr. Matteson wants this witness to do is to help him prove that the National Fire Protection Association is all right and then argue from it that the rules are all right. I don't think that this is any part of this case at all. There is a proper way of proving these things, and I don't think he should try to inject this into this case in this back-door method.

Mr. Matteson:

I will say—

The Court:

I will try to confine it.

A. Do you refer to the Association, the secretary of which is Mr. Parver, who holds the National Motorboat Show every year.

Q. I believe that is right.

A. Now read the question.

(Preceding question read by the Reporter as above recorded.)

A. It is an association of men who build boats and engines; its members are principally manufacturers of engines; not many boat builders are members of it. Its principal purpose, as I understand it, is to give a motorboat show each year as a business proposition, and charge people, who are not members of the association, for space in the show and to profit by the recipts of the association. As we have been exhibitors at the show we were asked by the secretary to join it, and we were told of the advantages relating to the dividend that we would get from the

receipts of the show. I think that our company at one time was a member, when we manufactured engines, but I am not sure of that at all. Another one of their purposes is to protect the industry against adverse legislation relating to the merchandising of products; they go for increased tariffs on engines and boats and the elimination of outside competition.

The Court:

That is just your understanding?

A. I have worked with them as a member of the committee in Washington and I have been—

Q. I don't want to interrupt you, Mr. Gibbs, but you have given us enough of description, unless you want to add something.

A. If you want the complete story I will give it to you. Now that I have gone into it I recall very definitely that that body had a meeting in Washington and called on Senator Fletcher—

The Court:

I do not think it is necessary to go into that any further.

Q. Do I understand that it was an organization that would come under the classification of a trade association in this particular trade?

A. Bounded together for largely merchandising purposes and the betterment of their business, but, as far as I have been able to detect, not for the dissemination of technical knowledge.

Q. I understand that your information with respect to problems involved in your business of boat building has come from conferences with other people engaged in the same line of business, among other things?

A. A very small part of it has come from that. I have been visited and attended various conferences called by

the government; have discussed technical problems with nearly all the branches of the government. My knowledge has come from the construction of the finest types of ships that are built, to the extent of many million dollars worth.

Q. I didn't mean to eliminate the other things that you have mentioned. You have suggested a few here. I believe you said that in the design of a gasoline propelled vessel it is not necessary to give especial attention to the ventilation of the bilges for the purpose of removing possible accumulations of gasoline fumes there?

A. I didn't mean to make any such suggestion.

Q. How would you summarize it?

A. I meant the ventilators going into the bilges, where there are holes in these bilges, under the floor boards, would not greatly increase the speed with which gasoline would dissipate, and if there were sufficient holes elsewhere—

Q. And consequently, in view of your view of it, ventilators—

A. I said non-power driven ventilation, acting on the principle of convection.

Q. In other words, you don't think it is important to have ventilators that rotate air to the bilges for that purpose?

A. No; not non-power ventilators.

Q. Do you think it is important to have power ventilators that extend to the bilges for that purpose?

A. I think that they could be of material assistance if you knew you had leaks or likelihood of leaks, a good method of protection in obviating some dangers.

Q. As I understand it, your view generally with respect to motorboats was that it was not important where you had overhead ventilation, but have either natural or power driven ventilators reaching to the bilges?

A. No, I don't say that power driven ventilators were not of material aid. I tried to convey the impression that gasoline lines could be made so well that these power

driven ventilators would have been unnecessary, and that any increase in the ventilation required for the supply of air to the engine and to the crew would not be of much effect.

Q. In other words, in the average vessel you think it is not important to have either natural or force-draft ventilators to the bilges?

A. Well, I think natural ventilation to the bilge through a cowl ventilator is possibly a dangerous thing.

Q. Would you say it was undesirable?

A. It is undesirable. That is a cowl ventilator without force-draft, you say? I think that the improper handling of a force-draft ventilator is a dangerous thing. I don't think that there is any system of ventilation that will cure the danger of a leaking system of gasoline supply, whether it be power, whether it be force-draft or whether it be natural ventilation, and I have my reasons for saying that.

Q. Can you refer us to any discussion or authority, any reputable authority, which supports your view on that point?

A. Discussions that I have had with the highest type of authorities that I know of, but I cannot refer to names; discussions with the various departments that I have dealt with, such as the Coastguard and the Army. I am almost in continuous discussion on technical details and methods developed for the design of power plants and hulls. Just whether Admiral Johnson of the Coastguard told me the things I am now telling you, or whether it was Commander Thiel or Commander Furey, I cannot say, but I can tell you that that source of information has been of great influence on me in the determination of my views on this question of ventilation, and from that source I have learned of accidents that have resulted, and changes have been made which I think will even go back into those rules and become a part of them.

Q. When I asked the question I was not referring to personal conversations with people you regard as authority; I was asking you about anything published in print anywhere that you can refer to that would support your view that natural or force-draft ventilation through ventilators leading directly to the bilges was either unnecessary or undesirable?

A. I cannot give you the date of this published account, but there is a published account of a fire and the destruction of a yacht as a result of the use of a force-fan type of ventilation. Now that was a written report; I don't know the publication or the date, but I do know that the boat was destroyed.

Q. All right; now, as I understand you, Mr. Gibbs, you make it your practice to keep yourself familiar with the literature that would cover such a subject, is that right?

A. Yes. I don't see all things, but I see a good deal of literature, and there is some of it that I don't have the time or the inclination to look at.

Q. Are you familiar with the publications of the National Fire Protection Association dealing with this subject?

A. No.

Q. Don't you think that publications of the National Fire Protection Association dealing with marine fire hazards on boats of this type would be an important thing for a man in your position at least to have knowledge of and be familiar with as a part of the learning on the subject?

A. I do not. I could read many magazines that are completely unbiased, that have no particular business, that would better give me what I need, that is, the truth; I mean facts that help me mold my judgment.

Q. Can you think of anything that would be more informative on the subject of marine fire hazards than a report of a committee of experts who had made a careful

study of the subject and made recommendations, specific recommendations, which were published by the National Fire Protection Association?

Mr. Underwood:

I object to that on the ground that it calls upon this witness to compare two indefinite things.

The Court:

He says he didn't read that literature. You can ask him why he didn't read it, and let him tell it in his own language. I will sustain the objection.

Q. Why have you not considered the publication of the National Fire Protection Association?

A. In the first place, I never had been invited to consider it; I have never seen it and I didn't know of its existence; in the second place, the marine fire underwriters I know something of and respect for a certain viewpoint. I have also worked with their branches, as stated in my qualifications, on technical matters that they are experienced with, but I am inclined to think that there are other sources that would give you much more accurate knowledge as to design. I further have the idea that people with the insurance viewpoint, dealing with methods and procedure, are inclined to tell you of methods of the past, past methods up to the time of the printing of the circular, and they are not inclined to do the research work that a man from another viewpoint than that of insurance would do. Such information as I think would be valuable to a boat builder would come from the man with the means to build a great number of boats. I can think of no greater or better source of information available to me than the naval architects of New York, the captains and operators who operate various boats of all kinds, and the purchasers of boats in government circles that I have an opportunity to confer with.

Q. Do I understand that your point of view is that an expression of opinion by an underwriter's representative is not worthy of consideration, even if only for the purpose of—

A. By no means; I think that the underwriters have in that book a lot of very sound sense, but I think I have discussed everything that i n that book, enough to fill six of these books, with men whose daily life is the development of such ships as we are now studying.

Q. I understood you to say that you had never seen this book.

A. I have never seen it, but I have it here—certain things that underwriters might ask for. I get a good deal from the manufacturers of materials. For instance, the Pyrene extinguisher—the underwriters have approved it, and it is fine, but I knew it was good three years before they approved it, and if I had gone by the underwriters books or book the ships that have been saved by Pyrene extinguishers would have been destroyed.

Q. By the same token, Mr. Gibbs, do you think that you appreciate the hazards and the necessities of this type of vessel sooner than the underwriters would?

A. I think it is entirely possible that I would. I have been given commissions, several commissions, to do things that hadn't been done before, because I was selected as a man with the knowledge and ability to do them. For instance, I built the first engine that the underwriters would ever approve for fire fighting under their label. They didn't tell me how to build it; I built it and it is in use today.

Q. Well it is your understanding then that these underwriters' views on subjects like these are inadequate, is that right?

A. I think, by the very nature of it, that they cover a period that has passed; I have seen many moving pictures of their methods, methods of fire prevention; I think

that we are not bound by their rules; our engineers are in a position to get the facts quicker than some underwriters. I don't say that is always the case, but that is my opinion. I think that where we are not bound to obey the rules, that our engineers are in a position to get the facts quicker.

Q. Well, I am not suggesting that you do not obey any rules, and I am not suggesting that you are bound by any rules, but wouldn't you consider a publication of an organization like the National Fire Protection Association, dealing with hazards of this type, a part of the literature on the subject worthy of your consideration?

A. I think it would have much of interest to me but not of greater interest than other things?

Q. Now is it your idea that the National Fire Protection Association is an underwriters' association?

A. No; it is my opinion that they operate in many ways, as the Southeastern Tariff Association, so-called, the one that operated here, but I think it is under another name; they were in the engineering department and with nothing whatever to do with underwriters except to confer with them. I think that the Underwriters subscribed to their stock, or just what the financial set up is I don't know, but that was my understanding at the time.

(Recess.)

Q. Well, do you know Mr. Luders, the head of The Luders Construction Company?

A. Oh, yes.

Q. And they are a reputable firm of yacht builders, are they not?

A. I regard Mr. Lauders as a rather eccentric person, as having a good deal of dealings with him; I know him very intimately.

Q. Do you know the firm of Henry B. Nevin at City Island, New York,—do you not?

A. I know of them; I have never met Mr. Nevin, although I think that he sells our products.

Q. They are one of the outstanding yacht builders of the country.

A. I would say that I am not familiar with his boats, to call them right offhand. I think he bears a reputation of being a good man,—that is, the firm, a good firm.

Q. And do you know Mr. L. B. Jackson, the Chief Engineer of that firm?

A. No.

Q. Do you know Mr. George F. Crouch, the Naval Architect of that firm?

A. Extremely well. I know Mr. George F. Crouch; I don't know what firm he is with.

Q. And what do you know about him?

A. I know that I gave him a commission once to design a boat for me, and I have discussed with him many technical matters relating to period vibrations in crank shafts, Diesel engines; I know what his background is.

Q. And do you know Mr. L. B. Jackson, the Chief Engineer of Fairbanks-Morse Company?

A. I think I know him; if he is the former engineer of the Gulf Refining Company.

Q. And he is a reputable engineer?

A. He has a very responsible position. I am not in position to say that he is a scientist, a good engineer; he is probably an excellent executive, if he is Chief Engineer of the Fairbanks-Morse Company.

Q. Do you remember Mr. J. L. Crone, who was the supervising inspector of steam vessels in the New York district a few years ago?

A. No.

Q. Do you know Mr. George A. Smith of the American Bureau of Shipping?

A. Well wasn't he formerly with the Bethlehem Steel, Secretary of the Marine Association.

Q. I don't know.

A. I know one Mr. Smith, and I think that is the same one, I am not sure.

Q. And he is a competent man in that field, is he not?

Mr. Underwood:

Which Mr. Smith is a competent man?

A. The Mr. Smith I know spends more of his time in organization of shipbuilders, and meetings, and sort of chamber of Commerce work as applied to this.

Q. This is the Mr. George A. Smith who is connected with the American Bureau of Shipping?

A. Well I think that would be a different man.

Q. What is the American Bureau of Shipping?

A. The American Bureau of Shipping is an association which has to do with specifications of vessels, somewhat similar to Lloyds, in the Bureau of Veritas.

Q. It is the American Classification Society, is it not?

A. I built nearly a million dollars worth of ships under them.

Q. Are you familiar with their rules?

A. With some of them. When I get a job, the American Bureau of Shipping, if the architects haven't drawn the specifications and leaves this up to me, I familiarize myself with their rules as of the date. Unless I have such a job I don't go into it.

Q. Now you say you know of no view opposed to your own with respect to this subject of bilge ventilation in the engine room in gasoline yachts?

A. I have not made such a statement.

Q. Well would you say so?

A. I don't know what other people's views are.

Q. You never have known of any opposed to those you have expressed?

A. You mean, people that differ with me?

Q. On this subject, yes.

A. Well tell me what the specific problem is, and if I know someone that does differently from the way I do, I will call his name.

Q. Well you offhand know of no one, is that it?

A. I offhand know of no one who differs with me on a technical problem?

Q. On the problem of bilge ventilation in a gasoline yacht?

A. Well I have not discussed this particular thing with Mr. Crouch, if that is what you mean, so I think that he would agree with my views, as we do agree on most things. But I cannot,—I haven't discussed it and I don't know. I have discussed with Mr. Crouch a great many engineering problems, and I think we see alike on those things.

Q. Would you accept Mr. Crouch's view on a point such as the requirements of ventilation in the bilges of a gasoline yacht?

A. If he gave me reasons; I would change my view if he gave me what I regarded as a real reason. But I am not,—would not change my view unless he did. I have thought very deeply on the matter of the movement of gases, and I have been right in most instances, even to the extent of saving people's lives,—or rather seeing them killed when my advice was not taken.

Q. Now if this pamphlet, Libelants' Exhibit 97, and the views expressed therein, were the result of joint efforts of a committee whose membership included the men I have just mentioned to you, would you consider it was entitled to considerable weight?

Mr. Underwood:

Wait a minute, may I have that question read, please?

(The question was read by the reporter.)

Mr. Underwood:

I object to that as incompetent, irrelevant and immaterial, calling for speculation.

The Court:

Now read the question again.

(The question was re-read by the Reporter.)

The Court:

No, I will have to sustain the objection to that; I think, that is your case, Mr. Matteson. I think the standard is, if you have a set of rules that Mr. Gibbs differs with, if he has testified in any detail in a different manner, that you can question him. If a set of rules adopted by a certain association on particular points, set this up, do you agree to that; or, if your answer is different, if you testified differently from that, can you explain it? You might question him about that, but I don't think that you are entitled to ask this question. I sustain the objection.

Q. The men whom I have named you would not consider underwriters' representatives, would you?

A. I don't know the conditions under which they wrote that book.

Q. I am not asking that.

A. If they were employed by the underwriters, to write it, I would say they are underwriters' representatives.

Q. As far as you know, they have no connection with underwriters?

Mr. Underwood:

I object to that as completely speculative; in proof of nothing.

The Court:

I think that is well taken.

Mr. Matteson:

I will withdraw the question.

Q. As I understand it, although you have been dealing with this subject for a long time, you never have given any consideration to the views expressed in these two pamphlets, Libelants' Exhibit 97, and the earlier edition of 1926, or the later editions of the same publication?

A. The only time I was putting regular time on the underwriters' pamphlets, was when they gave me a specific job that I was required to do to meet their specifications, and with those details I familiarized myself perfectly. I regard those things as information which can be got elsewhere quicker and less biased,—with no disrespect to the underwriters at all, but from a view other than theirs.

Q. Now I would like to come to the point of corrosion. I understand your theory with respect to corrosion in a tank which has water in it, is that the oxygen and the water have completely combined, consequently there is nothing to oxidize the iron; and where water is placed adjacent to iron it will not rust: Is that right?

A. No; there is oxygen in water; you can take it out,—I mean, free oxygen. But the water that would occur here by condensation would have oxygen in it. That is where man and most animals living in water, live,—oxygen-breathing animals. There is a limited amount, however, it is in very, very small quantity, and a layer of water,—a tank completely filled with water would show practically no rust at all.

Q. Well then do I understand a tank completely filled with water would not rust?

A. Oh, yes, but to a very small extent; that is the same water.

Q. Now what produces corrosion besides oxygen?

A. Corrosion is produced as I know it,—I mean, oxidation, corrosion is oxidation, it is sometimes called,—is produced by oxygen; a combination of oxygen with the steel, if that is the thing that you speak of as rusting. It is augmented by many things, but that is what corrosion is. We are speaking of iron, aren't we?

Q. Yes. Now condensation in a tank in the vicinity of sea water, would contain a certain amount of salt, would it not?

A. From sea water?

Q. Yes?

A. I don't think a great deal. There may be some slight amount of salt in the water.

Q. And that is indicated by such a thing as the more extensive corrosion of steel window frames or other steel objects nearer to the sea than further away, is it not?

A. Well the wind, I think that's liquid water, in most instances, where the wind actually picks up, as it did at Miami, the salt water, and carries it away. The evaporation of the salt water picks up no salt, and which comes from the ocean,—the salt water.

Q. Well in the evaporation, the water containing salt will carry some salt with it, will it not?

A. No, sir.

Q. If you wanted to distill salt water you would have to distill it two or three times to get it clear of salt, would you not?

A. If you distilled it too rapidly, you could drive over with a mechanical current into your atmosphere; but the method of making salt, or distilling water, is evaporation. Evaporators sometimes leak.

Q. Acids will extend corrosion, will they not?

A. Oh, yes.

Q. And electrolysis?

A. Yes.

Q. —will bring about corrosion?

A. Yes.

Q. And surface deposits on a steel plate will assist in corrosion, will they not?

A. Anything containing acid, would; or some things would prevent it; some things could increase it. Oil would not be—some forms of oil with sulphuric acid would not help any,—could cause corrosion.

Q. And carbon dioxide tends to cause corrosion to, does it not?

A. Well as I have stated, I am no chemist; but I do not believe that carbon dioxide would cause corrosion, unless there was some other element there to break up the carbon dioxide and to make the molecule of oxygen available for its combination with the metal. I do not think C02 would cause corrosion, although the very metal itself might break it down. It is possible, but I am not chemist enough to answer that question.

Q. Well that is a recognized hazard in connection with boiler water,—too, is it not?

A. Well it possibly is. As I say, I am not a chemist.

Q. Now as a matter of fact, iron oxide induces corrosion, does it not?—Encourages corrosion?

A. Iron oxide?

Q. Yes.

A. Iron oxide, as I know it, is corrosion,—one form of it.

Q. But when present, it tends to induce further corrosion, does it not?

A. It depends; it does at the surface of water, or between air and water, as they call it. If it remains wet and tends to suck the air in, and if it is porous, it might. I don't think that anybody knows, from what I have read of corrosion, exactly what happens; it is galvanic and chemical, and there are theories as to what does it. But one thing, the way that it is usually protected is to cover it with an impervious pigment and to keep any other oxygen from getting at it; because in order to have rust, you must have oxygen to combine with the iron, and to change the pure iron or steel, whatever it is, into a ferrous oxide, which is rust.

Q. And you would remove all of the rust, or iron oxide, before you applied such coating, would you not?

A. Not necessarily. If I could block oxygen or air from getting to it, I think the use of that as a pigment would probably be a very good thing. I have seen it done, and have seen ship operators insist on it.

Q. Now it is a fact, is it not, that rust in boilers is considered as a hazard increasing the danger of corrosion?

A. Oh, rust anywhere is a bad thing, except perhaps when it might be used as a form of a paint to be mixed with oil, to make it impervious to the entrance of—

Q. Do you know of any paint that is prepared with iron oxide?

A. I have—as I say I am not a chemist, but I have been told from time to time that one of the older and better known paints was in effect ground rust and oil; not treated by taking rust, maybe and grinding it, but by making it.

Q. What paint is that?

A. Well, I have been told it is red lead, supposed to be red lead,—by competent people.

Q. Well, red lead is a sort of lead, is it not?

A. Not as described to me.

Q. Well you say that any kind of red lead is iron oxide?

A. That is the way it was described to me; that's what I have been taught, that red lead was, and not a lead. However that is—in dealing with paints I go to a reliable paint builder, a paint maker, and where the owner leaves that matter up to me, I in turn refer it to a reputable paint builder and get his characteristics on it.

Q. You don't of your own knowledge know of any paint that is made with iron oxide, do you?

A. Only what I have been told. I am not a paint manufacturer or chemist.

Q. Well you know that ordinary water tanks are highly subject to corrosion, do you not?

A. Well, they rust, but not very fast, when they are completely filled with water. It is when you let the oxygen in.

Q. Would you say that ordinary water tanks would last a hundred years?

A. No; it would depend upon the thickness, of course, how long they will last.

Q. What is the thickness of an ordinary steel water tank?

A. It is as high as a house.

Q. The thickness?

A. I mean by that, that the thickness of an ordinary steel water tank is determined by the diameter of the tank, and the shape; and that therefore I could not tell you what the thickness the tank would be, without knowing the size.

Q. Well an ordinary tank of a two-story house, what would be the ordinary size, thickness, of such a tank?

Mr. Underwood:

I object to that if your Honor please; the witness says he needs to know the dimensions of the tank.

Q. Well, say, 100-gallon tank?

A. Now I need to know the shape.

Q. Cylindrical?

A. What?

Q. Cylindrical, as most of them are?

A. This has to be cylindrical,—with a foot diameter and ten feet high, or six foot diameter and one foot high?

Q. Suppose you describe a typical tank then and tell us what its thickness would be?

A. I know of no typical water tanks for a house; there all kinds, they run all the way from a gasoline barrel to a cypress tank.

Q. Well what I am getting at Mr. Gibbs is just this; we all know a water tank, because we have had experi-

ence with them in our homes. Now I would like to have some standard of comparison for the durability of such a tank, and the durability of this tank on the Seminole which you say was good for a hundred years.

A. Well the tank that is used around a farm, with a two-story house, we have a windmill; that is usually made of sheet metal, galvanized. I have heard of one of those being made of metal that wasn't galvanized. If you were making that, if you did, you would make it thicker, to resist corrosion, and you might keep it painted, or put lime inside of it to block corrosion. But I know of water tanks that where at least, to my certain knowledge, are forty-two years old, and it never had any new plates in it,—right here in this house.

Q. Of course that would be fresh water entirely, wouldn't it?

A. Yes, that is drinking water.

Q. Of course there are certain acids in gasoline, are there not?

A. You could develop acid in gasoline, with other things. I am not a chemist and I don't know what the make-up of the gasoline is; but what I have learned of chemistry, elementary chemistry, that you get in my course of training, would indicate to me that the combinations do not exist as acids.

Q. And there is, I think you agreed with me this morning, an element of sulphur in gasoline,—usually present in gasoline?

A. That isn't the make-up of gasoline, that is an impurity.

Q. And sulphur tends to attack steel, does it not?

A. Sulphur, when it is capable of taking with it the other elements which would make of it acid, sulphuric acid, that would have a tendency to change the form of the iron and produce a new substance,—one of which would be rust, others would be too, most probably.

Q. And all of those things would contribute to corrosion, would they not?

A. From water,—or from gasoline?

Q. Yes?

A. If you put gasoline that was filled with sulphur, here, a very poor grade of gasoline, on account of impurities, I think its tendency would be to cause some rust.

Q. Now this matter of condensation in a tank is a continuous process, is it not?

A. Well it isn't so very continuous. If you take a very small weight of moisture, would come into the air, with your tank.

Q. Granted that, it goes in, day in and day out, and as temperatures change, does it not?

A. Yes.

Q. So that whatever it amounts to, you have your supply continuously renewed?

A. Yes, but it is almost distilled water; it is a very, very pure form of water.

Q. Yes, and water absorbs oxygen, does it not?

A. Not much. Water absorbs anything; it is a solvent of all other materials; gold, platinum, anything else; but slightly, and only very slightly.

Q. Well it is a well known fact that you can verify, is it not, that water absorbs approximately one-twentieth of its volume of oxygen?

A. I don't know that, and I don't think that is true, but I don't know; I am not a chemist.

Q. Well whatever oxygen was absorbed by this condensing of water, of course would be carried down with it until it reached the bottom of the tank, would it not?

A. Yes, but it would not necessarily rust the tank when it got there.

Q. Of course it would contribute to the supply of available oxygen?

Q. And you might set up combinations of acids which would eventually cause some part of the oxygen to con-

tribute to corrosion; but the mere fact that oxygen was in the water, does not mean that there would be any great amount of corrosion.

Q. Well as I understood you, it is oxygen that starts corrosion, primarily?

A. That is true, but it does not mean if you had a bucket of oxygen with a bucket of iron, that you will get any particular corrosion. That is a chemical process, and just how it acts I don't know.

Q. Now I think you have said that this water that would accumulate in the bottom of the tank would to a certain extent make a seal?

A. That's right.

Q. When the moisture first comes into a tank with the atmosphere that is drawn in, it usually condenses on the sides of the tank, does it not?

A. Yes, sir.

Q. And of course there is no seal against the action of the moisture on the sides of the tank, is there?

A. That's right.

Q. And there is a plentiful supply of oxygen there to assist in rusting; that is correct, is it not?

A. Yes, there is some oxygen there, and under certain conditions that would supply oxygen which is necessary to rust; but it does not follow that the oxygen goes into rust, it may go into the water, or the gasoline.

Q. Now of course it would be anticipated that the level of the liquid in these tanks would rise and fall?

A. Yes.

Q. As the gasoline was used?

A. That's right.

Q. And isn't it a fact that the area of exposure and then covering, and exposure, and covering against the steel object—

A. You mean, that is called wind and water?

Q. Wind and water; that is the point where there is usually found corrosion, is it not?

A. Yes, sir, right on the edge where it is kept damp and seems to form some kind of a batter; there is a theory that that is the galvanic action, is rapid at that point. It is only a theory, and the experts state it is thought, not known; but they know it rusts more around wind and water which is exposed to air.

Q. There would be nothing to protect the side seams of this tank against corrosion of that character, would there?

A. The element of time would protect it, and the thickness of the plate, and the weakness of the air,—of the impurities in the air.

Q. In view of that do you still say that this tank as installed on the Seminole would be good for a hundred years?

A. I do.

Q. Did you ever know a tank so installed on a boat, to last any such length of time?

A. I have never known of a—

Mr. Underwood:

I will concede that the witness isn't a hundred years old, if your Honor please.

A. Almost.—Did I ever know of such a tank a hundred years old?

Q. Yes?

A. I have known of a good many pieces of iron that are many hundreds of years old, exposed to rust and wind and water and rain, and protected by rust. History shows them, they are on exhibition today.

Q. I think that you said that this yacht that you spoke of, you were building, that you built the tanks into it so that it was built up with joiner work?

A. It is covered with joiner work.

Q. It couldn't be removed without interfering with the structure of the ship?

A. Yes, sir.

Q. Of course that was true on the Seminole, was it not? Those tanks could not be removed without removing parts of the structure of the ship?

A. I don't know what the top was, but the logical way would be, to take the deck off.

Q. Isn't it a fact that the captain's cabin was directly over the tank compartment on the Seminole, in the plan?

A. I don't know, but if it was, it would have merely been like other boats.

Q. That is the only way that you can suggest that these tanks could have been removed, is through the top of that compartment, is that right?

A. Oh, no, those tanks as I saw it, could have been moved by unbolting that bulkhead. As I remember it, that bulkhead was bolted together, the bulkhead facing the engine room; I may be mistaken, but whether that was so or not, you could have cut those rivets and taken that out. I think that may have been the easiest way to do it.

Q. You would have to remove that bulkhead, would you not?

A. Yes, you would have to remove one of the walls to let your tank out. I see bolts here, but it would seem to me that—and there were evidently bolts here.

Q. Well the testimony is that the single plate in the middle was fastened by bolts, and I believe that the rest was riveted.

A. Well I don't know the size of those, but I judge, —it occurred to me at the time that that was left bolted up, just like a door,—a temporary door, to pull that out and take those tanks out if you wanted to.

Q. Now I call your attention to this, the opening from the number two tank is exactly at the left hand edge of the bulkhead, and of the number three tank is exactly at the right hand edge. In other words, the plate covers the distance from the middle of the number two tank t

the middle of the number three tank. Now considering the closeness with which those tanks were spaced in that compartment, you wouldn't be able to take them out through that opening, even though they were removed?

A. No, you are quite right about that.

Q. And if the bulkhead were taken out, you would have to remove the batteries and the shelves that were attached to it?

A. It might be.

Q. And the auxiliaries that were immediately in front of it, would you not?

A. It might be. But on the assumption that what you say is true, the removal of that would not have assisted greatly; you would have to open another seam, to give you the least trouble from the tank; and then I am not sure that it could be done, because I don't know how they were fastened in the top; it may be they were fastened there where they couldn't pull outside.

Q. Well of course it would be impossible to fasten that bulkhead in place with the tanks in place, would it not? That is you wouldn't be able to get inside of the tank—

A. If it is riveted; you can re-rivet the tanks from the inside.

Q. The bulkhead?

A. The bulkhead, from the inside. It would be a difficult thing. That was probably done, and the tanks probably slipped in through the top when it was built.

Q. That is the only practical way that you see, is through the top of the compartment, is that right?

A. That's what it would appear.

Q. Now there is one thing that you spoke of as an atrocious practice; that is the practice of drawing off gasoline in the engine room through the bowl or through the connection on the bowl of the carburetor?

A. You mean, by breaking the line?

Q. Well my impression was that you referred to some adjustment on the carburetor, through which gasoline could be obtained; but whatever it was, you tell us?

A. Well in the absence of a source of gasoline for any one of the many purposes that it is used in an engine room, it is quite common practice to take a wrench and open up the union, and then let the gasoline come out of the line into a cup, or onto a sponge or a rag. And I have been on a great many ships where a little gasoline was needed, to wash the dirt off your hands; "Wait a minute, I will give it to you, just a moment"; and he would reach down and open up the line, and, "Here", hand you a rag; I would wipe off my hands, hand him back the rag. He tightens up the cup. A thing you would see on a great many ships in this harbor, where the unions were pretty well worn from that practice.

Q. Now you describe that as an atrocious practice?

A. I do.

Q. Why do you consider it an atrocious practice?

A. Because it is not known at that time how well those unions are made up; and unions are not made for that kind of use, unions are made to be put together, a few times in the life of the union. They are not a valve.

Q. Well what would the hazard involved, be?

A. The hazard involved would be that the union wouldn't be made up tight; that he might have a small wrench to do it with, instead of the larger wrench; and it would further be the hazard of requiring maybe one man to tighten it, while the other man took the oil out,—and the division of responsibility.

Q. And would there be the hazard of spillage and leakage of the gasoline?

A. There would be the hazard of—usually you spill a whole lot of gas when you wet your rag or put it into a can; and every time you do it, you jerk your joints;

you usually lift it up; it is down here, and you lift it up until you can get it under the cup.

Q. Do you consider that spillage of gasoline a hazard?

A. I consider the wilful, I mean the running of gasoline in a stream, out in the boat, is a thing that should not be done. I think that any leakage in an engine room is a bad thing, at all.

Q. And you consider drawing gasoline in the engine room—

A. I don't call that leakage.

(Thereuon, at 5:03 o'clock the hearing was recessed until 9:15 o'clock A. M., of the following day, to-wit, November 16, 1939.)

Thursday, November 16, 1939, 9:27 o'clock A. M.

Hearing was resumed pursuant to adjournment of the previous day; the witness, MR. GEORGE W. GIBBS, was recalled and further testified as follows upon continued

Cross Examination.

By Mr. Matteson:

Q. Mr. Gibbs, the coolest part of a vessel is usually the bilge, is it not?

A. Not always.

Q. Well I mean, the average conditions, that is true, is it not?

A. No, I have known them to be very hot.

Q. I am talking about the lower part of the ship, in contact with the water; that is ordinarily the cooler part of the ship, is it not?

A. Depending upon the construction of the ship, whether it was wood, or steel; and the rate of transfer

of heat out of the bilge into the water, if the water be colder than the ship. It is quite possible for the water to be very much hotter than the inside of the ship; you can have a temperature considerably higher than the ship.

Q. In southern waters it is usual that the air is warmer than the water, is it not?

A. Warmer?

Q. Yes?

A. Sometimes it is and sometimes it isn't. That is what makes the wind,—sea breeze one time and land breeze another; one at night, and the other in the day.

Q. Well the wind is dependent on the variations in temperature of the air, is it not?

A. The winds along shore are dependent upon the difference in temperatures on the shore and the ocean. If the ocean is cold, those airs that are cold over the ocean, they settle, and the hot airs on the land rise, and there is a circle there, and it is reversed, depending upon whether it is night or day; at least that is the theory of Dr. Manfried.

Q. It is the difference in temperature,—the air, not the water, that makes the wind?

A. Well that temperature of the air is caused by the water.

Q. Well perhaps that may be so, that the temperature of the air is to some extent affected by the water,—the land that it is over; but it is temperature of the air that makes the wind?

A. Over a hot building, for instance, the air is heated and gradually rises, and then that causes the wind to flow, to fill the gap, caused by the rising of the hot air; and wind is caused by these convection currents, which of course affect the temperature.

Q. Won't you concede that under ordinary circumstances, the lower part of the hull of a ship, that is in contact with the water, in this climate, is cooler usually than the upper part of the ship?

A. It would depend largely upon the time of the year. I have never actually gauged that, but I have known of a very cold ship, especially if she is still, in a very warm current, right here in this section, the water was very hot and the air was extremely cold.

Q. Perhaps you will go as far as this with me, that at times at least the lower part of the hull of the ship, the bilge, is the coldest part of the ship?

A. I think unquestionably that there are such times.

Q. I have turned to this article that you referred me to on convection, in the Americana Encyclopedia. I notice it begins,—when the air in contact with a hot stove becomes warm, it expands and grows lighter than other air, owing to unbalanced forces the hot air rises to the ceiling and then spreads out to the walls, where it becomes cool, and thereafter contracts and becomes dense.—You don't suggest that the bilge of a ship is like a hot stove, do you?

A. No. It is to the extent that there is a different temperature; it is a difference of temperatures that causes the convection. It might be relatively like a hot stove.

Q. Well now if the bottom of the ship was actually cooler than the upper part of the ship, then you wouldn't have any convection of air, gas from the lower part of the ship to the other, would you?

A. Oh, if it was cooler?

Q. Yes?

A. If it was just one plate, and they had absolute uniform temperatures, with no extraneous forces, you would have no motion.

Q. And if it was cooler, you would have no motion, because cold air would stay at the bottom; isn't that true?

A. The tendency of cold air at the bottom and hot air at the top, would greatly retard convection, to some extent. For instance, if your floor was a hot stove, your

plate was a hot stove,—I mean, a cold plate, and if your ceiling was a hot stove, your tendency there would be a tendency to retard the convection?

Q. You admit that it would be retarded under such circumstances?

A. That would be the tendency, yes.

Q. Now it would, as a matter of fact, in the absence of extraneous forces such as you were talking about, stop it completely, wouldn't it?

A. Assuming a homogeneous temperature, without baffles or plate, the hypothetical situation of that kind, I say would retard it.

Q. I am talking now just purely from the theory of convection. Of course there may be other things, such as induced ventilation and so forth, but I am just talking about the theory of convection alone. In constructing a ship you have got to anticipate that there will be times at least when the forces, conditions, will be such that the forces of convection will not operate at all, haven't you? Or at least, as you say, be greatly retarded?

A. We would have to consider practical observation, and if one happened to know that at no time had air apparently,—or gas apparently been still, you could practically eliminate the thought of that theoretical condition, where convection didn't set in. One would realize that they had never seen smoke, for instance, stand still, regardless of how quiet the room was,—the uniform temperature. We would be forced though to think that theoretical conditions would never exist.

Q. Of course when you see smoke, you know it is coming from a hot stove or fire, don't you?

A. And therefore you would think it would rise, but it don't, it falls, in most instances,—many instances.

Q. Now I read you one sentence from this article on convention. I would like to have you call my attention to

anything else that you consider bears on the subject of ventilation, in the article?

A. It is a short article; will you read it to me, or someone lend me your glasses?

Mr. Botts:

Here are some; they are bi-focals; can you read with those lower lenses?

A. Shall I read it out loud?

(By Mr. Matteson):

Q. I don't care about your reading the whole thing, but you may if you wish. I asked you to point out anything in it that you considered pertinent to the subject of ventilation?

A. I can tell you from memory; there is another example given of convection in the handling of liquids.

Q. Well let's see if I can find that?

A. It is in the second paragraph.

Q. Is this the sentence: Convection phenomena also occur in liquids. A large vessel of water supplied with heat, at one side of the bottom becomes, through the action of convection currents, uniformly heated throughout.—Is that what you have in mind?

A. That is the sentence of interest in this matter.

Q. Well there is nothing in this article at all about ventilation, is there?

A. It is the entire basis of ventilation. It is as important to ventilation as friction is to the design of machines. It is the background of all ventilation,—the ABC's of it. As illustrated in this second paragraph, when you discuss water, the slightest change in temperature of water will cause rapid convection, or motion and movement. Bear this in mind, a slight change in temperature of water, one degree for instance, does not increase the volume of the water. 1/195th, or one gallon

in 500, as it does with other gas. It increases its volume practically nothing,—an infinitesimal amount. Yet with that tiny decrease in specific gravity, due to the expansion of the water by almost nothing, but with the variation so slight that one cubic foot of water weighs practically nothing less than the other, we will say a 20th part of an ounce in 100 pounds; and that difference of temperature in a fluid,—and a gas, and a liquid or both fluids, causes the theory of convection that would let a bit of litmus here show up over there in a tank, in a remarkably small time. All ventilation is based very largely on the theory brought out in this short article. It is a theory known to me since I was in college; brought back to me attention in many discussions with people on ventilation. And I regard that as a very splendid definition of the basic laws which are extremely important in the study of ventilation.

Q. Now I asked you yesterday, Mr. Gibbs, and I ask you again now, if you can refer us to any authority which supports the view that the theory of convection will be adequate to exhaust from a room or compartment, gases that are heavier than air?

Mr. Underwood:

If your Honor please, I think we have been over all that once.

The Court:

Well we won't go into it extensively; it is repetition, though Mr. Matteson. If we can save more time, let the question be answered.

A. I know—can recall no authority who has, or which has specifically expounded the theory which I have expounded. I wish to say however that this failure on my part to recall this authority, is just as my failure to

give you other specific information where I did not bother to remember just what engineer had discussed the matter with me.

Q. Now we will leave that subject for the time being.

Mr. Botts:

If the Court please, it seems to me that, since the witness gave this as his authority, and the sole authority for his theory, that it would be appropriate to have that article, not read now, but to copy it into the record; because he gave that as the basis for his authority, and it is the only one he has given.

Mr. Underwood:

If your Honor please, it is just another example of one's inaccurate memory. The witness made no such statement, and it does not appear in this record. What he said, was, I called it to his attention after he had given me his views about convection. I don't have any objection at all to putting this piece in the record if Mr. Botts wants it there, but I don't think it ought to go in on that basis, because that is not the true basis.

The Court:

It is open here if anybody wishes to examine it.

Mr. Botts:

If he gave any authority, I don't recall it. If it is agreeable, we will have that photostated and filed.

Mr. Underwood:

I have no objection, just so you get the book back to Mr. Anderson.

Mr. Matteson:

If there is no objection, let the stenographer assign a number to it, and we will furnish the photostat copies as soon as it can be arranged.

Mr. Underwood:

You are offering that now, and giving it a number?

Mr. Matteson:

Yes.

(Thereupon the said encyclopedia excerpt, to be substituted by photostat thereof, was admitted in evidence and filed as Libelants' Exhibit No. 138.)

(By Mr. Matteson):

Q. Now Mr. Gibbs, I think in referring to these gasoline tanks on the Seminole, you said that you considered that they were built for some other purpose than the storage of gasoline. What did you have in mind with respect to that?

A. I had in mind that the thickness of the plates suggested pressures far in excess of the pressures that were required for this job. It is an opinion based on the thickness of a great many plate tanks that I knew of.

Q. What more strenuous purpose do you have in mind that it could be used for?

A. I could have any one of a thousand uses requiring great pressures.

Q. Well, name one of them?

A. A water tank with the pneumatic system, for instance.

Mr. Botts:

You mean what is known as a pressure tank?

A. It is known as a pneumatic system tank. You put air in one end of a tank and water is in the bottom.

Mr. Botts:

But the air is then put under a pressure?

A. Yes, sir; sometimes you put a pump, and sometimes it is occluded with the suction in the water. That is a

tank that requires tremendous strength and tightness; and I have seen such a tank as that, used for the purpose.

(By Mr. Matteson):

Q. In other words you think it would be suitable for an air pressure tank?

A. That's one of the uses. That is one of the most terrific services that a tank can be called upon to do, is to serve in that particular purpose. Of course there are literally thousands of others. You asked me to name one.

Q. And if it were used for such a purpose, how would you make it tight against the terrific air pressures that you are talking about?

A. Against what?

Q. Against the heavy air pressures that you are talking about?

A. Well they are made to be right, by the close spacing of rivets, and the heaviness of the plates.

Q. Isn't it a fact that the air pressure tanks are double riveted?

A. It would depend entirely upon the pressure that you would operate under. It would vary back to the place where you sacrificed tightness for strength. Those systems usually operate at around 62—well a maximum of 60 pounds; equivalent to most city pressures.

Q. Well would you approve such a tank for air without welding or caulking?

A. Most assuredly,—when you say without caulking, I would permit caulking when the tanks were tested, as is usual with a riveted tank; but I would insist on hydrostatic pressure, which these tanks are put under, which guarantees their tightness under pressures far in excess of working pressures. When I had it inspected on that basis, I would be satisfied.

Q. How long, in your opinion, should a hydrostatic test be applied, to be effective?

A. I would be satisfied with a hydrostatic test of an hour. We actually in our work use a longer time than that; as a matter of fact I would be satisfied with five minutes.

Q. As a matter of fact, in your practice, how long a time do you use?

A. It depends upon the instructions of the people who employ us. They may ask us to leave it on for twenty-four hours, or thirty-six.

Q. That would not be unusual, would it?

A. What is that?

Q. Twenty-four to thirty-six would not be unusual test?

A. I would think so. I can conceive of no reason for a much longer test, a hydrostatic test.

Q. What would you say was the usual length of time?

A. I would say there is no such thing that I am familiar with.

Q. All right. Now do I understand you to say that caulking is only used when leaks have been discovered?

A. No, I wouldn't say that.

Q. Well that is the way I understood it yesterday. Do tanks of this type ordinarily some caulked?

A. Not necessarily. It would depend somewhat on the design of the tank. But what I said yesterday was that tanks under test are often caulked at the point where seepage appears, even with the fluid inside of them, under the hydrostatic test, and only there.

Q. Well as a matter of fact, isn't it a fact that standard tanks for the storage of fuel oil and gasoline, usually come either riveted and caulked, or riveted and welded?

A. A great many tanks do come welded. In fact that is the popular way to make tanks today, because welding is quite accurate; is advanced. Just a few years ago a good engineer wouldn't think of accepting a welded tank, he demanded a riveted tank, at a high price.

Q. Well my question was, Mr. Gibbs, isn't it a fact, as far as you know, that tanks of this type, for the storage of fuel oil or gasoline, are either riveted and welded, or riveted and caulked, and come that way?

A. It is not a fact.

Q. And that is true today, is it?

A. Did you say, usually come?

Q. Yes?

A. It is true today.

Q. What?

A. It is true today.

Q. It is true today that they do not actually come that way?

A. Well I don't say that they would not, in the test. Now the important thing is the test, and if they develop a weakness anywhere, that weakness is repaired. I would think caulking would be the way that it is usually done. I haven't seen all the tanks in the world, but under my observation, the tanks that I have seen, are not usually welded or caulked; perhaps 80 per cent of all the tanks today are welded tanks, but that didn't apply just a few years ago.

Q. Well now I am making it double-barreled; either eliminate welding, and call it caulking. You say that it is not customary for tanks of this type to be supplied by the manufacturer in one way or the other, either welded or caulked?

A. I didn't say it wasn't customary. I said that—tried to say that it wasn't the universal rule; that they could be caulked, they could be welded; there would be various opinions on it.

Q. Do you make tanks in your own yard?

A. Yes, sir.

Q. Now about these tanks on the Seminole, you observed one of them when we were out there in October. Did you see any evidence of caulking on the outside of that tank?

A. I saw the—my observation of the heads would indicate that there was plenty of room for a caulking iron, and that they might have been caulked.

Q. Well if they were caulked, you would certainly be able to see it, would you not?

A. You would not.

Q. Well caulking is a surface operation, is it not?

A. But the surface operation at the bottom of a crack, can't be observed by looking directly over it, where there is a general corrosion of the water or the mud or the stuff that was on those tanks. A microscope, by cleaning that out, or sawing that section away, would show us; but there was no evidence to me that they were not caulked in the heads, that particular place that was pointed out. I can draw a picture and show you.

Q. I particularly called your attention, in the presence of the Court—

A. Exactly.

Q. To the head of the tank?

A. They said this wasn't caulked, and I looked and made a mental note that it might have been; because there was lots of room to put a caulking iron there.

Q. You didn't say so at the time, did you?

A. I wasn't asked to say so.

Q. Don't you remember that when it was called to your attention that there was no evidence of caulking on the outside, you borrowed this man's glasses to look at it, and your reply was, well you can't say that they are not caulked on the inside?

A. No, I don't recall any such thing; if I borrowed his glasses to look at it, and did make a remark, I think was that you—in fact I know that it was, you can't say that it was caulked there.

Q. Now of course that would apply to the top of the tank. Now at the bottom of the tank—

A. That was one of the spots under consideration.

Q. Of course we will concede that you couldn't see the inner edge of the seam at the top of the tank. At the bottom of the tank you can see both edges of the metal, can you not?

A. Yes.

Q. And it would be impossible for that seam to be caulked on the inside?

A. I would not—you mean from the outside?

Q. From the inside; I mean, it would be impossible?

A. Harder.

Q. —to be caulked from the inside?

A. Yes, you are right there.

Q. And you could not observe or call to the attention of any of those present, any evidence of caulking on the lower seam, could you?

A. I saw no evidence that there was no caulking.

Q. Well now when caulking is done, a section of the metal is separated and pressed away from the main body, is it not?

A. Not necessarily.

Q. And part of the edge that is originally there, is destroyed and pressed away from its position, is it not?

A. Not necessarily; the metal—the whole bit of metal is compressed, causing the two pieces to adhere closely, rather than to have them apart. But you don't have to separate them in order to mash the metal in,—to draw them tight.

Q. And you mean to say that you can look at a tank and not be able to tell whether it is caulked or not?

A. I am putting it backwards; I say it is most difficult to look at a tank and say that it wasn't caulked.

Q. Now when a rivet is removed from a piece of work, and replaced, isn't it a fact that the hole is usually reamed out, and a larger rivet put in its place?

A. Well not always. We remove a great many rivets now with acetylene, and we simply touch the center of

it, and it practically collapses under the heat; we confine our destruction to the center of the rivet, in a small rivet.

Q. Don't you recognize that it is a good practice to cut the hole out after that has been done?

A. Not unless the hole is injured, and when you pierce the shank of the rivets, the heads fall off; or you could just tap them and they come off. That is the way rivets are commonly removed.

Q. You say it is common practice in your yard to restore rivets of the original size, after rivets has been removed in one way or another?

A. Depending entirely upon the place it is being used. If we were putting a Scotch boiler, with very high pressure, subject to terrific stresses or service, we probably would examine it, and if necessary make it an electric job. But I can see no reason whatever to change the size of rivets unless the holes are injured; and we don't do it in our yard unless ordered to do so by the man employing us.

Q. Would you put back a rivet without reaming out the hole, in a gasoline tank?

A. I can see no reason why you wouldn't, unless the hole was injured.

Q. It would be very difficult to get a rivet out without injuring the hole, would it not?

A. I don't see where there would be any difficulty to it at all.

Q. Now with respect to the bracing of the tanks; these wood separators were between 1 and 2, 2 and 3, and 3 and 4 tanks, were they not?

A. I saw it between two tanks, and I assumed that that was the method of bracing the tanks.

Q. They act as separators; they come between; is that right?

A. They act as locks to the tanks, to practically tie the four tanks,—assuming that what I saw here, and I

couldn't see anything that was burned,—was that this construction was carried through; the whole process would have served as a lock, locking the four tanks, if it ran across the four, making a unit out of the system.

Q. You spoke of there being no objection to there being wood, as foundation of the tanks. Were you assuming in that that the tanks would not leak,—did not leak?

A. No, I didn't take that into consideration at the time—that any leakage that might come on the wood. I have seen a great many tanks installed on wood; nearly all of them are in wooden ships; and I could see no objection to the wood there, regardless of whether they leaked or not. Of course I didn't figure on them leaking, but if there had been a tank that definitely did leak, I wouldn't change the wood there.

Q. You would not have changed it?

A. No.

Q. How was this ship stiffened, fore and aft, as to her structure? Can you tell me that?

A. I have no idea, but I paid very little attention to that; I mean, I wasn't asked to observe that. Just generally speaking it was sort of it—struck me that an examination would have shown it was partly Isherwood system; I mean by that, that it seemed to have fore and aft stringers treated as a beam.

Q. You refer to the—

A. Very small resemblance.

Q. You refer to the port and starboard deck stringers along the side?

A. What is that?

Q. Refer to the port and starboard deck stringers along the side?

A. No, I refer to the scantlings that run fore and aft on the ship. I just have a hazy recollection of seeing shelves, stringers, and things like that, seem d to me to be ample, but I didn't go into that at all.

Q. Did the ship have any center line girder?

A. I didn't observe any part of that.

Q. Did she have any keelsons?

A. I made no observation as to that.

Q. That would have a great deal to do with whether the ship was stiff or whether she had movement in her structure in a seaway, would they not?

A. The strength of the ship?

Q. Yes.

A. I might have been asked to do that, but I wasn't.

Q. If the ship has considerable movement in her structure in a seaway, that of course will place considerable strain on her fittings, will it not?

A. It would depend entirely on how the fittings are placed, the length of them; if it is in a section of the ship with no flexure it wouldn't have much. I would simply state that I might have hunted for these strength members, which I saw some of them, which were apparent. Were it not for the fact that the ship was of deep girth, and of steel, and there is almost no movement in a steel ship,—the ones I have seen, with the short length and her girth:

Q. You would say she would have no—

A. —deep molded depth, instead of girth.

Q. You would say she would have no movement in her structure?

A. I think the movement would have been inappreciable from the standpoint of causing distortion to any inside equipment.

Q. If there were some such motion, it would tend to put a strain on her connections between her gasoline tanks, her feed lines and her engines, would it not?

A. I wouldn't say so in the Seminole, because the stuff was all right together. If the tanks was in the extreme bow, and the other equipment was at a place where there was actual variation from the alignment,—

a straight line, for instance, and a distance from a straight line, there might have been some tendency for a strain. But that was not the case here.

Q. It is a fact is it not that if the ship has a tendency to have a movement in her hull due to lack of stiffness, amidships is the point where that will be most apparent?

A. Oh, no. It would be most apparent in what is called the point of greatest flexure. You may have a perfectly straight line in the area of the engine room, and the whole bow and stern can go up and down, and if your staff is concentrated around the engine room there is no need of any strain. However, that steel hull, as I observed it, permitted of no vibration of the hull or machinery at all. It was easily much stronger than any wooden hull I have ever seen in my life.

Q. I think you said that in designing a vessel you did not need to take into account the possibility that pipe line connections might vibrate or work loose on the gasoline lines, and that you have known many vessels that have never had a wrench placed to their pipe lines, in their lifetime; is that right?

A. No, sir, that is not right.

Q. Well tell me what your view on that is?

A. I said that those—in the design of a vessel, that those materials were put in in a way that they would give no trouble, with a very distinct appreciation of the fact that improperly installed they might give trouble; and that there were no secrets as to what you had to do to make it permanent and sound; and when you didn't do it you simply didn't obey what would be indicated by proper design.

Q. Then I think we are on common ground. Then if you had a vessel where you had frequent trouble from pipe lines coming through,—coming loose and leaking through vibration, you would consider that the pipe lines were not properly installed, is that right?

A. Why I would have to know what was the cause of that trouble.

Q. Well I think you just said that there was no secret or difficulty about designing a vessel so you would eliminate that trouble?

A. That is quite true, sir.

Q. Then if that condition exists, it follows that she hasn't been properly designed and put together; is that right?

A. No, that would not follow.

Q. Well what does follow?

A. It would follow that certain things might have happened, to take a perfectly good, sound job and injure it. For instance, sabotage might set in there. A man,—lazy operator, might break a line in order to secure gasoline. If he did such a thing it would probably be the wise thing to put a cut-off line in the engine room so that it would not be at the mercy of his disobedience to your instructions.

Q. You spoke of the hazard of breaking a pipe line to draw off gasoline in the engine room; and you do consider that a serious hazard, as I understand it?

A. Yes, I think that is a dangerous practice.

Q. And the danger is the possibility of leakage of raw gasoline into the engine room, is it not?

A. That is right.

Q. Now what would you say of the practice of attaching a rubber hose to a—we will say this draw-off valve that was in the engine room of the Seminole, and flowing the gasoline out through the hose, through a window that was higher than the cut-off valve, which of course made it necessary, when the operation was discontinued, to break the line by detaching the rubber hose at the valve; would you say that was also an atrocious practice?

A. Why, no; there is no difficulty at all to bringing that hose in and completely emptying that gasoline out,

without putting any part of it into the engine room. I suppose you mean that he pulls it apart and lets what gas is in the hose, run down into the boat. That is unnecessary, and it isn't done by even boys, that I have seen filling gas with a hose.

Q. How would you do it?

A. I would—when I ran the hose into the tank, or wherever it was outside of the ship, I would seal it, the end of the hose, with my thumb, and then I would bring that end of the hose right back to the cut-off place where it is fastened; I would put the two pieces together, and I would draw them down like that, and then I would take them out of the engine room. You wouldn't have to take the hose into the engine room; I would hand the two ends out of the window, and I would either put it in the tank of the small boat that I was filling, or drop it overboard. But I would not waste it; it is not a whole lot, but I would simply take one end into the tank of the boat that I was filling, remove my thumb, and carry it in.

Q. And you think as a practical matter that you could perform that operation without spilling any gasoline at all in the engine room?

A. I have done similar things repeatedly, getting gasoline from my automobile for my wife; in lending gasoline to people.

Q. And you think that is an entirely different matter than breaking a gasoline connection on a copper pipe, and keeping your thumb over it to prevent a leak?

A. The great danger with that,—breaking a line, is of course the fact that you have no vessel you can stick under it, and you may reach the frying pan, but usually the vessel available is something like a coffee can; and when you break that coupling you lift the pipe up high, you strain the fittings, and then you get your gas, and perhaps you have,—of course you are putting it into a

very wide, open can, to start with, where you have some gas fumes come off. You put it back and tighten up your coupling, and if you have the right sized wrench you tighten it up tight; if you haven't got the right sized wrench you perhaps don't. But you make a very improper use of a union. If you are going to do that, you would provide a valve, and when that operation is repeated there is going to be one time when you don't draw up your connections tight enough, in which event you will have a continuous leak. Of course you wear the parts every time you do it, and have an awful good chance to burr it.

Q. The difficulty, I take it, with respect to breaking the pipe, is that someone would be negligent in doing it?

A. The most careful man, that deliberately twists a whole pipe line, is going to injure that, regardless of whether he is negligent or not. But even the best man can't make up a coupling continuously over a period of years, without injuring the—wearing the threads and wearing the faces of the union.

Q. Well now this practice which you have described as atrocious, results, as I understand it, in a hazard of spilling gasoline on the floor or into the bilges, which will evaporate there and form gas, gas fumes, which are dangerous; is that correct?

A. That practice would result in a possibility of a continuous stream of gasoline into the bilges from a line that may have crystallized and parted; or from a very serious injury to another portion of the pipe line.

Q. You suggested at one stage of your testimony that the engines of the Seminole might be washed with gasoline. Would you approve of such a practice?

A. Well that has always been done and I approve it as a necessary, practical thing to do; a thing that can be done with safety if the danger is recognized, which it is, with such an engineer as you could hire, and probably did, for this type of vessel.

Q. I see. Well, the gasoline used for washing the engine of course would evaporate very promptly, would it not?

A. That is one of the purposes of its properties; that is required for washing.

Q. Exactly, the tendency of the gasoline fumes so released, would be to fall into the bilges, would it not?

A. At the time of the washing,—which, by the way, is usually in a machine shop, once a year. You don't wash engines like you wash your face. The washing, Mr. Matteson, refers to the washing of a part that has been taken out, and it has gotten grit all over it, and you wash it and oil it before you replace it, in order to keep grit out of the inside of the engine.

Q. Well weren't you referring to the use of a sponge with gasoline to mop off the exterior of the engine and clear it up?

A. Oh, no, sir; no, sir.

Q. You didn't refer to that, when you were speaking of washing?

A. Why certainly not. I referred to the proper operation of the engine.

Q. Now can you tell us, Mr. Gibbs, by reference to any standard work, or, of your own knowledge, what the relation is between liquid gasoline and gasoline vapor, as to volume? If you want to refer to Kent on the subject, I think I have the place?

A. Could you postpone that until I get my own glasses? I can't see with those.

The Court:

Try mine.

A. I can tell you, for any purpose that you wish.

Q. At 32 degrees, it is 22.3 cubic feet per gallon according to the figure that I reach here?

A. Thirty-two degrees, that is the temperature of the—standard temperature of freezing; is what?

Q. 3.6 per cubic feet per pound; 22.3 cubic feet per gallon?

A. 23 pounds a gallon? Is that the weight of it?

Q. No, 23 cubic feet per gallon.

Mr. Botts:

That is 23 cubic feet of what?

A. That is absurd.

Mr. Underwood:

Just a minute, let me read this.

A. Mr. Matteson, if you give me the weight of a cubic foot of one and of the other, that is all I want to know.

Mr. Underwood:

Do you want to put in the record what Mr. Kent says, or do you want to take Mr. Gibbs' word?

Mr. Matteson:

I don't care about Mr. Gibbs.

Mr. Underwood:

Just read this into the record from page 4-61 of Kent's Mechanical Engineers Handbook, entitled Power, 1936. It says, "Typical significant properties of gasoline are, volume as vapor at 32 degrees Fahrenheit .760 mm, 3.6 cubic feet per pound, 22.3 cubic feet per gallon; air required for combustion of one pound of gasoline, 15.3 pounds."—Do you want any more?

Mr. Matteson:

No, sir.—Your Honor, we have just read into the record the relationship between liquid and gas.

Mr. Botts:

Did you hear what it was?

The Court:
No, sir.

Mr. Matteson:
It is 22.3 cubic per gallon of liquid gasoline.

The Court:
Let me see if I catch that; just read what was read into the record, Mr. Bryant.

(The foregoing quoted excerpt was read by the reporter.)

(By Mr. Matteson):

Q. Now I want to ask you a question or two about this safety can; what is your objection to this?

A. My experience has shown that these things are not practical,—a flexible tube.

Q. Of course that could be eliminated entirely, could it not?

A. You mean, someone could invent a new one?

Q. No; cut it off with a hack saw, if you didn't want it?

A. Oh, that is a suggestion; but whether—

Q. I mean that is not an essential part of the arrangement, is it?

A. A man buying it, he doesn't know what is essential. It may be a very ingenious thought; I don't know whether an engineer would have it. And besides, an engineer would think this was all right. I know that it isn't.

Q. Well it would be all right until it wore out, wouldn't it?

A. It does not immediately snap off. It ruptures right in here, and the tiniest little bit, and then it leaks, out here.

Q. Of course the only time there would be any gasoline in this flexible tube that you are speaking of would

be at the time there was actually gasoline being poured out of the can; that is right, is it not?

A. Of course.

Q. That is right?

A. What is that?

Q. The only time you would have any liquid gasoline or any other kind of gasoline in this flexible tube, would be when you are pouring out?

A. No, you might pour it out like that, see, and immediately drop it like that, and it is full of gasoline.

Q. Of course it will run immediately back into the tank, will it not?

A. It probably would. It might be like that, and it wouldn't run into the tank; then that wouldn't run into the tank, none of it, and you might twist it.

Q. If it were used as it was intended, it would be placed on its base and the gasoline would run back into the tank, and then you would put this across in the socket it is intended to be placed in, would you not?

A. Of course, the suggestion that this be cut of, might be considered a fine thing. If you cut it you would leave it off. There would be no suggestion to bring it back and lock it; that is why this length is put there, probably. But do you know whether there is any gauze in here?

Q. No; but there is a valve that closes when the outlet is turned around, it shuts off from the tank, does it not?

A. Do you know if, while handling this gasoline in the engine room, it would spark, or anything happening to hit that vent before he turns it off, that conflagration may set in and destroy the ship,—that this thing is in effect a bomb, infinitely more dangerous than that?

Mr. Underwood:

Referring to the draw-off valve?

A. Referring to that can.

Mr. Underwood:

I am sorry; the can; excuse me.

Q. Do you regard the can as a bomb?

A. No, not in any way.

Q. I am referring to the filling can?

A. That can is in no way a bomb, compared to this.

Q. Why not?

A. You build no pressure in there. I have repeatedly dropped a match in an engine cylinder and had the explosion, just simply a very gentle explosion, which would occur in that. In this however, the minute your pressure started to build, you would compound the effects of your explosion, and such a thing might wreck this room.

Mr. Underwood:

When the witness said "that", he referred to Libelants' Exhibit 13; when he said "this", he referred to Libelants' Exhibit 137.

(By Mr. Matteson):

Q. Now I think you told me yesterday, Mr. Gibbs, that if there was not as much as 93 per cent of air mixed with the gasoline fumes, there was no danger of ignition at all; is that still correct?

A. There is not as much—I would say there was no danger of explosion. It is possible to burn in a plant slowly, what we know in the cylinder of an engine as inefficiently; weak explosion or slow burning.

Q. You told me yesterday, Mr. Gibbs, very specifically that in a mixture at less than 93 per cent of air in it, no ignition at all whatever would take place. Do you change that?

A. No, I mean it is possible to cause a burning, but not—a very slow burning, which I think under glass would show it probably a slow movement of a portion of the stuff,—not all of it.

Q. Now this flexible tube has a brass outlet, has it not?

A. That appears to have a brass nipple on the outside, for the sole purpose of keeping this jagged thing from cutting you. That is what is called trim.

Q. Well a brass end would not strike a spark from anything, would it?

A. Well, I never heard of brass, and metal doesn't very often.

Q. When you were referring to a spark, you were referring to some spark from some other source?

A. I was not considering a spark made by this striking.

Q. And the spark from some other source in the engine room would explode gas no matter where it came from, wouldn't it?

A. It would explode—

Q. Whether it came from this, or whether it came from something else?

A. It depends entirely upon the atmosphere that it is in.

Q. Well, isn't a fact that whether this is safe, or any other contrivance in the engine room is safe, depends upon the negligence or the carefulness of the engineer or the man who is handling it?

A. No. We often have devices that apparently are the answer to great problems, and they prove elements of great destruction; like the original forced draft ventilating systems.

Q. Well, do you think you could design a can for this purpose that would be satisfactory, Mr. Gibbs?

A. I think I could design one that would be more satisfactory than that; in fact I think I could buy one on the market that would be more satisfactory than that.

Q. And one that you would think that would be reasonably safe if carefully handled?

A. Well, I can't say that it would be safe. I say it would be more safe than that.

Q. As a matter of fact there isn't anything that is 100 per cent safe, where you have gasoline involved?

A. There is nothing in the way of a large can in an engine room, carrying gasoline, that would meet with my approval at all. I have never seen it.

Q. Now you referred to the gauge of the metal in this can, yesterday, and you referred to this rim around the bottom of the can. Do you regard that as indicating the gauge of the metal of which this can is constructed.

A. I don't think—I can't see, but this may be double here; a piece to hold the bottom in. You really ought to have a section through this. I suspect that this is a wrapped joint; but you can tell from hitting the gauge of this, and this too; I know approximately the gauge of that; this is separate from the tank.

Q. Now this bottom rim as a matter of fact is something entirely separate from the tank; it is put around the bottom for the tank to sit on as protection, is it not?

A. Certainly, and probably heavier gauge than the tank.

Q. This you realize, do you, is a seamless, welded steel tank?

A. I don't know that it is. If I had a section through it, sawed in two I could find that. Is it printed there?

Q. Yes, it is printed here; seamless welded steel, guaranteed leakproof. Do you think that label is misleading?

A. I would be inclined to think that the label is intended to be true. They say, seamless welded; it means it has seams and they welded them; and yet it has no seams.

Q. Do I understand you to say, Mr. Gibbs, that the proper way to install a gasoline tank, galvanized iron, which is cylindrical, and has one convex and one concave end, is to stand it on the concave end?

A. It is to stand it as those tanks in the Seminole were stood; as that tank there is stood, exactly like that.

When you say, concave or convex, I just want to be sure that we have our viewpoint on that.

Q. I am talking about the way the Seminole tanks were installed.

A. That is the correct way to install any cylindrical tank; the only way I have ever seen it done.

Q. The only way you have ever seen it installed?

A. Yes, any tank of that kind, except horizontally, and at angles sometimes up or down; but if it is vertical, invariably that way.

Q. You say you have seen them horizontally?

A. I say they might be. Yes, I think I have seen them horizontal.

Q. Well, of course, if you installed them horizontal, you would eliminate this crevice around the bottom that we have been talking about, where the sediment would accumulate, wouldn't you?

A. Oh, no. You would perhaps not have it at the top, but you would have it at the bottom; depends upon where you drew off, of course. If you drew completely off,—there would be a very peculiar case, to ever install a tank that way, where you had definite limitations as to the shape of the tank space.

Q. Of course these tanks could have been installed horizontally, with cradles, one above the other; couldn't they?

A. No, I don't think that would be a practical thing at all.

Q. Do I understand you to say they regard pans under such tanks, as totally unnecessary?

A. Not only totally unnecessary, but I think those pans were not pans,—I don't think they were installed as drip pans, if that is what you mean.

Q. You think it is not necessary to put pans of any kind under such tanks?

A. I certainly do think that it is unnecessary; could serve no purpose.

Q. Did you ever, in your construction of vessels, install pans under such tanks?

A. Never.

Q. Now isn't it customary in tanks of the size of this one,—of these tanks in the Seminole, when they are used for a purpose like the storage of gasoline, to have openings in their sides or ends, through which access can be had to the interior of the tank for the purpose of cleaning?

A. That would depend, Mr. Matteson, on whether you are buying a stock tank of sufficient thickness to prevent any injury to the tank by failure to clean—or rather, injury to the ship; or, whether you bought a tank of the size, for the pressure, where the thickness would be an element of corrosion—the thickness of the plate or sheets, would be an element of corrosion.

[Q.]A. Then as I understand your point of view, it is that there would be corrosion in these tanks, but you think if the thickness of the metal were such that it wouldn't go through in a hundred years?

A. I didn't say there would be corrosion of any appreciable amount. But I believe the thickness of those tanks was sufficient to let them last a hundred years. The hundred years period I meant to indicate a period vastly greater than the life of the vessel,—which might be a hundred years; I mean, the life of the tanks.

Q. Have you ever installed tanks similar to these, galvanized iron cylindrical tanks, in your vessels, with access plates on their exterior, to provide for cleaning on the inside?

A. Yes, sir.

Q. Under what circumstances did you do that?

A. When the specifications called for it; when they put them on and put them there, and we left them off. As a practical matter, it is usually that that is done in an extremely large tank, when a man actually gets in the

tank; and almost invariably they are flat tanks, which are subject to tremendously high unit pressures in the metal.

Q. You haven't seen them in cylindrical tanks no larger than those in the Seminole?

A. I have seen manhole plates in cylindrical tanks, it seems to me, of about the size of the Seminole; but not often.

Q. Those tanks are large enough to take a manhole plate, are they not?

A. You could make them with a manhole plate, but I don't think that they are stock tanks like that with manhole plates, except when very much heavier made, for other purposes.

Q. I appreciate sometimes you build vessels to specification. Do I understand that when you design—prepare the specifications yourself, you don't make such provision of an opening for the cleaning of the interior of a cylindrical galvanized iron tank?

A. We do and we don't. It depends entirely upon what the situation is at the time. If there is available a tank of very heavy metal without a manhole plate,—probably twice the metal, without the manhole plate, and others of a four or five pound tank, with the manhole plate, I could advise the owner to take the bigger tank. Of course that would mean that we had a ship like this, with ample room for the tank; that weight wasn't a factor. But a great many things enter into your decision as to what tanks to use.

Q. Well if you regarded the tank as a permanent installation for the life of the vessel, you would probably want access plates on the exterior of the cylindrical galvanized tank?

A. It would depend a great deal, with my work, as cost. I could afford to withdraw the tanks, take the heads off and examine—or without that, simply pull those

plugs out and wash them out and get—determine any sediment inside; and I have repeatedly done that,—examined tanks in that way. But it isn't—I wouldn't regard it as essential with a big, oversized tank such as that, to actually get inside of it.

Q. I am getting away from the Seminole tanks just a minute; I am asking what you do?

A. If I could get a heavy gauge tank, at a price favorable, or much cheaper than a light gauge tank, with a manhole plate in it, I would take the heavy gauge tank, in many instances.

Q. Well do I understand then that if you regarded your tank as a permanent installation, good for the life of the ship, that you would not go to the expense of providing access plates on the tank?

A. Many instances not.

Q. What instances would you do it?

A. We would do it in instances where the vessel was of a high speed nature, or one requiring the minimizing of weights, in which case we would be working on a narrower margin of strength in the tanks, and where inspection would be advised. And where I would have a boat, comparatively speaking, of unlimited displacement, a boat where weights meant nothing as to speed, I would be inclined to accept a very heavy gauge tank without a manhole plate, if there could be a substantial saving in money.

Q. Then if there was—to get back where we started, if you regarded the tanks as permanent installation, didn't require inspection, good for the life of the vessel, you would not go to the expense of providing access plates on the tank?

A. No, for the reason that the remote instance of tearing the joiner work or woodwork, in which the tanks are encased, it would be no great trick to get into the tanks, either by removal of the rivets or the opening of a hole in the tanks.

Q. Yesterday I was asking you to name some of the yachts that might be comparable in size to the Seminole, that you had built. I think you named the Fortuna; can you name any others for us?

A. We built——you mean, the exact shape of this?

Q. No; comparable size?

A. Well I guess we built a lot of boats; I would have to think back; but I recall instantly a boat larger than this boat possibly, maybe ten or fifteen feet, but the "Colonel", for Col. E. H. R. Greene of Miami.

Q. What was the name of that vessel?

A. She was not a steel boat. Her name was the "Colonel".

Q. Called the "Colonel"?

A. Infinitely a more elaborate boat than this.

Q. Any others?

A. Built the "Centaur", quite an expensive ship; but she wasn't a houseboat.

Q. How large was she?

A. I don't recall, but the cost was $87,000.00.

Q. Any other yachts eighty feet or larger?

A. Yes, we built a houseboat, I don't recall her length, for a man in New York, who had the Buick agency; I don't remember his name. But the boat was eventually sold down here to a man who is on the Keys; he has a sponge grove.

Mr. Botts:

Perky?

A. Perki; I think it is Perki.

Mr. Anderson:

Perky.

(By Mr. Matteson):

Q. What is the name of that vessel?

A. I don't know the name of the vessel. He named it—I think it has had two or three names.

Q. Who owned the "Centaur"?

A. Glenn Stewart; I don't know what his initials are, but there is a man in the room who does, Mr. Munroe.

Q. Where is the "Colonel" now?

A. The last I saw of her she was bought by somebody from Jacksonville.

Q. Do you know the name?

A. No.

Q. Is she in Jacksonville now?

A. I don't know.

Q. You don't know where she is?

A. No.

Q. And the "Centaur", where is she now?

A. I don't know.

Q. And the boat you built for Mr. Perky, where is she now?

A. I don't know.

Q. Have you named for us all the boats,—all the yachts of any type, over eighty feet in length, that you have built?

A. Oh, no, sir. We build a great many boats for the Government alone, hundreds, running as much in cost as $90,000.00 apiece; many of them. We built the ferry system for the Overseas Highway, and with boats similar in many ways to the Seminole.

Q. I am talking particularly about yachts?

A. Well our experience, we have not built a great many yachts, although we have repaired hundreds of them.

Q. Now have you built any yachts since you built the Fortuna?

A. The Centaur was built since then. We built one this year, a very nice yacht; I don't know the name of that, but it belongs to Mr. Ellis of Augusta; delivered to

him last month. The last I saw of her, he named it "Maybelle", or some such name. Ninety per cent of them have got a "May" in it.

Q. The Centaur was a Diesel engine boat, was she not?

A. I think that she was; I think she had—

Q. And she was 64 feet long?

A. That is at the water line. She was a schooner.

Q. She was approximately 64 feet?

A. I don't remember.

Q. And the "Colonel", was a Diesel engined boat, was she not?

A. You might call it a Diesel engine boat; sort of a semi-Diesel engine.

Q. Now getting back to the Fortuna, what sort of gasoline tanks did you put in her?

A. As I remember it, they were square tanks. There was a boat designed as a yacht, by one of the foremost designers in the United States, Henry J.—Gielow & Orr, I think was the name at the time; but it is now Henry J. Gielow. And almost invariably a boat of her size, when you install tanks, you are limited as to the place you can put them, and they are usually square,—I mean flat surfaced tanks.

Q. It was the Fortuna, as I recall it, where you said the tanks were enclosed in joiner work so that they could not be reached?

A. I did not say that regarding the Fortuna. I said that regarding a ship I delivered last month; and that in literally hundreds of vessels that have come into our place for repairs, that in most pleasure vessels the tanks are simply stuck in some available place good for nothing else, and usually boarded up; under the floors or in the sides.

Q. Isn't it a fact that the main gasoline tanks of the Fortuna were enclosed so that they could not be reached? Or, put it this way; were in an enclosed compartment?

A. The main tanks of the Fortuna? I don't remember that, Mr. Matteson.

Q. Isn't it a fact that she had four galvanized iron cylindrical gasoline tanks?

A. I wouldn't think that that would be the case at all. I don't think that is a fact. Of course the Fortuna has been rebuilt and lengthened; and just what they did since she left our shop, I don't know. But in the original design of the ship, as I say, you may fill all your available space, especially with a thing—occupiable space with a thing like a tank; if you have any extra space to spare, then you cut the size of your ship off, as a rule, either reduce her beam or her length. A designed ship usually has flat surfaced tanks, built for the purpose for which they are intended.

Q. When was the Seminole built?

A. My guess is '22 or '23,—no, wait a minute. No, No; my guess is that she was built about '20; 1920.

Q. Well I didn't mean to try to mislead you; I thought you probably knew. It says here she was built in 1920; is that correct?

A. Mr. Matteson, we built several hundred boats, and we have figured and made intimate study of hundreds of others that we weren't fortunate enough to build. And I can tell you more about a specification of something that we bid on—

Q. Who designed her?

A. Henry J. Gielow, or Gielow & Orr, whichever was the firm's name at that time.

Q. Now you said something about her being rebuilt. I don't find any reference to that in the Register here. Are you sure about that?

A. Regardless of whether it is in the Register, she was rebuilt; whether the Register picked it up or not I don't know.

A. I don't know that; but the Captain came to Jacksonville and showed us a picture of the changed design,—the lengthening of her, and so forth.

Q. Is that recently?

A. No, a long time ago. She was supposed to be one of the finest ships of her size; photographed everywhere.

Q. Why was she altered, do you know?

Mr. Underwood:

I object to that if your Honor please; I think we have heard enough about the Fortuna. We are trying the Seminole case.

Mr. Matteson:

We are testing this witness; the views he has expressed. And the Fortuna is quite pertinent in that respect.

Mr. Underwood:

Well, he didn't reconstruct the Fortuna.

Mr. Matteson:

We don't know that she was reconstructed.

Mr. Underwood:

He says she was, and there is no proof she wasn't. This book is dated 1933, that is six years ago; and what was the reason of the owner altering the Fortuna, is no part of this case. I would like to finish this case.

The Court:

I don't see that it is material.

Mr. Matteson:

If she was such a good boat, I don't know why she should be rebuilt.

Mr. Underwood:

Perhaps the owner didn't like the color of the joiner work; perhaps he wanted a longer boat because his family had increased in size; but what of it?

(By Mr. Matteson):

Q. Isn't it a fact, Mr. Gibbs, that you originally installed in the Fortuna, four cylindrical galvanized iron tanks?

Mr. Underwood:

I object to that on the ground it is repetitious; the question has already been asked and the witness stated he doesn't remember.

The Court:

I overrule the objection.

A. I don't recall that, but we might have done that. It is entirely possible that that could have been done. Because she had an engineer with very positive views; and these rich owners very often do exactly what their captain and engineer tell them, regardless of their ability. It is entirely possible that he thought that these were the proper tanks.

Q. I suppose you still have the original plans and specifications of that vessel?

A. We might, not necessarily. We might have them. We never expected to build another one, because Gielow—we had those drawings from Gielow, and if we built another, we would pay for them; and we probably sent them to him. We sometimes keep them.

Q. Isn't it a fact that those cylindrical galvanized iron tanks were in a closed compartment?

A. I could not answer that.

Q. And isn't it a fact that that enclosed compartment was provided with four cowl ventilators, to ventilate the tank compartment?

A. I don't recall any situation of that kind.

Q. And isn't it a fact that there were six inch lead trays installed underneath the four galvanized iron tanks, in the Fortuna?

A. Not that I recall.

Q. And isn't it a fact that the reason why those galvanized iron tanks were enclosed in a compartment, with joiner work, was because you regarded them as a permanent installation, the same as you regarded the tanks on the Seminole as a permanent installation?

A. There was not one thing done on that boat because I had any wishes in the matter whatsoever. We carried out the instructions of the owner, through his naval architect, Mr. John H. Wells, and his resident inspector, captain and engineer; and the work was done from working drawings; we did exactly what we were told to do; there was no comment.

Q. Did you supply the tanks for that job?

A. As I recall—we probably did, but not necessarily. The owner, I remember, supplied his own bathtub, which was a great piece of vitreous metal; had to be ground away to fit the bow of the boat. We had nothing to do with it.

Q. And isn't it a fact that the cylindrical gasoline tanks which you installed in that vessel, were provided with access plates for cleaning?

A. I don't remember a thing about those tanks.

Q. And isn't it a fact that those cylindrical galvanized iron tanks were installed in a horizontal position?

A. I don't think that they were. I think such an installation would have impressed itself on my memory. I don't remember details for which we are not responsible.

Q. Now assuming that there were some cylindrical galvanized iron tanks installed by you in the Fortuna, would you have considered them a permanent installation, good for the life of the vessel?

Mr. Underwood:

I object to that as speculative, and immaterial.

Mr. Matteson:

Trying to estimate the life of a cylindrical iron tank, in respect to this vessel.

The Court:

Read the question.

(The last question was read by the reporter.)

The Court:

Overrule the objection.

A. It would depend entirely upon the gauge of the tank.

Q. You wouldn't have installed them in a closed compartment, surrounded by joiner work, unless you did consider them good for the life of the vessel, would you?

A. Well, I would have done whatever he had told me,—whatever our instructions were, on that job.

Q. Now Mr. Gibbs, yesterday you were citing us the Fortuna as an evidence of your experience—practical experience in the construction of vessels, on which you based the opinions that you expressed here. Do I understand that now you disclaim any responsibility for anything,—any of the arrangements of the Fortuna?

A. I claim that I had the opportunity of knowing the designing ability of the man who designed that boat. I most certainly disclaim any responsibility for the acts of an engineer or architect, just because I fulfilled his instructions to me. I believe that the knowledge that I gained by seeing the Fortuna and other boats, gave me a viewpoint and gave me experience on making a good joint and doing work properly from a standpoint

of workmanship, with no respect to design. If the Fortuna had been an abortion, I would refer to her with pride, if the work that we did on the Fortuna was done in a workmanlike manner; and would charge the designer with the abortion, if it was the design that was the abortion.

Q. As a matter of fact don't you know, Mr. Gibbs, that in 1937 it was found that the galvanized iron tanks—cylindrical tanks which you originally installed in the Fortuna, had rusted through to such extent that they had large holes in them?

A. No, I do not know that.

Q. You hadn't heard that?

A. No.

Q. And that the tanks had to be completely removed and renewed?

A. I did not know that. And enclosing them or putting them in as they were, was done under instruction, with no calculations having been made by us.

Q. The ventilation in the tank compartment, was that your idea or the designer's idea?

A. Might have been the cause of rusting the tanks.

Mr. Underwood:

If your Honor please, I object to such questions. It is quite clear that Mr. Gibbs didn't design the Fortuna; he said repeatedly he just carried out the specifications.

The Court:

That is a matter of argument. Overrule the objection.

A. I believe that it is easily possible that those ventilators might have let a good big bunch of salt water right into that enclosed place.

Q. And I take it that you would not, of your own volition, have installed ventilation for that tank compartment?

A. Only for the matter of dry rot of the compartment.

Q. Would you have installed it for that purpose?

A. It would depend. If it were metal I wouldn't do it, I wouldn't have any ventilation, with metal containers.

Q. You wouldn't have any ventilation in the compartment at all?

A. Containing tanks, unless it was a matter of dry rot.

Q. You wouldn't take into account the possibility of leakage or corrosion of the tanks at any time during the life of the vessel?

A. Not if the tanks were of sufficiently large gauge, thick enough. I would only be following the practice of stock boat builders, who, even for light gauge tanks, install permanently.

Q. Well will you communicate with your office, Mr. Gibbs, and produce for us so that we can examine them, such plans and specifications as you have of the Fortuna at the time she was constructed?

Mr. Underwood:

May I hear that question read, please?

(The question was read by the reporter.)

Mr. Underwood:

If your Honor please, I object to that. It has no probative value on any issue in this case. At most it is an attempt to get into the record by putting in plans of another vessel, the opinion of the architect who drew those plans, as to what was right at that time, for that particular boat. It has nothing to do with that, even if the plans were here in Court they would be inadmissible as proof of any fact, without the presence of the architect who drew them, so that I could have a chance to cross

examine here and find out what his views really were and why he did it. We have gone very far afield in this case. Actually, your Honor, it doesn't matter whether these tanks were well or badly designed; the question is whether they leaked. No matter how badly designed they were, if badly designed, if they didn't leak it doesn't make any difference as far as this affair is concerned. And of course, by the same token, the Fortuna's tanks are just farther removed from the issue.

Mr. Matteson:

If nothing in the boat leaked, as Mr. Underwood claims, there would have been no explosion.

Mr. Underwood:

That isn't necessarily true; somebody may have put dynamite in there.

The Court:

That is argument; you don't want this in the record, do you?

Mr. Matteson:

No, sir.

(Discussion was had off the record.)

The Court:

Gentlemen, there has been emphasized in this case, throughout, matters the importance of which I didn't appreciate at the time, and matters apparently not sufficiently connected with the relevancy, have been made so much of, the Court is impressed in connection with ruling on the relevancy of certain testimony. I don't know what magnitude is going to be given to it in the ultimate consideration of the case; and just to rule on it and ex-

clude something that might be considered by counsel to be of so momentous significance, I hesitate about excluding it. Certainly, fundamentally, we are not trying the case of the Fortuna, we are trying the case of the Seminole. What appears to me mostly is the matter of administrative policy toward this case, and getting through with it. We have here—it is Thursday, we have Friday and Saturday morning, then we have Monday; and under the arrangement now, if we don't get through with the case you have to submit it to some commissioner to take depositions.

Mr. Matteson:

I would be satisfied to have Mr. Gibbs produce that sometime next week, after we finish the Court session; let me ask the questions of him at that time. It seems to me clearly, where the witness has made statements with respect to these things. I am entitled to cross examine him with respect to them.

The Court:

Here is the possibility of relevancy; Mr. Gibbs has referred to the Fortuna as a vessel which was constructed there at his shipyard; and up until now—until the cross examination, it would appear that the experience that he had in connection with his construction was one of the matters that went into his experience, based upon which he expresses an expert opinion. Now then by cross examination it has been brought out that it was constructed, not only as appears, as I recall from direct examination, where the designer and architect was someone outside of his plant, but now on cross examination Mr. Gibbs takes the position that even though there was, according to his opinion, some wrongful theory in the architect's design, he would follow it. Now just how strong that is as affecting the Court's ultimate opinion as to his views,

is yet to be determined. Just to exclude it altogether, I think it would be error, so I am going to let it go in; but the administrative matter of getting through, is what appeals to me.

Mr. Underwood:

If your Honor please, I would like to make one further remark on the subject. There are only two possibilities: One is that Mr. Gibbs drew some of the plans; the other is that he didn't. Now if he didn't, and just built the boat according to the specifications of the naval architect who did draw the plans, it is utterly immaterial. On the other assumption, assuming that he did draw some of the plans, or was responsible for some of the design, it was 19 years ago; and even if diametrically opposed,—even if he did something then diametrically opposed to what he says today is his opinion, does not impinge on the credibility of the witness' testimony in the slightest. I did things 19 years ago that I wouldn't do today, and vice versa; and I imagine we all have. I have opinions today that I didn't hold 19 years ago, and I imagine we all have. So it does not seem to me, even if we get to these plans and take a lot of time pawing over them, it is going to advance us one iota toward the real determination of the true issues in this case.

The Court:

You will talk that over at noon; let's see if you can get together on it. I want to get through with the case, gentlemen, and if you can work that out some way and see if Mr. Gibbs can get the plans, and let's determine that, and not take up the good time of the Court now; and go forward with this.

Mr. Anderson:

Judge, let me say this, may I? He may have done it wrong 19 years ago, and profited by that experience. I

think I did that a lot of times in my professional career; I am sure we all did. Nineteen years ago a matter came up, we had to do something, and did it wrong; then we found out later we did do it wrong, and that is the basis of our ability to do it correctly today. It has not anything in the world to do with this case.

The Court:

The only possible relevancy there, I think, that entitles it to go in,—there have been mountains made out of matters I didn't appreciate at the time; there may be some relevance. I am not disposed to keep out something that may be of importance that I don't appreciate.

Mr. Matteson:

I think we can take care of the arrangement all right; we might even stop at Jacksonville on the way North.

(By the Witness):

A. As a practical matter, Judge, there is not one chance in a million that those drawings are in existence. The man for whom they were built, died shortly after. It was built under directions of the owner. There is no record in this book, of alterations, which unquestionably did exist, according to Mr. Matteson. This doesn't show it. She went to a location,—was down in the Thousand Islands. We don't make a habit of keeping the drawings that we have had and don't want, by an outside architect. We do make a very definite habit of doing what we are told to do, exactly what we are told to do; because the minute we vary from any dimension of the architect, we would then become responsible. Very often—

The Court:

Do you think you have the plans and specifications back in your plant?

A. No, sir, I don't think there is one change in a thousand that we have got plans that are 19 years old. The Fortuna, well photographed, profusely, and a beautiful ship, with a reputation of being one of the finest ships. The Fortuna was a special ship, to suit one individual bachelor, and a ship that we would probably never build again in the world. There was no occasion to keep the drawings; and I don't think that if it had been an available stock job, that we would keep them over 19 years.

(By Mr. Matteson):

You will be willing to make a search and see what you have, would you not?

Mr. Underwood:

I object to what the witness would be willing to do; I object to this whole business.

The Court:

I think he can answer the question, Mr. Underwood.

Mr. Underwood:

Don't you think that question ought to be directed to counsel, rather than to the witness? I won't advise the witness to produce any plans unless instructed by the Court.

Mr. Matteson:

I have asked the witness to make a search and see if he can produce these plans. If he says he can't, that is one thing; but he certainly is under the obligation to make the best search he can and see if they are available.

Mr. Underwood:

I object to it, on the ground I have previously stated; and I think that Mr. Matteson, at this stage, ought to

be made to demonstrate completely the relevancy of any such fishing excursion before your Honor grants his request.

The Court:

I am not acting on the request now. I think the question is properly directed to the witness,—whether he will do that.

A. I won't answer that until I see—if this is my right, until I discuss it with counsel. Because I regard it as—

The Court

I am not ordering you to produce them; I am directing you to answer the question, to determine whether they are available.

Mr. Underwood:

I think the Court might instruct the witness, so that he may understand that he is directed to answer the question, whether he is willing to look.

The Court:

That is right,—whether you are willing to look, Mr. Gibbs; and answer the question, to see whether they are at your office, and whether they would be available in case the Court did order you to produce them. Is there somebody up there at your plant that you could direct a wire to and ask if they are there, and determine that one thing?

A. I suppose that could be done; that I could wire; but—

Mr. Underwood:

If your Honor wants that done, if you direct that that be done, I will do it, of course. I think that is something

that—I am the one who should be admonished, and not the witness.

The Court:

I may be wrong about that, but I disagree with you. I think the witness is on examination, and I think he is entitled to ask him whether they are back there at his office, whether they could be produced; and with that determined, for the Court to determine how it will be done,—if it is ordered to be done.

Mr. Underwood:

If your Honor directs that we ascertain whether they are there, we will do that.

The Court:

All right, I think that should be done.

Mr. Matteson:

That is all that I have.

(A brief informal recess was had.)

By Mr. Botts:

Q. Mr. Gibbs, can you from your experience give us any estimate as to the amount of gasoline that would be required for a single priming of motors of the type that were in the Seminole,—type and size?

A. My experience would indicate that each one of those cylinders would take about two to three tablespoons full; that that would be about what you would put in there.

Q. Two or three tablespoons full; and these were six cylinder engines, were they not?

A. Yes.

Q. That would be twelve cylinders, which would be something like thirty-six tablespoons, something like that?

A. Yes. That is just my guess. That is determined by actual operation.

Q. Well—

Mr. Underwood:

May he finish?

A. And is determined by the skill of the operator.

Q. In speaking of protecting by the use of paint, you referred to red lead as in effect, rust. Red lead is red oxide of lead, isn't it?

A. I don't know that. I was taught in school, and this of course referred to that time, that one of the best anti-corrosive paints was made of rust—of the elements that compose rust; of iron and oxygen; oxide of iron in some of its forms.

Q. Have you ever heard of iron rust being used in a paint?

A There are many paints that have the various oxides, or component parts of it.

Q. But are they used as a pigment, or as a coloring matter?

A. Well the coloring matter is a secondary situation regarding paints. You can throw anything in there; but it is anti-corrosive, it is covered up with the anti-fouling paints.

Q. Don't you know that red lead is red oxide of lead?

A. I don't know, it may be. I have attended one or two lectures where red lead was said to be a thing which is not even red lead, but as I have said in my testimony, a thing that had been described to me as red lead was essentially not an iron oxide paint.

Q. Did I understand you to say the other day that you would not get a spark in closing a knife switch?

A. I don't believe that you could, with this voltage, in the closing of it.

Q. Was it 110 volts?
A. What is that?—Yes.
Q. It was 110 volts?
A. Yes.
Q. Well you don't know much about knife switches, then, do you?
A. I know something about them; I have tested them.
Q. And you have never seen a knife switch that would emit a spark when it was closed?
A. Never.
Q. Would you be—well I don't know whether it is there now; if it is still there I would show you one at noon and demonstrate it.

Mr. Underwood:
I object to that going in the record, unless Mr. Botts is going to testify.

Mr. Botts:
All right, I will testify.

Mr. Underwood:
I don't think you could qualify, Mr. Botts, as sufficient of an expert.

Mr. Botts:
Yes, sir, I can do that too; and I will before it is through; and I can point you to the switch.

The Court:
We will strike anything from he record,—so far as any probative force, the remark should not be considered.

(By Mr. Botts):
Q. Now then you said the other day, as near as I can recall it, that you saw no evidence of a violent explosion having occurred on the Seminole?

A. Yes, sir.

Q. Did you see evidence of any explosion?

A. No, unless you call a fire,—which I can't say was due to any explosion.

Q. Do you mean to say that there was no explosion on the Seminole?

A. I don't know; I wasn't there.

Q. Well in your opinion as an expert, if there was an explosion, would there be any evidence of it?

A. There might, yes. I think it would depend upon the intensity of the explosion, as to the evidence.

Q. Well then I don't understand you to say that in your opinion there was not an explosion on the Seminole?

A. I merely state I saw no evidence of an explosion on the Seminole.

Q. Would you read the question again. —Either I didn't ask it as I intended, or you didn't answer it?

A. Conclusive proof of an explosion.

Q. Just read the last question, please.

(The last question and answer were read.)

Q. Well in your opinion, from the examination of the Seminole, was there any explosion upon that vessel?

A. It would be an absolute guess on my part. I saw nothing—no evidence to indicate an explosion.

Q. Now you say that these large tanks had been tilted out of plumb; how would you explain that?

A. Well I saw that many things had been jerked apart; not by explosion, but by the operation of the wrecker. A fire as great as that, beams perhaps falling all around, from the shed, and the removal, possibly theft, by the junk thieves; and many reasons—particularly the operation of the wrecker. When you wreck a thing of that kind, you usually hook on to it with some form of crane and jerk the whole thing up as a mass; and there is evidence that that was done.

Q. I am referring now particularly to the distorted situation of the large and heavy tanks, where they were

tilted out of plumb, and evidently not in the original position?

Mr. Underwood:

If your Honor please, I object to the question on the ground that that is not the evidence. The evidence shows that only one tank was shifted out of position,—not all of them.

The Court:

Well I think the best way to handle that,—Mr. Gibbs is a very intellectual witness; and if there is any part of his cross examination that does not incorporate some factual situation, Mr. Gibbs, you call it to our attention. I overrule the objection,—the technical objection.

Q. You say that the presence of a tank, or other tanks bent over—one or more of those tanks was out of plumb and appeared not to be in a situation as originally installed; at least one or more of them?

A. Yes, I think that is true.

Q. All right. Now then those tanks, under the evidence, appeared to have been mounted on steel supports, fastened to the bulkheads, with metal, probably, I believe steel pans underneath them?

A. Yes.

Q. Your observation confirms that method, does it?

A. As I recall it, that is essentially what was done.

Q. Now then can you explain how that tank or tanks, if more than one was displaced, could have been displaced and put in its present position without an explosion of some sort?

A. Oh, yes. In the first place, I don't see just how an explosion inside the engine room would have pressed those tanks towards the explosion. They were tilted, as I understand it, towards the engine room, were they not?

Q. I don't recall that; I think the photographs would show. I don't recall that.

A. As I remember, they were tilted inside, and not out. That would lead me to believe that unless the explosion was from in a ship, where it isn't supposed to be,—the possibilities of an explosion,—that the explosion theory wouldn't carry there. Another reason that could exist for the tilting of the tank, is the usual field, is the fact that that theory would have no such a structure as that. It is almost impossible to lay a vessel up anywhere, without a watchman there all the time, that the stuff isn't stolen, or examined with a view to stealing it, or making an offer to the owner for its purchase. And it appears to me that somebody—that if the wrecking operations didn't get that tank hooked up by error, or some other way, when they pulled it up, that possibly some junk dealer did it, to try to make an offer and buy the tanks, as good tanks. He wouldn't be much interested in them unless they were intact. But around any calamity like that you have armies of junk dealers.

Q. And you are propounding now a theory that that tank might have been displaced by mechanical means applied to it by some human force subsequent to the fire?

A. Yes; either by the wreckers, accidentally or intentionally getting it the easiest way to clear the wreck; or it might have been done by some person viciously or innocently, with a view to determining the value of the property, with a view to stealing it or purchasing it.

Q. Now you heard the testimony, I believe, of the very first, or one of the early witnesses, that there was in fact an explosion on that vessel, didn't you?

A. I didn't listen to all the testimony, and I don't recall that particular thing. I might possibly have heard it.

Q. Mr. Gibbs, assuming that there was an explosion upon the vessel Seminole immediately before the fire

started, would the fact of such an explosion be a reasonable explanation of the present distorted or unnatural condition of one or more of those tanks?

A. The assumption, coupled with my observations, would lead me to believe that that tank was not displaced due to any explosion. Even if there was one,—any possible explosions in that boat; basing that opinion on the idea that the explosion took place, if at all, in the engine room.

Q. And you just think there wasn't any explosion?

A. I didn't say that; I said I didn't think that the tank, the position of the tank, could possibly be evidence of an explosion in the engine room.

Q. Well was there evidence, from your observation, of a fire sufficient to have been the cause of that tank being put out of position?

A. No, sir. I think the fire might have melted the tank to a liquid form and not exerted any force in the world that would have tilted it as it was. I can only conceive of manual effort on the tank to displace it in the manner it is displaced.

Q. Suppose we would assume that that tank was in its present position the morning after the fire; what explanation could you give of that, if it were a fact?

A. That someone had gone there in the night and put it in that position.

Q. But I will say, the morning of the fire, and before the fire was extinguished on there, suppose it was in that position; what would you say?

Mr. Underwood:

I object to that on the ground it is speculative; on the ground there is no evidence in the record to support it. I refer particularly to Respondents' Exhibits 3-X, 3-W, which show the four gasoline tanks of the Seminole on the afternoon of the day of the fire, while the fire depart-

ment's streams are still on them, and show no displacement whatever of No. 1 tank.

Mr. Botts:

If you can't see it, you have very poor eyes, that is all I have to say. I can see the distortion of these tanks now.

Mr. Underwood:

That raises another issue in the case. I don't wear glasses, and Mr. Botts does.

Mr. Botts:

And I can see the distortion right now.

The Court:

Let's read the question.

(The last question was read by the reporter.)

The Witness:

Is that a question?

The Court:

Just a minute, the Court has a burden here. I am not ruling whether there is or is not a distortion. Technically ruling, I overrule the objection.

A. Will you read the question to me?

(The last question was re-read by the reporter.)

A. Just the last part of it.

The Court:

Do you understand what he means?

Q. The distorted position.

A. I would say that regards,—meaning people's removing rubbish, or the wreck, possibly to hunt for the body, or for any other purpose, had caused the situation; or that possibly the water had floated,—that this tank floated; would be the best possible answer. If the boat was sunk, and if the tank had no gasoline, it is possible that one side of the tank was restricted and the other side was not restricted and it floated into such a position. I think that an examination at the time would have disclosed the real cause of twisting the tank. I cannot conceive of an explosion being the cause,—any force it would exert, putting the tank in that position.

Q. Well if there was not an explosion upon that boat, from your experience as an expert, have you formed any theory as to what caused the fire, if there wasn't an explosion?

A. I have very definite theories. I would like advice of—

Q. You are here as an expert?

A. —of counsel, as to whether I am permitted to give them.

Q. I am asking you to propound some theory other than that of an explosion, which will explain this fire?

A. The theory is, espionage. The more I think of it, the more that theory persists in my mind.

Q. By the deceased Mr. Abel, I suppose?

A. No, sir; by someone who might profit by such a disaster.

Q. And who could be in that category?

A. I would prefer not to make any speculation, but I have in my mind many people who would be tremendously interested in destroying that ship.

Q. And destroying this boat yard and all these other yachts?

A. Absolutely; not—

Q. Well, that's a new one.

A. I have another theory; Mr. Botts, you have asked for various theories; I have a theory that possibly carelessness on the part of other people might have had something to do,—even without authority.

Q. But I am trying to get the origin of a fire without any explosion on that vessel; the fire originating so rapidly that it would blow a man's leg off and cause his death, in that engine room?

Mr. Underwood:

I object to that question; on the ground that there is no proof that anything blew anybody's leg off.

Mr. Botts:

Well, the man came out without a leg; that is proof.

Mr. Underwood:

And the proof also is that he was found at a spot where the concrete would have been above him; and great slabs of concrete on his body; it is possible that the concrete severed his leg. There is no proof that his leg was blown off at all.

The Court:

I think we are getting into the realm of speculation there. That objection is well taken.

Q. I believe that is a good way to leave your explanation of this fire, anyway. You made the statement yesterday that gasoline was from one to ten per cent heavier than water?

A. That is just a guess. It is probably—of course the gasoline is much lighter than water; it was an error that I made. The gasoline is about, around four per cent lighter than water is.

Q. You have looked that up since yesterday, haven't you?

A. No, I didn't. I have repeatedly made other testimony showing that the water went to the bottom and that the gasoline rose to the top. All my testimony is filled with the position of the water in that tank, as to being heaviest and at the bottom portions.

Q. But you did make the statement yesterday that gasoline was from one to ten per cent heavier than water, didn't you?

A. Well I probably made a great many errors.

Q. I think so.

A. In the way of calling of words quickly. But I certainly do know, and did know, that gasoline was lighter than water.

Q. Do you recall any other instances in which your testimony may have been equally careless or ill-considered?

A. I don't regard that as careless. The misstatement of a word, because I could certainly catch that, and almost any person in the world knows that gasoline is lighter than water, and that oil floats on the top of water; and it is not conceivable to me that I would be held responsible for making the—calling the heavy the light; an error there.

Q. Now then I understand the engine room floor of this vessel was at a level lower than the floor of the surrounding staterooms, fore and aft, and the passageway that was on one side of the engine room; is that correct?

A. I think it was, yes.

Q. Now does the term, the bilges of the vessel, does that refer—and I am asking the question so I won't use the term improperly,—does that refer to the entire space underneath the floor of the vessel, and between that and the hull structure of the vessel? Is that what is known as the bilges?

A. Well I have known it to refer to two different things, depending upon what you are talking about. A vessel has square bilges, or abrupt bilges, that refers to the change from the approximate side of the vessel, to the bottom of the vessel. But when you refer to the bilge of a boat, with reference to where you store things, that usually refers to the entire bottom of the boat underneath the floor boards.

Q. Well then that would be an understandable use of the term, to refer to that entire space underneath the floor of the vessel, as her bilge or bilges; am I right?

A. I would think that is what you are talking about.

Q. It is in that connection that I am going to use the term, and I wanted to be sure that we understood each other on that.

A. Well I would understand that; unless you were on the outside of the ship, talking about her lines.

Q. Now then, Mr. Gibbs, the bilges of this vessel would have been a little bit lower right underneath the engine—

A. Excuse me; when you say, bilges, you get back to the corner; two things; the bilge, you mean the bottom?

Q. All right, the bilge then. In this boat, the bilge of the boat was defined on its upper level,—on its bottom level by the hull of the vessel, and on its upper level by the floor of the vessel, which was lower underneath the engine than in any other places; is that correct?

A. I would say one boundary was the bottom of the hull; the other boundary would be, in this boat, the first plane that it struck, which in this instance would be the floor of the engine room, or the floor of the boat.

Q. The floor of the boat; but the floor of the engine room was somewhat lower in that small space, than the floor of the boat, as I understand it?

A. Yes; they called that the bilge of the boat.

Q. Do you recall how much lower the floor of the engine room was than the floor of the other part of the same deck?

A. It is considerably lower, I think; the whole engine room floor.

Q. Two or three feet lower, wasn't it? A couple of feet?

A. As I remember it, about 20 inches lower than the forward end of the ship; and would probably vary due to staterooms or some—the drawings of the ship I have never seen, but the stateroom might be low or high.

Q. Then the bilge of this boat was a relatively confined surface, confined,—I mean confined area, confined by the hull of the boat, and this floor; that is true, isn't it?

A. That is true of most boats; but not nearly as confined as apparent, because usually there is a pretty large hole right under your engine,—clutch and so forth; because you don't put your engine bed on top of your floor.

Q. But I am speaking of this particular boat, that the bilge was a substantial enclosure, wasn't it?

A. Not nearly as much as would appear to laymen.

Q. Does the floor appear different to an expert than it does to a layman?

A. Yes; a layman does not conceive of things that he does not know of.

Q. A solid floor is a solid floor?

A. No, sir; a layman would think that an engine was put on the top of the floor.

Q. Well, I am not questioning about how the engine is mounted. The solid floor of that vessel above the bilges was a solid floor, whether observed by an expert or a layman, wasn't it?

A. You mean, a continuous floor?

Q. The floor that was there?

A. I won't say it was a continuous floor; I would think there were parts of it in which the continuity was broken up, that was not apparent to the eye.

Q. But it was solid, wasn't it?

A. Except for having holes, it was solid.

Q. And where were those holes?

A. They were possibly at various places.

Q. Do you know that there were holes?

A. I think so.

Q. Where were they, if you know?

A. I think they were under the engine; and around various other places that I could list in going over the drawings to refresh my mind. But there was of course—the floors had floated away, or had been dissipated in some form,—the coverings, I mean; so that we cannot know definitely where all of the holes existed. But it is safe to say that there was a very substantial hole in the vicinity of the engine room, in making the engine room common with the bilge and the boat. And that probably existed wherever it was not necessary for men to stand.

Q. Now then you are just making an assumption now without any knowledge of the fact, are you?

A. That is based on practice. I never have in my life seen someone floor up between the engine bed, of any engine.

Q. Now—

A. Neither have I seen them, in a case like that, try to avoid opportunities of ventilation by putting floor boards underneath walks, or in positions where the foot could not get, to trip, to fall.

Q. All right; now if in the bilge of this vessel, by some carelessness or otherwise, gasoline vapors should have been deposited, which I believe you stated yesterday, by reference to the authorities, were approximately three times as heavy as air,—will you explain to us how

those relatively heavy vapors would have been exhausted or removed from the bilge?

A. Yes, sir. Those heavy vapors in my opinion do not remain as independent or a distinct vapor, long. The tendency is to mix immediately with the air. The reason for such an opinion is to some extent based on the fact that the minute a bottle containing a small amount of gasoline is opened, the nose is sensible of the presence of gasoline in the bottle, meaning that the vapor, some of the gasoline itself, which formed a vapor, has mingled with the air and gotten to the nose. It was only the presence of the article itself, on the nerves of the nose, caused the sensation of smell. The theory of convection would cause the intimate contact of your vapor with your air, and then it would be swept into the air, with the general mixture, as can be proved by merely taking an open pan or cup with gasoline in, and in a very short time it isn't there any more. The theory that the gasoline goes into vapor and remains in the cup,—well, does not hold; because the only way to keep gasoline in a container is to make it absolutely air tight; because if there is an opening, it is gone. I have had considerable experience with efforts to keep gasoline, and one of them is the little skiffs that we sell; we have people complain sometimes that they did not run—the gasoline didn't last as it should have. They have it corked, and we find that a little vent hole is sufficient to let a considerable amount of gasoline out. Invariably those complaints come from people that haven't used their boat in a period we will say of a week. That happened with us. We put the gas in, immediately use it, they will get as much as ten hours use out of the given amount of gasoline. I have already testified as to the ease with which a gasoline vapor becomes a mixture, and on the fact that convection exists wherever there is any change in temperature for any cause whatever. The conclusion that I draw is that

wherever there is motion, there is tendency for a mixture of gases. I do not believe—it has been my experience that a vapor has only to come in the presence of air, to rapidly become a mixture. And if you will check up on the specific gravity of vapor, which is heavy, as compared to air, you will find that air,—that the explosive mixture, for instance, or a mixture of air and gas vapor, is extremely light, a little bit heavier only than air itself. And as soon as there is a mixture, to all practical purposes you practically have,—for specific gravities, you practically have in your bilges a gas of the same density as the air; it is actually about I think fifteen per cent,—or much less than that. You can readily see that if one is three times as dense as the other, and if it only takes about five parts of gasoline vapor to nineteen parts, or maybe twenty parts of air, to make an explosive mixture, that you are only putting a tiny bit of heavy gas and an enormous amount of light gas, and that the resultant weight of the mixture, which is explosive, becomes practically the weight of the air. Therefore there is very little difference in the air, and air-vapor, explosive mixture, as a practical matter, and with convection theories in view.

Q. Is that all?

A. Yes.

Q. Now then it is true isn't it, that there would be a less tendency to have the gasoline vapor mix with air, in an enclosed area, than there would out where air currents were freely circulating; isn't that true?

A. I would think that the circulation within the closed area would perhaps be just as rapid as the circulation in the larger enclosed area, relatively.

Q. Do you mean to say that in a tightly closed room, that the air currents circulate as freely as they do outside? You don't mean to propound that theory, do you?

A. Not with the same speed, but with the possibility—it would be hindered by the friction of the holes.

Q. All right, let me see if I understand you. Do you mean to say now to seriously contend, that if we would take this room, or any other room, and close it tightly and leave it without any moving object in here, and it remained at a uniform temperature, that there would be as substantial a circulation of the air in that tightly enclosed, quiet room, than there would if windows and doors were open?

A. You mean, if all parts were of uniform temperature?

Q. I say, that the temperature remains at the same temperature, and is tightly closed, that the circulation would be as free as it is where it is open with windows and doors?

A. Why certainly not. There would be—if you had a breeze blowing through, with another kind of temperature, in the air that came in, it would have the temperature change. Or if you had openings and with various cold or hot winds coming down, you would create those things that I said about convection.

Q. What I want to see if I can get you to express an opinion,—and I don't like to cut off these long explanations, but I would like for you to answer me, and then any explanation you want to make will be perfectly all right. Now let's take the bilges of this vessel, underneath a floor, comparable in a way to the slab of this table, and the area underneath it, with perhaps some small openings, which you have theorized, it is covered solidly; do you mean to say that gasoline vapor in that area would be dissipated as freely as it would had the floors been removed?

A. No; I think the floors would have been a deterrent on the—

Q. On the rapidity of dissipation of the vapor, wouldn't it?

A. Yes, sir.

Q. Now do you have in mind the testimony which was —and the difference from one of these handbooks, that the expansion coefficient of a gas is approximately 1/491; I

believe, of its volume, for every degree increase in temperature?

A. At 32 degrees.

Q. At 32 degrees?

A. Yes that is right.

Q. And the expansion coefficient would not be relatively changed very greatly, if it was from 80 to 81 degrees, than it would from 30 to 32, would it?

A. No.

Q. So for purposes of illustration, it would be—could be treated as approximately the same, couldn't it?

A. Oh yes.

Q. All right. Then if there was gasoline vapor, and we will take the lowest figure, three times heavier than air,—down in the bilges of that vessel; how great an increase in the temperature would have been required to bring that gasoline up—that gasoline vapor up to a temperature under which your convection,—the law of convection, would have operated to raise it up into the upper—to the overlying layer of air?

A. Oh a very very slight amount of heat would cause motion,—considerable motion; and wherever that motion existed it would occur at an opening. Wherever that opening existed, it would contact the air, and meet counter currents; and you would put that into an air mixture, which would immediately become extremely light, as compared to the air, of almost the same specific gravity; and you would get—it would be swept up with convection into the general atmosphere, from the bilge to the engine room, and from the engine room to the atmosphere.

Mr. Botts:

Well I will have to go into that a long time.

(Thereupon the hearing was recessed until 2:00 o'clock P. M. of the same day.)

Thursday, November 16, 1939, 2:10 o'clock P. M.

(Hearing was reconvened pursuant to the noon recess, and thereupon the witness, GEORGE W. GIBBS, resumed the stand and further testified as follows upon continued cross examination.)

By Mr. Botts:

Q. Mr. Gibbs, I call your attention to a folder headed, "Fire and Explosion Risks", and I will ask you if you are familiar with that work?

A. I don't think I ever saw that. I have read a book a good deal—

Q. Do you think that that is a recognized authority?

A. I would have to look; I have read a book that looked somewhat similar to that, once.

Mr. Underwood:

The book referred to is by Dr. Von Schwartz, translated from the revised German edition by Chas. T. C. Salter, reprinted for the 3rd edition, London, 1926.

A. I do not believe that if a book such as that were available to me that I would read it. It appears to be connected with buildings, rather than marine hulls.

Q. Now we were discussing a situation where there is a closed room, entirely air tight, in which there is air, and a quantity of gasoline fumes. Now I want to ask you whether or not in that situation, in your judgment, there would occur immediately or eventually, a complete equalized mixture of gas and air, so that the mixture at the top of the room would be equally impregnated with the gasoline fumes, as would the bottom of the room?

A. In my judgment it would.

Q. It would?

A. The mixture would become homogeneous.

Q. Now do you have any authority whatsoever for that statement, other than you own unsupported opinion?

A. I cannot recall any written statement that I have read, reiterating such a conclusion, that I have read. I question whether that exact problem has ever been presented to any man.

Q. Now it is a fact, isn't it, that in order for a heavier object to be lifted in a lighter,—as for instance, if there was water, and a heavier object was—an object heavier than water, at the bottom, some force would have to be applied to lift it to the surface, wouldn't it?

A. It would depend upon the nature of that heavier object. For instance if it was a piece of lead, it probably would remain in the bottom; but if it was a liquid of lead it might—or a gaseous lead, and the water became a steam, that became converted into the gaseous form, there would be in my opinion a homogeneous mixture resulting. But the liquid is a very different proposition as far as the mixing is concerned. We speak of liquids and solids.

Q. All right, now then, let's get to the exact question that I asked you; that if we have any mobile substance such as a liquid, with an object of greater specific gravity than water, at the bottom of that liquid, some force will have to be applied of some sort in order to raise it to the surface, wouldn't it?

A. Certainly.

Q. All right. Then if we have in a room filled with a gas of some sort, whether air or otherwise, and in the bottom of that room was we will say a container of equal specific gravity with air, but within that container was a heavier gas, some force would have to be applied to that gas in that container, to lift it to the top of the room, wouldn't it?

A. You mean the heavier gas, isolated from the rest, in a sealed container?

Q. Yes?

A. Yes, sir.

Q. Now then as a general thing, it is a law of physics, is it not, that any object at rest, irrespective of its weight, if it is raised to a higher level, force of some character will have to be applied to it, won't it?

A. What is that? Any—in order to move one object a force is required—to a different place? Yes, sir; the law of inertia.

Q. Then gasoline vapor is made up of minute quantities of the carbon and hydrogen of which gasoline is composed, isn't it?

A. It is a gas,—with properties of a gas.

Q. Well it is composed of the same substances?

A. You mean to ask me if there are a great many solids finely divided?

Q. No. I said, gasoline vapor is composed of minutely divided quantities of the substance which forms gasoline; to-wit, a combination of carbon and hydrogen; isn't that true?

A. What do you mean by, minutely divided?

Q. Well, small, minute particles?

A. You mean smaller than in the gasoline?

Q. Not necessarily; but whether in gas or liquid, it is carbon and hydrogen, isn't it?

A. It is a carbon-hydrogen compound.

Q. And then that substance, whether in the form of a vapor or of a liquid, would still be a carbon and hydrogen compound, wouldn't it?

A. Whatever its elements are in one state, they probably are the same in the other.

Q. Then let's get back to our law of inerta that we were speaking of a moment ago. If a heavier object is at rest,—if an object heavier than air is at rest in air, some force will have to be applied to it in some manner way, shape or form, to bring it to a higher level, won't it? That is your law of inertia, is it not?

A. To move anything, Mr. Botts, it requires a force; or, to stop anything it requires a force. That is the fundamental law of inertia,—the definition.

Q. Now let's get the specific question I asked you: If any object is at rest, at a given or determined level, in order to raise that object to a higher level; force in some manner, way, shape or form will have to be applied to it, will it not?

A. Energy will have to be applied to it.

Q. All right, energy or force. Now then that law of inertia applies irrespective of the question as to whether or not the object which it is desired to move, is large or small, doesn't it?

A. The law of inertia is universal.

Q. All right. Then if we have a gasoline vapor, concededly approximately three times or more heavier than air, and we have that in an enclosed room, where no external force is applied; when you say that that gasoline vapor, without any force being applied, would rise to the higher level, aren't you then disputing the very law of inertia which you have just expounded?

A. I will have to have the first part of the question over.

Mr. Botts:

Please read it.

(The question was read by the reporter.)

A. I do not say, have not said, that that would rise without any force applied, or changes that assume motion of any kind.

Q. Then how will it become mixed and reach the ceiling of that room?

A. It won't without certain forces.

Q. All right then, now we are getting somewhere.

A. The premise is,—let's understand this, that there is no force of any kind. For instance, the force—which don t apply here, of osmose, where a diaphragm inserted in a tank, with one liquid on one side and another liquid on this

side, and those two liquids transfer through the porous wall, merely because they are separated by a porous wall; a law of physics.

Q. Nothing strange about that.

A. So strange that no one knows why; never yet been able to discover a reason.

Q. Nor do you know the reason why a catalyst operates, either, do you?

A. A what?

Q. A catalyst. Don't you know what that is?

A. Oh yes; if you pronounce it right I may tell you. Catalysis, is that what you mean?

Q. You don't know why that operates, either, do you? How it operates? Then let's—I concede that you know more technical engineering terms than I do; let's confine ourselves now not to exhibitions of expert knowledge on other things, but this particular question?

A. I will try to do that Mr. Botts, and at no time will I make one statement which does not bear, in my opinion, directly on the answer to the question that you put to me.

Q. All right. Then the law of cosmos, or whatever that was, is out?

A. Not in my opinion, sir.

Q. Now then we have gotten to the point that if gasoline fumes or vapor are in an enclosed space, that they will remain inert, or in location at the bottom of the container, unless some force is applied: Is that correct?

A. That is correct.

Q. You say it is?

A. Any bit of mass will remain inert unless force is applied,—or continue in motion unless force is applied.

Q. And we can go further, I take it,—that the object to be moved can only be moved in proportion to the quantum of force applied; is that true?

A. I would like to know what quantum means.

Q. Quantum, amount, extent.

A. Will you read that to me?

(The question was read by the reporter.)

A. Oh, yes, that is true.

Q. Now then—

A. The quantity of force and the—coupled with the friction that must be overcome in the removal, and the—

Q. It still moved in proportion to the amount of force, however that force may be dissipated?

A. But there is the factor of friction which also—it would remove inversely as the friction.

Q. It still is a question of dissipating the force in moving the object, whether in a direct lift, as in a vaccum, or coupled with friction?

A. One element of it is friction.

Q. I think you have agreed, however, that friction in air is rather small, isn't it?

A. It is,—depends upon what forces you are dealing with.

Q. I believe you testified this morning that one gallon of gasoline would produce 23.6—22.6 cubic feet of gas vapor?

Mr. Underwood:

I think that was read from a book, wasn't it Mr. Botts?

Mr. Botts:

Well it is in evidence; he either testified to it or conceded it; I don't know which.

A. One gallon of gasoline would produce—

Q. 22.3 cubic feet of gasoline vapor?

A. Well if there is some authority on that I would be inclined to accept it. I don't know exactly what it is.

Q. Well that was the figure that was produced from this Kent's book this morning, and to which I understood you agreed.

A. Well if that is in Kent's, I would be inclined to accept it. You mean that the vapor, the 20 cubic feet of vapor.

Q. 22.3 cubic feet of gasoline vapor is the result of one gallon of liquid gasoline.

A. Cubic feet?

Q. Cubic feet. Now those were the figures that—

A. All right, in preference to any argument we have got, that is all right.

Q. Do you know the weight of a gallon of gasoline?

A. Not offhand; I know approximately what it is; for all my purposes a pint of gasoline weighs somewhere near one pound.

Q. That would be then—

A. It is about seven and a half pounds, is what it weighs—what a gallon weighs.

Q. Would you be willing to refer to Kent and give us the exact figure, and accept that?

A. It won't vary anything hardly from that. I have used it a thousand times. I can look that up.

(Discussion was had off the record.)

Q. For purposes of my examination I am willing to accept that, because the purpose of it makes no difference, but I didn't want to get anything that was inaccurate in there later. Then if you had 22.3 cubic feet of gasoline vapor in a room, it would take seven and one-half foot pounds of energy to raise that one foot, would it not?

A. It would take some pounds.

Q. Well eliminating our element of friction—

A. To raise it? Unless you had a corresponding column coming down, for instance if this room was filled with that vapor, uniform texture, which it would be, it would take almost no energy to lift that amount to the ceiling.

Q. Granted, but the room that I am calling your attention to isn't filled that way. I am trying to get you to show me how you can supply the energy to fill it.

A. What is that?

Q. Now I am speaking, not if you have a force from above, coming down, and pushing it up; that is energy, irrespective of how it originates, isn't it?

A. If you push,—if you take the whole room, all of it, so there is no counterbalancing column, it would take a certain number of foot pounds to raise it.

Q. All right.

A. Lift the whole thing up, not this up and that down.

Q. It will take seven and a half foot pounds of energy to move a gallon of gasoline—to raise it one foot in height, irrespective of whether that is in the form of gasoline vapor or gasoline in liquid; isn't that true?

A. To raise any weight—

Q. Let's confine it to the question, gasoline, if you don't mind.

A. Gasoline would take a number of foot pounds to raise it, which would be a function of its weight, as though it were steel or shot or anything else.

Q. Exactly; in other words it takes—assuming that weight of seven and a half pounds per gallon, it would take seven and a half foot pounds to raise that gallon of gasoline one foot, wouldn't it?

A. I think so.

Q. And that would be true whether the gasoline was in the form of liquid or in the form of gasoline vapor wouldn't it?

A. Provided it was in a restricted column and there was not a counterbalancing column to take its place.

Q. Well if you have a counterbalance, you are supplying further energy?

A. No, there is no energy, one way or the other, except a slight energy of starting a frictionless body.

Q. Well I would like to argue that question with you, because I know you are wrong; but I won't. Do you mean to tell me that when an elevator counterweight comes down, it isn't supplying energy on its way down?

A. Contrary; I said that it did supply the energy which offsets the desired energy to lift the elevator, just as you have in convection.

Q. Then I misunderstood you; all right. Then if you don't mind now, let's not supply any other factors than those that I put in my question. Then, after you answer the question, you can supply all the other factors that you want to, and give any discussion of those that you want to. Now I am suggesting to you this; that here is a gallon of gasoline, and it is desired to raise it one foot in height. It will take seven and a half foot pounds of energy from some source in order to accomplish that result, will it not?

A. Yes.

Q. And that would be equally true whether that gasoline was in the form of a liquid or in the form of gasoline vapor of equal weight, would it not?

A. Yes.

Q. I also understood you to say just a few minutes ago, and I want to be clear on that; that if we have a perfectly tight receptacle, in which is air and gasoline vapor, —we will say 22.3 cubic feet of gasoline vapor, and the area of that receptacle is,—the square area is 22.3 square feet and it is ten feet tall, and in it is air and 22.3 cubic feet of gasoline vapor, and there is no external force by way of heat or otherwise applied to it, so that it remains in its present temperature; I understood you to say awhile ago that under those circumstances there would be no motion of the gasoline vapor, and that it would remain at the bottom of the chamber, and the air would remain at the top; is that right?

A. No such problem was put to me, as that.

Q. Well then I tried to ask you that question awhile ago, and I thought you answered it. Now then take that

problem and give me your answer. Will the gasoline vapor remain at the bottom or will it ascend to the top?

A. Under the hypothesis—

Q. That is what I want you to confine yourself to.

A. That no forces of any kind—heat,—the principles,—or any other principles of physics which would cause forces to be set up are applied, it would remain there in that condition which could not exist as a practical matter.

Q. All right then, under that hypothetical question the gas would remain at the bottom and the air at the top: all right now, then in order to produce an equal mixture—

Mr. Botts:

There is Mr. Hawkins, and I would rather suspend before I ask this next question, because I have a number of them.

(The witness George W. Gibbs was temporarily withdrawn from the witness stand.)

3852 Thereupon: J. E. LAWTON as a witness on behalf of Libelants', in rebuttal, was sworn and testified as follows:

The Court:

What is your name?

A. J. E. Lawton.

The Court:

Where do you live?

A. 1868 S. W. 17th Terrace, Miami.

Direct Examination.

By Mr. Matteson:

Q. Mr. Lawton by whom are you employed?

A. By the Retail Credit Company.

Q. And how long have you been employed by that company?

A. Since November 1st, 1931.

Q. In what capacity are you employed by that company?

A. As an inspector.

Q. What is the nature of the business of that company?

A. The Retail Credit Company is a national reporting organization; it was established in 1899, with home office in Atlanta, Georgia. We make reports to the home office of various insurance companies, and also for credit purposes.

Q. And upon request, do you make investigations?

A. On direct request from the customer.

The Court:

I expect you had better let the record show that this is a witness for Libelants?

Mr. Matteson:

Yes, sir; just ahead of the testimony, you can say, a witness for the Libelants, in rebuttal, taken out of order.

(By Mr. Matteson):

Q. In April 1935 did you have occasion to make an investigation with respect to the Seminole Boat Company?

A. Yes, sir.

Q. Will you tell me what you did?

A. We received an inquiry, I believe it was from Chubb & Son, an insurance company in Atlanta; the inquiry was on the Seminole Boat Company, as I recall, and H. C. Phipps. I was in Palm Beach as an inspector for the Retail Credit Company for three years, and I had some occasion to know something of the Phipps brothers; so I called on Mr. Roy H. Hawkins, of the Biscayne Boulevard Company, who was their local representative, and the only man I know connected with the organization. I asked

him to please furnish me with the names of the officers of the corporation. Mr. Hawkins gave me the change of name; I believe the change was from H. C. Phipps to John S. Phipps, as the new principal in the business,—at least, an executive in the business. My report was written on the Seminole Boat Company and/or John S. Phipps. It was for insurance purposes, as I recall.

Q. Did you ask Mr. Hawkins for information with respect to the company?

A. Yes, sir.

Q. Did you make a report with respect to your investigation?

A. Yes, sir.

Q. I show you Libelants' Exhibit 106 for identification and ask you what that is.

A. This is a report rendered by myself as an inspector for the Retail Credit Company, to Chubb & Son in Atlanta, Georgia; our account 8957.

Q. Was that document actually written by you?

A. Yes, sir.

Q. Was the information which you received from Mr. Hawkins, incorporated in that report?

A. Yes, sir.

Q. Put it the other way around; where did the information that is contained in that report,—where did you get that from?

A. The only person that would have any local knowledge of the change of the corporation, and its affairs—

Mr. Underwood:

I object to that as not responsive.

Q. Put it this way: What was the source of the information which you received?

A. The source of information was, Mr. Roy H. Hawkins, Secretary of the Seminole Boat Company.

Q. I think you said you interviewed Mr. Hawkins?

A. That is correct.

Q. And what was the date of that interview?

A. I can't say positively but my report was made the same date that I interviewed him; the report was made 4-18-35. Our basis for collecting reports is within four days after they are received. The man was interviewed within four days of 4-18-35.

Q. That would be April 18, 1935?

A. That is right.

Q. Now on the occasion of your interview with Mr. Hawkins, will you please tell me if he made the following statement to you, in words or in substance: "The Seminole Boat Company is a closed corporation, and is not a trading company, and is not engaged in business".

Mr. Underwood:

I object to that.

Mr. Matteson:

I have read the question exactly as I put it to Mr. Hawkins when he was on examination; I asked him at that time whether he had made that statement, and he replied that "I did not say that".

The Court:

The time and place was incorporated in the question to Mr. Hawkins?

Mr. Matteson:

Yes, sir.

The Court:

What is the objection?

Mr. Underwood:

I will withdraw it.

A. That is the information incorporated in my report, and to the best of my knowledge and belief, he did.

Q. And did he also at the same time and place make the following statement to you, in words or substance: "This is a holding company for the Yacht Seminole, which has been in the Phipps family for the past five or more years, and is now principally owned by John S. Phipps, the older brother of H. C. Phipps, the latter being no longer interested in the company or in the boat".

A. Yes, sir.

Mr. Matteson:

That is all.

Cross Examination.

By Mr. Underwood:

Q. How long have you known Mr. Hawkins?

A. I don't believe I met him on more than that one occasion.

Q. Where did this interview take place?

A. In the office of Biscayne Boulevard Company, Fourteenth Street and Biscayne Boulevard.

Q. Where, in the building?

A. As I recall it, Mr. Hawkins' office was the second office on the left as you entered the building. I was kept waiting in the vestibule from the main office; he apparently had someone in his office, because he came out and interviewed me in the reception room or the hall, rather than in his office individually.

Q. Did this entire interview then take place while you were both standing?

A. Yes.

Q. You didn't go into Mr. Hawkins' office?

A. I did not go into his office; I was not seated.

Q. Did you go up or down any stairs?

A. No stairs.

Q. The interview took place on the ground floor of the building?

A. On the ground floor, so far as I know?

Q. Whom did you ask for when you went in?

A. Mr. Hawkins.

Q. Whom did you speak to at first? Whom did you ask for Mr. Hawkins?

A. I did not know the man; I don't know who he was.

Q. What did he look like?

A. I couldn't describe him.

Q. How long did you talk to him?

A. Just asked him for Mr. Hawkins.

Q. Was it a man or a lady?

A. It was a man.

Q. You say that Mr. Hawkins came from a room at your left as you entered the front door?

A. That's correct.

Q. The second room from the front of the building?

A. As I recall it.

Q. When did you first receive any inquiry about this report that you made, after you made it?

A. After I made it? The first knowledge I had that the report would ever be used—

Q. No; just when did you first receive any inquiry about it?

A. I wouldn't be able to state anything definitely; it was within a year after the report was made, to the best of my recollection.

Q. Did Mr. Hawkins tell you that he was 45 years old?

A. No, sir. My estimate of ages are estimates only.

Q. You made in your report the statement that Mr. Hawkins' age was 45; is that correct?

A. That's correct.

Q. That is your estimate?

A. That's my estimate.

Q. Was it your estimate too, when you reported that the Seminole Boat Company is a successful firm?

A. Can I see it a moment?

Q. Certainly.

A. That is based on information I gathered in my investigation.

Q. Did you investigate any place else?

A. Oh, yes.

Q. Oh, this is not entirely based upon Mr. Hawkins?

A. The information—

Q. Is it or isn't it?

A. The information indicated as to the ownership of the business, is based on Mr. Hawkins' statement.

Q. Is this report or is it not entirely based—

A. The report—

Q. Wait until I finish my question. Is it or is it not based entirely upon information that you say you got from Mr. Hawkins?

A. The report is a compilation of facts.

Q. Will you answer my question yes or no, please? Is it or is it not based entirely upon information which you say you got from Mr. Hawkins?

A. The report as a whole, no.

Q. Is it or is it not?

A. No.

Q. It is not. Now did Mr. Hawkins tell you that the firm is successful?

A. I couldn't recall such a statement as that.

Q. Did Mr. Hawkins tell you the future outlook was good?

A. I can't recall it.

Q. Did somebody give you that information?

A. Someone apparently did.

Q. Well do you have any doubt about it?

A. None whatever.

Q. Well as a result of your investigation, you considered that the Seminole Boat Company was a successful business and that it's outlook was good; is that correct?

A. That's correct.

Q. Where else did you investigate the Seminole Boat Company?

A. Our sources of information are confidential, and if you wouldn't care to insist, I wouldn't care to state.

Mr. Underwood:

If your Honor please, I move that the witness' entire testimony be stricken from the record.

Mr. Matteson:

If your Honor please, the testimony of the witness on the pertinent points is certainly directly obtained from Mr. Hawkins. I think we all appreciate that there is a reasonable reticence as to other sources of information; I think they ought to be respected. I certainly think there is no basis for striking any testimony.

Mr. Underwood:

I don't think my right to cross examine this witness is to be circumscribed one iota by his reluctance to go into the sources of his information.

Mr. Matteson:

As a matter of fact, the witness hasn't refused.

Mr. Underwood:

I understood his answer as a refusal.

Mr. Botts:

The witness as I understand stated that unless counsel insisted, he would prefer not to state.

A. That's my statement.

Mr. Botts:

Well is there anything wrong with that?

Mr. Underwood:

No, I just misunderstood the witness, Mr. Botts, or else he changed his view,—one or the other. Withdraw my motion for the present.

(By Mr. Underwood):

Q. What other sources of information did you have?

A. As to the standing, reputation, and character of Mr. Phipps, the First National Bank testified.

Q. How about the Seminole Boat Company? You weren't asked to investigate Mr. Phipps, were you?

A. I was asked to investigate the Seminole Boat Company, and—

Q. And then—

Mr. Botts:

Wait until he finishes his answer.

A. I was asked to investigate the Seminole Boat Company and H. C. Phipps.

Q. Let's leave Mr. Phipps out of it for the moment. What other sources of information did you have with reference to the Seminole Boat Company, besides Mr. Hawkins?

A. The First National Bank of Miami testified as to the character of the organization—of Mr. Phipps.

Q. Of the Seminole Boat Company?

A. Of Mr. Phipps.

Q. Did you hear me ask you to lay Mr. Phipps aside for the moment, and tell me what other sources of information you had about the Seminole Boat Company?

A. I had no other source of information about the Seminole Boat Company.

Q. Then it must be that it was Mr. Hawkins who told you that the firm was successful, and that the future outlook was good; is that right?

A. I have no way of stating whether that is correct or not.

Q. Let me try it again. Did you have any source of information about the Seminole Boat Company when you made this report, other than Mr. Hawkins?

A. None other than Mr. Hawkins; that's correct.

Q. You did in your report make a statement that the Seminole Boat Company was successful and that it's future outlook was good, did you not?

A. Yes.

Q. And is it not therefore the fact that you got that information from Mr. Hawkins?

A. It must be; I didn't manufacture it.

Q. What did Mr. Hawkins look like?

A. As I recall him, he was a large man with dark hair.

Q. Is that as good a description as you can give of him?

A. I saw the man only once, to my knowledge. I wouldn't be able to pick him out and describe him more accurately.

Q. Did anybody introduce you to him?

A. Yes, sir.

Q. What did that man say?

A. I couldn't recall a thing like that.

Q. Did Mr. Hawkins tell you that the Seminole was used in Florida waters in the winter, and around New York in the summer?

A. I believe that he did.

Q. Did he tell you that she is a large, well-equipped yacht?

A. Yes, sir.

Q. Did he tell you that she was capable of ocean travel?

A. Yes, sir.

Q. Did he tell you that she was occasionally used for that purpose—ocean travel?

A. I couldn't recall that.

Q. Will you look at your report, down toward the bottom, and see if that refreshes your recollection? Does that refresh your recollection any?

A. That does not refresh my recollection; no, sir—identify the statement.

Q. Did Mr. Hawkins tell you that H. C. Phipps was proprietor of the Seminole Boat Company?

A. No, sir.

Q. Where did you get the information up here at the top?

A. The information was a description from the inquiry received by my office from Chubb & Son in Atlanta. Our inquiries come in on, we will say a small ticket.

Q. Perhaps I can shorten it a little bit. If you want to go on after you answer this question, and explain, you may. Did the inquiry that came to you from Chubb & Son, describe the Seminole Boat Company,—describe H. C. Phipps, rather, as the proprietor of the Seminole Boat Company?

A. Exactly yes, sir.

Q. Where is the inquiry that came from Chubb?

A. Chubb & Sons have the inquiry.

Q. Did you send it back to them?

A. We send our inquiry to our home office in Atlanta; they send it, at the end of the month, to Chubb & Son.

Q. Have you a copy of it?

A. No, sir.

Q. Will you write to them and get a copy of it for me?

A. I have no authority to do that. I will do anything the Court orders.

Mr. Underwood:

If your Honor please, I don't want to have to incur the expense of going to Atlanta and subpoenaing this document, but I would like very much to see it.

Mr. Matteson:

If your Honor please, I can't see what possible relevancy there is to it. The witness says it described the Seminole Boat Company, H. C. Phipps, Proprietor, on it.

Mr. Underwood:

It has as much relevancy as the balance of the 19-year old boat—what was the name of it?

Mr. Anderson:

Fortuna.

Mr. Botts:

It is purely in impeachment of a prior witness; and that does not go to the impeachment.

The Court:

Well if we had a case with a jury, and were ready to go to trial, I don't think I would hold up the case to get this. Neither would I in regard to the Fortuna. But I have come to the conclusion, about the Fortuna, if Mr. Gibbs had the plans and specifications with him, or if he could have gotten them from his place of business, locally, or over the noon recess, why I would allow him to be examined in regard to them, and allow counsel to look at them; but to require them to be filed in evidence, I should not do that. I think I will follow the same rule here; if the witness can get this information, I think it has a possibility of relevancy and will allow it to be brought in if he can get it. So I will allow counsel to propound the question to the witness, whether he can get it; and if he says he can, let him respond as to whether he will get it or not.

(By Mr. Underwood):

Q. Will you write to them and ask them for it?

A. I will write to them and ask them for it.

Mr. Underwood:

Thank you very much. That is all.

Re-Direct Examination.

By Mr. Matteson:

Q. Just a minute; I think that you said that your ultimate investigation was with respect to John S. Phipps; why was that?

A. In making my investigation I learned that Mr. H. C. Phipps was no longer proprietor of the Yacht Seminole; that it had been incorporated as the Seminole Boat Company, with Mr. John S. Phipps as President, as the principal, and Mr. Roy H. Hawkins as Secretary.

Q. From whom did you obtain that information?

A. Mr. Roy H. Hawkins.

Mr. Matteson:

If your Honor please, there certainly is nothing to be concealed about this; we will be very glad to cooperate, to get any information relative to it at all. It seems to me the facts are perfectly clear, and clear on the face of the report. An inquiry came in describing the Seminole Boat Company as H. C. Phipps, Proprietor. The question is, what were the results of his investigation and talk with Mr. Hawkins; and I don't see that anything is going to be added at all, by adding anything further. I am willing to concede any facts that can reasonably be said to be true; and I am willing to have this filed in evidence; willing to take any steps Mr. Underwood wants, to obtain the original inquiry, or anything connected with it, to satisfy his curiosity to the fullest extent. It just seems to me it is unnecessary. Would any object be served by filing this report in evidence?

Mr. Underwood:

No.

The Court:

All right, you report what you find out, to Mr. Matteson, there; or, if he is not here; you better report to Mr. Dyer; you know his initials,—Mr. Dyer?

A. Batchelor & Dyer; yes, sir.

Mr. Underwood:

Perhaps that could be done by telegram, and we can get through some day.

Mr. Matteson:

Might I suggest this; I would be glad if you will send a telegram for it, at our expense, in order to facilitate it.

A. I shall do so.

Mr. Matteson:

And do you understand definitely what it is that Mr. Underwood wants?

A. Mr. Underwood wants the inquiry ticket, I believe, that covered this—that called for this report.

Mr. Underwood:

The communication that you got from Chubb, that called for that report.

A. That is correct.

(Witness excused.)

Mr. Underwood:

I think also, by agreement, I would like to recall Mr. Hawkins at this time.

3867 Thereupon: ROY H. HAWKINS as a witness on behalf of Respondents, was recalled and further testified as follows:

Direct Examination.

By Mr. Underwood:

Q. Mr. Hawkins you have already been sworn. Did you see the witness on the stand who just testified, Mr. Lawton?

A. Yes, sir.

Q. Were you ever interviewed by him in 1935?

A. No, sir.

Q. Did you ever tell him that John S. Phipps was the Proprietor or the principal of the Seminole Boat Company?

A. No, sir.

Q. How old were you in 1935?

A. 35.

Q. Where was your office in that building?

A. On the second floor of the building; still is.

Mr. Underwood:

That is all.

Cross Examination.

By Mr. Matteson:

Q. Mr. Hawkins whose room is the second room on the left-hand side as you enter the offices of Biscayne Boulevard Company?

A. It is the bookkeeper who usually answers such inquiries as this.

Q. What is his name?

A. Wilson.

Mr. Matteson:

That is all.

(Witness excused.)

3868 Thereupon: GERGE W. GIBBS resumed the witness stand and further testified as follows upon continued:

Cross Examination.

By Mr. Botts:

Q. Now Mr. Gibbs you will recall we were discussing a chamber, the horizontal cross-section of which was 22.3 square feet, and it was ten feet tall; and in that was air to which was added 22.3 cubic feet, or the equivalent of one gallon of gasoline vapor, entirely enclosed, so that no air—outside air currents or anything like that could reach it. And under those circumstances I understand you to say that the gasoline vapor, without the application of some outside energizing influence, would remain in place at the bottom?

A. I said that without the application of any force whatsoever, outside or inside, it would remain at the bottom.

Q. All right. Now then if you applied force which would cause that entire volume of 223 cubic feet of the contents of that receptacle to become an equalized—homogeneous is the term, I believe, you used,—mixture of gasoline vapor and air, some degree of force, from some source, would be necessary, according to your previous statement. That is correct isn't it?

A. Yes.

Q. Now then it is true—

A. If that same thing became a mixture.

Q. Yes. In accomplishing that mixture then, that seven and a half pounds of gasoline vapor at the bottom, would part of it be raised to the top, and part of it be raised midway, so that there would be an approximate raising of four and a half to five,—an average of four and a half to five cubic feet raising of the weight of that mixture, in

order to have part of it raised clear to the top, or nine feet of raising, and the other part only raised a foot?

A. The foot pounds of energy required to do that would be determined by the height of the center of gravity of the—new center of gravity with respect to the old center of gravity.

Q. Well roughly that would be a raising of four and a half feet, wouldn't it?

A. Might be; I would rather imagine, somewhere about that.

Q. And four and a half times seven and a half is thirty-three and three quarters, so it would require some thirty to thirty-five foot pounds of energy to accomplish that mixture, wouldn't it?

A. It might.

Q. Now then if the energy applied to accomplish that was heat alone, then if I understand your definition of convection correctly, the operation would be that of convection would it?

A. If it was heat alone that brought it about?

Q. If that was the energy that was applied, the operation would be one of convection, would it not?

A. Practically speaking, yes.

Q. All right now then—

A. But understand this Mr. Botts; that the application of heat or cold, or the absence of heat, but relative heat is what I imagine.

Q. Well the force would have to come from somewhere, however supplied; it would have to be force.

A. That is right.

Q. Now if you raised the temperature of that body of 22.3 cubic feet of gasoline vapor, assuming it still to be at the bottom of your chamber,—if you raised it one degree it would be raised approximately 1/491, or roughly speaking, 1/500'th of its volume; it would be increased in volume approximately 1/500 wouldn't it?

A. Yes; that is for each 500 cubic feet, one degree of temperature.

Q. Yes.

A. Would raise the volume, increase the volume approximately one cubic foot.

Q. Wait a minute; one degree would raise the volume of that 1/500 of its volume, wouldn't it?

A. That is right, one gallon; did you say, 500 cubic feet?

Q. There are 22.3 cubic feet involved. Now then if we raise that 1/500 in volume.

A. There are how many?

Q. 22.3 cubic feet.

A. Well it would be 1/500 of that.

Q. Which would be some four thousandths, plus, of a cubic foot.

A. Whatever it figures out.

Q. Wouldn't it be almost impossible to heat that to a great enough temperature to raise the volume—the specific grayity of that gasoline vapor sufficiently to equally distribute that throughout the chamber? The heat necessary would be almost prohibitive, wouldn't it?

A. It would be an extremely small amouht.

Q. What?

A. To raise a body of very little mass, a degree of temperature, does not take much heat.

Q. But you didn't understand my question. I am trying now to find out, one degree of heat would raise it about 4/1000 of a cubic foot in volume. Now it is—

A. What do you mean by one degree of heat?

Q. I mean, raising the average temperature of that 22.3 cubic feet of gasoline vapor would increase the volume of the entire mass of gasoline vapor about 4/1000 of a cubic foot in volume wouldn't it?

A. Well if that became—was increased in temperature one degree:

Q. Yes.

A. Then its mass would be increased 1/500; but how much energy are you talking about?

Q. Enough energy to increase it one degree.

A. Which is a very small amount.

Q. All right, I concede that. That isn't the point I am trying to get at. I am not interested in how much energy, I am interested in the results. So that instead of raising that one degree of heat, and instead of having 22.3, we would have 22.304 as the volume, wouldn't we?

A. 1/500 more with the increase.

Q. Which is roughly 4/1000?

A. Yes.

Q. Now then how many degrees of heat would it be necessary to apply in order to decrease the specific gravity of that gasoline to one-third,—of that gasoline vapor, to one-third?

A. Enough to supply that energy required to change those centers of gravity of the new liquids.

Q. You haven't gotten the question yet. How many degrees of heat would be required? How much are we going to have?

A. You have a room filled, have you not, with gas?

Q. Umh hmh.

A. And it takes energy to bring—heat, we will say:

Q. Yes, heat.

A. And heat is energy.

Q. Certainly.

A. All right, but the increase in temperature does not mean energy.

Q. It is the result of energy?

A. It is a matter of what had happened; but you want to know whether there was—whether this could have been done by any forces that could have been conceded.

Q. You haven't understood the question yet, so let me try it again. The specific gravity of this gasoline, for the purpose of this we will take the lowest figure, one-third—I mean three times that of air.

A. Yes.

Q. Now then, in order to raise that so that its specific gravity would equal that of air—

A. The mixture.

Q. Of the air—wait a minute: in order to raise the specific gravity of the gasoline mixture, the gasoline vapor, so that it was equal in specific gravity to air, we would have to raise it approximately one thousand degrees in temperature, wouldn't you?

A. It would be three times its present specific—

Q. Volume. And if one degree will raise it 1/500, five hundred degrees would raise it one; and a thousand degrees—so it would take approximately a thousand degrees of temperature; am I right?

A. That is approximately right.

Q. So that the application of heat alone, you would melt any ordinary receptacle before you could apply that much heat, wouldn't you?

A. What is that?

Q. I say, you would melt any ordinary receptacle before you could apply that much heat, wouldn't you?

A. That wouldn't follow at all.

Q. You say so, but I would like, when you make a statement, if you don't mind, to support it either with authority or reason.

A. Well the minute that you have any change in this closed hypothetical place, you begin to change a substance which is one gas, into a mixture of gases. And with the mixture of gases you get—it is a different proposition; you get your—you have very little difference between the weight of air and the weight of the mixtures; and great ease with which the laws of convection apply.

Q. But the laws of convection, or any other law, require equal amounts of force to lift an inert object, whether it is the law of convection, or an explosion of gunpowder, doesn't it?

A. But you haven't indicated that there is any energy required.

Q. I thought we agreed that heat was energy, or was a manifestation of energy.

A. You are talking about a scale,—degrees of temperature. You don't give the cause of the increase. The cause of the increase might be a match,—a match applied to that area of—I mean the heat that comes from a match might be enough energy to raise that volume from one volume to the other.

Q. Naturally a certain amount of heat will raise a certain amount of temperature; but it isn't going to supply the foot pounds of energy necessary to raise the whole mass, is it?

A. What is that?

Q. A small amount of heat is going to supply the foot pounds—

A. You are talking about foot pounds; you are getting to the element of energy; but the ouly way that you can discuss it at all, is the application of energy to the mass, to raise it up.

Q. It took me a long time to lead you to that conclusion, but I agree with you. Now then, I want you to tell me if you say that gasoline vapor in a container will be raised and become a homogeneous mixture; I would like for you to tell me how it can be done without the application of the requisite amount of energy, from whatever source it comes.

A. It would require a requisite amount of energy from the very start, to bring about that homogeneous mixture.

Q. And isn't it perfectly ridiculous to say that a change of one degree in temperature, increasing that mass 1/500 of a volume, would supply a sufficient amount of energy to accomplish that admixture?

A. No, a change of one degree, plus other forces that set in there, in the practical case like the engineroom of the Seminole, might do it.

Q. What other forces are you talking of?

A. Forces of convection; forces of balanced columns; the forces of—that stand because—

Q. Now Mr. Witness, I am not a fool, and I have studied physics. Now then the force of convection, whence is the source of this force of convection that you are talking about? Is it other than heat?

A. Yes, it is the force of convection—it is due very largely to heat.

Q. Entirely to heat, isn't it?

A. Entirely to heat.

Q. Well then, you talk about force of convection, then you are merely talking in technical language about the force or energy derived from heat, aren't you?

A. Yes.

Q. All right; well then a sufficient amount of heat to raise the temperature of that gasoline vapor one degree, thus increasing its volume by approximately 1/500, would not be sufficient energy to apply the requisite number of foot pounds to raise that several feet, would it?

A. Well, one degree rise in temperature must be considered in the terms of the energy required to create it.

Q. Well—

A. One degree of heat, a rise in temperature of one degree of heat, of water, is a very large unit; of iron, it is a different unit. Depends entirely—

Q. And of gasoline vapor, it is a different unit, isn't it?

A. Probably.

Q. That is kindergarten stuff.

A. It is kindergarten stuff, much of this is kindergarten stuff, but that doesn't mean for one minute that it is not vital stuff.

Q. All right; now then I want you to tell me, let's take the bilges of this yacht Seminole; according to your associate, approximately forty-four, I believe it was—4400 cubic feet in volume was his estimate of it, and that is filled; let's assume there is some gasoline vapor down in

there, maybe the forty-four cubic feet which he said would make it an explosive mixture; there is forty-four cubic feet of gasoline vapor down in that bilge. Now then that is approximately—represents approximately two gallons of gasoline. Now from whence are you going to get the force that will clear these gasoline fumes out of that bilge?

A. Back to the Seminole now?

Q. Umh hmh.

A. All right. There would be continuous circulation below the floorboards.

Q. Why?

A. In what is known as that bilge, due to the heat, and due to the fact that your columns are balanced, and that you do not require much energy for the circulation, because instead of these foot pounds you talk about, the force comes right back; when one goes up, the other goes down, and you have your elevator again; and you can therefore have very violent turbulance beneath the floor of your engineroom. Because then you have a balanced column, and it requires almost no energy, without raise of any temperature, hardly, to create turbulance, at least below the floor of that engineroom. Another thing, the gas that is down below that engineroom floor is not gasoline vapor, it is a mixture; and as a mixture it has a very low specific gravity. It is not the specific gravity that you speak of.

Q. Now Mr. Witness if you want to leave it that way, if that is your explanation, I am going to comment on that when you are not here, and if that is your explanation, I want to give you a chance to add anything to it that you want to.

Mr. Underwood:

If your Honor please I move to strike out those remarks, on the ground that the witness should not be threatened by the great fear of comment when he is not here.

Mr. Botts:

I am just saying, if he wants to leave it that way, I am satisfied.

The Court:

Well I won't strike it.

Q. All right; now then you stated at some point in your testimony that gasoline vapor had a tendency to mix with air, did you?

A. Yes.

Q. Now then isn't it true that where two gases are materially different in specific gravity, that not only they do not have a tendency to mix, but they have a tendency to stay separate; isn't that true?

A. There is a force tending to separate them, but also forces tending to mix them.

Q. What force is tending to mix them?

A. The force of convection, and the currents,—air; certain facts that we do know.

Q. All right let's get back now for a minute to our enclosed chamber, that we had awhile ago.

Mr. Underwood:

I thought you were out of that.

Q. No.

A. I can see no application to that enclosed chamber, to the problem before us.

Q. I am sorry; I am going ahead and ask the question, because I think I will be able to draw some applications; so if you will just humor me by answering my questions. Now let's take that enclosed chamber, and we will assume that outside forces,—blowers or whatnot, have mixed the 223 cubic feet of contents of that chamber into a perfectly equalized homogeneous mixed combination vapor of gasoline and air. Now then that mixture having been ac-

complished, suppose all outside force is withdrawn, and the temperature of that mass remains exactly as it was, so that there is no outside influence whatsoever. I will ask you, wouldn't there then be a tendency for that mass to separate, and the heavier particles, of which the gasoline vapor was composed, to settle to the bottom, and the lighter fractions or parts of air, to go to the top; wouldn't that be true?

A. Yes, sir.

Q. All right; then that being true, it necessarily follows, does it not, that where there are gases, one materially heavier than the other, not only is there no tendency to confine, but there is a tendency to separate; isn't that true?

A. No, sir.

Q. All right.

A. The other question was asked in the case of the Seminole's bilge, was it not, with no restrictions as to no outside forces? You don't allow outside forces in the second premise?

Q. I am discussing now the question of whether or not—

A. You took us back to the sealed room; then you are taking us back to the engineroom.

Q. I took you back to the sealed room, and put it there, and you agreed that the gasoline vapor would settle and the air come to the top, so there would be a tendency to separate.

A. I said there would be a tendency to separation.

Q. Then the tendency, so far as it exists for gasoline vapor to combine with air, would be due to outside forces, would it not, and not to any inherent affinity or tendency inherent in the two substances, to combine?

A. It is my opinion that the outside forces are sufficient to make them mix, but I am suspicious of an inherent tendency, somewhat like that of osmose, to cause

those two liquids to definitely—those two gases to definitely mix.

Q. Well you are not wanting now to retract your answer that in the closed room there would be at least a tendency to separate? You are not—you don't mean to withdraw that?

A. No,—with no other forces.

Q. All right. Then as I understand it you would agree with the statement which I find here in this authority, refering to vapors of high density,—higher density than air, for instance, benzol, that in consequence of this high density, the individual molecules of the vapor adhere more closely and are only with difficulty mixable, or mixed, or soluble in air. Do you agree with that statement?

Mr. Underwood:

May I have the source of the statement, please?

(The question was read by the reporter.)

Mr. Botts:

I am referring to page 32 of the book which was described in evidence a short time ago.

Mr. Underwood:

Not in evidence; you mean, described in the record?

Mr. Botts:

Described in the record, I mean.

A. I would regard that as purely one man's theory, which I think is in error.

Q. Well then you disagree with this statement?

A. I am not convinced by that statement at all.

Q. Well isn't that statement largely in accord with your own opinion expressed with reference to the tendency to separate, in this enclosed room?

A. He gives—that is a statement of not only the fact, but is theory of the cause of the fact. For instance, I should like to know what the density of nitrogen is, and also what the density of oxygen is; and there are two gases which readily mix and become air; that is a mixture. And if those things have varying density, I would think it would tend to explode the theory that the knit molecules, or the closer molecules of one gas would have a tendency to prevent the intermingling with the molecules of the other gas.

Q. You disagree with the statement I have read, is that right? Or do you—are you simply quarreling with the correctness of it?

A. As an engineer, not as a chemist, where they deal with the inner structures of compounds, the statement is—I would think that would lead to a false conclusion. But I am not a chemist and I don't want to be setting myself up against that reasoning; and I don't think that the question to me is fair unless I had read the book, or knew what other facts he had developed, to lead him to make that conclusion.

Q. Well as I understand it then you are not in a position,—you don't care to deny this, nor do you care to accede to the correctness of it. Is that your position, that at this time you want to take neither position?

A. Mr. Botts, one paragraph out of a highly technical book is not anything that one should pass judgment on, unless they see more of the discussion

Q. But is there anything obscure or difficult to understand, about the statement that when two gases such as benzol and air,—and gasoline and benzol are very much of the same type,—I think you will concede that, won't you? Gasoline and benzol are very much the same,—they are both hydrocarbons aren't they?

A. Yes.

Q. All right; that there is nothing difficult about understanding the statement that gasoline vapor, being heavier

than air, would have a tendency to adhere closely together, and would not easily be mixed with air. Is there anything difficult about understanding that?

A. Very difficult for me to understand without reading more of it. For instance we often mix, in liquids, an extremely heavy thing with something that is quite light, and without effort; and I believe it is often done with gases; and I can see no reason why affinity or attraction of a molecule within the gas vapor, and another molecule within the gas vapor, should tend to exclude the molecules of another gas, where the molecules were not so close, when we do know definitely that other, what we call fluids, which means liquids,—and gases, of definitely known differences in specific gravity, do readily mix.

Q. Well then I would like to have you put yourself in one or the other of three categories, with reference to that question: that you agree, that you disagree, or that you are not willing to commit yourself. Now in which one of those three categories will you place yourself, with reference to that question?

Mr. Underwood:

If your Honor please, I object to the question on the ground that it confronts the witness with alternatives—

The Court:

Because what?

Mr. Underwood:

Because it confronts the witness with three limited alternatives.

Mr. Botts:

Well I can ask him three questions if you want me to.

The Court:

I think that is a matter of argument, Mr. Botts.

Mr. Botts:

All right strike out the question and I will ask him:

Q. Do you, Mr. Gibbs, agree with the statement in this question with reference to the mixability of gas vapors and air?

Mr. Underwood:

If your Honor please I object to that as repetitious. He has covered the ground more than once.

Mr. Botts:

I haven't had a categorical answer, and I am trying to get him placed.

Mr. Underwood:

He has answered that question, Judge, three or four times.

The Court:

I think he has answered it, but I don't want to cut you off from your examination, if you can show me:

Mr. Botts:

He answered one time and then he started with a long discussion in which he qualified his answer; and I don't believe that he has ever given a categorical answer, that he agrees or that he does not agree.

Mr. Undrewood:

If your Honor please, he said in effect that he neither agrees nor disagrees; and if Mr. Botts doesn't understand it, that is too bad; but he has answered the question more than once.

Mr. Botts:

I am trying to get him to say he agrees, he disagrees, or he don't know; and I think that's a fair position for this highly technical witness to take.

Mr. Underwood:

He wasn't produced as a chemist, your Honor.

Mr. Botts:

Yes, but he has testified very, very fully about his knowledge of convection, which seems to explain everything; and the mixability of gases. Now he has put himself up as an expert in that, I am asking about the very thing concerning which he is attempting to testify as an expert.

The Court:

I will overrule the objection, and if it is repetition, do not repeat it again.

(By Mr. Botts):

Q. Do you agree with that statement?

A. What statement?

Q. The statement that in consequence of the relative density of gasoline vapors as compared with air, that these vapors tend to adhere together, and are not, only with difficulty, mixed and combined with air. Do you agree with that statement?

A. I agree to it in part; and welcome the authority. That part which says they do mix with air. But I do not agree that the mere fact that the molecules are closer together in one than in the other, that that is the reason why their tendency may persist in keeping them apart.

Q. All right now then, do you agree to this statement: that vapors given off by such liquids as gasoline, from the surface of liquids, tend to sink downward rather than to rise from the surface.

Mr. Underwood:

May I see that, Mr. Botts?

Mr. Botts:

I haven't used the exact words, but it is right there.

Mr. Underwood:

May it appear then, that the statement is not from the book.

Mr. Botts:

It is not in haec verba from the book.

A. Yes.

Q. You agree with that?

A. There is a tendency for them to do that.

Q. Do you agree with this statement; that where readily volatile substances yielding heavy vapors are being dealt with in any apartment, the evolved gases or vapors tend to sink by their own weight to a lower level? Do you agree with that statement?

A. Read the second word in the statement.

(The question was read by the reporter.)

A. Yes.

Q. Now then I understood you to say the other day that cowl ventilators and skylights passing through the top of the engineroom, but not passing into the bilge, together with the windows in the side of the engineroom, constituted an efficient method of exhausting any possible gasoline vapors from the bilge. Did I understand you correctly, in making that assertion?

A. The statement said, as I recall it,—was that this arrangement of ventilators was as efficient an arrangement as could be made without the use of forced draft ventilators.

Q. Well now then do you mean to say that cowl ventilators and the skylight passing through the roof or top of the engine room, coupled with the two windows, one on either side of the engineroom, and the ledges of which it appears were about five to six feet above the floor of the engineroom; do you say that those are—that that method is

or is not an efficient and sufficient method of exhausting or removing from the bilge, a possible accumulation of gasoline vapor?

A. I say that that is the most efficient arrangement that could have been used at that time, with the possible exception of a system of forced draft, which I do not even know was in existence in a practical way, at that time. And that I would regard the ventilator as being sawed off at the top, not extending down, for a distance below the roof, as more efficient than one that did extend down for a distance below the roof.

Q. Now then the question was not whether you regarded this as relatively efficient. The point I wish that you would answer is, whether or not this sort of an arrangement would be actually and practically efficient in actually removing gasoline vapor from the bilge?

Mr. Underwood:

If your Honor please, I object on two grounds; one, that it is repetitious; and the other, on the ground that it does not say how much gasoline vapor, nor does it say in how long a time.

(The last question was read by the reporter at the direction of the Court.)

The Court:

I will overrule the objection. Mr. Gibbs, if you want any other element as a basis,—element of the hypothesis, why then you can ask for it.

A. I would have to know the amount of gasoline to be removed, or gasoline vapor, or mixture, to be removed.

Q. Any amount, whether one cubic foot or one thousand cubic feet?

A. Then I would have to know the time element.

Q. One minute, or a thousand hours, take your choice; tell me about it. Now you are an expert, please don't try to evade.

A. I will not evade Mr. Botts, but I most certainly will answer the question thoroughly. It would not be, in my opinion, sufficient ventilation to remove—how many cubic feet, a thousand cubic feet, did you say?—A very large quantity of gasoline, in a time of one minute. It would be efficient—effective, to remove an amount smaller than that, in a greater period of time.

Mr. Underwood:

The last two or three words of that answer?

(The last answer was read by the reporter.)

Q. In referring to gas vapors such as gasoline vapor, in a compartment with air, would you agree with this statement, with reference to a proper way of removing the gasoline vapors: that in such case it would be fundamentally erroneous to attempt to use a ventilating appliance, working at a higher level, and the floor ventilation then becomes sine qua non. Do you agree with that statement?

A. I do not.

Q. All right. Do you understand the expression, sine qua non?

A. Well no; that—

Q. That without which, is a technical translation; but, that without which the results cannot be accomplished is the meaning of sine qua non in that connection.

A. That without which:

Mr. Underwood:

May I suggest if there is going to be any discussion about that, let's ask Mr. Botts to rephrase the question entirely in English.

Q. I read from the text, and I just wanted to be sure that the witness understood that one phrase.

A. Anybody could speak freely to me in Latin; it is all Greek to me.

Q. Do you agree then that in cases of heavy gases such as gasoline vapors, in conjunction with air—

A. Does that book say, such as gasoline vapors?

Q. It is referring to heavy gases.

A. It does not refer to them developed in continuous and gigantic quantities in factories, as by-products of manufacturing industry, and not incidental leakage of a few drops occasionally?

Q. It makes no such limitations. Now if I may just complete the question, the statement is here that, "In cases of these gases heavier than air, that floor ventilation is an absolutely necessary essential to proper ventilation". You don't agree with that statement, do you?—I have phrased that in English, eliminating the words, sine qua non. I had, in doing so, to rephrase it, to carry the idea.

A. Mr. Botts, I would like to know the quantity. Floor ventilation exists with the—

Q. Well do you concede that in cases of such heavier gases, that floor ventilation is superior to ceiling ventilation?

A. It would depend entirely on the quantity to be removed, and the speed with which it had to be removed.

Q. Well irrespective of the quantity, wouldn't floor ventilation accomplish the results quicker and more efficient, in a given length of time? Wouldn't floor ventilation accomplish the results quicker than ceiling ventilation?

A. Are you speaking of blower systems, or those ventilators we were discussing?

Q. Floor ventilation, whether blower power or otherwise.

A. Well I would have to know what was meant by the words, floor ventilation.

Q. We have got floor ventilation in the yacht Seminole; it isn't necessarily a thing called floor ventilation, which means words without a description.

A. All right, sir.

The Court:

I think it is a little difficult to extract a statement from a book and ask a question as to whether the witness agrees with the statement, when he does not know just exactly what the situation is that is being discussed. If you take it as a separate proposition, disconnect it with a text book, and ask the question, I think it might throw some light. But I don't know, just for the purpose of enlightening the Court, I don't know whether that authority is dealing there with a situation with gasoline engines present in the room or apartment, and I don't know whether he is dealing with boats, I don't know whether he is dealing with factory conditions, or just what it is.

Mr. Botts:

I can answer, so far as my examination shows, that it seems to be—

Mr. Underwood:

I object to any statement on the record as to what the book is dealing with.

The Court:

I just wanted to state the difficulty I was having, and point it out to you. I don't think you ought to put in the record, what is in the book.

(By Mr. Botts):

Q. Let's take it this way: if you had a quantity of gasoline vapors in a room, which you wished to remove without the use of power ventilation, in your judgment would that gasoline vapor be removed more efficiently by an

opening at the level of the floor, or an opening of equal size in the ceiling?

A. In the ceiling; and if there is anything that would cause maximum amount of turbulence in the room, by cross drafts, and that would be done in my opinion more efficiently by elimination of the foot to the ventilators; I mean by the foot, that part that is below the ceiling.

Q. All right; that is all right. Now would you say that, assuming gasoline vapors had collected in the bilge of the Seminole, that that vapor would be more difficult to remove from that location because it was covered with the floor of the engineroom and the deck; or would it have been more easy to remove if that flooring was absent, and it was entirely open up to the air.

A. If it was entirely covered with the floor it couldn't be removed.

Mr. Botts:

Now if you will read the question please; he didn't understand it, I don't think.

(The question was read by the reporter.)

A. If it was covered it couldn't get out. If it was partially covered, as is usual with an engineroom floor, it could get out. Whether it could get out more freely, which is very doubtful, from those two compartments, one covered by a roof and the other by a floor, with many large holes in it, is a question of the direction of the currents, as aided by baffles, such as floors. As is the air that enters the chimney of an old-fashioned lamp, which smokes, and nearly putting a diaphragm in, air rushes down into the hot chimney and then up out of the hot chimney and your flame is bright, and no carbon is formed. Such baffle construction might be an aid to circulation in the bilge and also in the engineroom.

Q. Then as I understand it your position is that the existence of this floor covering vast majority of the area above the bilge, would be in your opinion an aid to clearing the gas from the bilge?

A. There are conditions under which it would.

Q. I am speaking about the conditions of the Seminole, now. With those conditions, do you say it would or would not have been an aid?

A. I don't know where the holes are—were, in the floor, so I can't make a definite statement.

Q. Then you don't know whether there were any holes or not, do you?

A. I do know that there were definitely a number of very large holes.

Q. If you don't know where they were, how do you know that to be a fact?

A. I understand from the testimony there was still another, and I know where many of them were; I know the location of many holes in there.

Q. Do you say the existence of that floor was an aid to remove the gas from that bilge, or not?

A. What I say is that the existence of the floor, with those holes, had a certain beneficial property in the removal of those gases. I do not believe however that the gases would have been removed as readily without the floor, or without the roof in the ship. I think an open ship,—I mean no roof, no engineroom floor, that gas vapors or gas mixtures could have been more readily removed.

Q. Now it is true, isn't it, that if there were gasoline vapors in that bilge, that the level of the top of the combustible or explosive mixture would have been practically constant throughout the whole bilge, wouldn't it?

A. You are speaking of the Seminole?

Q. Yes.

A. No, not true at all.

Q. You mean with those gases, there would be one place where the gas mixture would be richer than it would in others; is that it?

A. I think that the time any gas vapor hit the—got in the bilge, that it was an air mixture, that there was continual current in that floor—below that floor, and also in the engineroom, and also within the shed of Pilkington; and I don't think there was any opportunity, unless some freak of nature had a dead calm possibly some night, with fixed temperatures; even then I question the condition that ever could occur to prevent very violent—very rapid currents of *mixture*, tending to clear the ship of gases—gasoline vapors.

Q. Now then let's come a minute to this tank. You said that in general practice, in installing tanks that you made a hydrostatic test, and if leaks developed you caulked the leaks, is that correct?

A. Depending upon the kind of tank. If it is a copper tank and the leak developed, we clear it of—we take the liquid out which we put in for the test, and we either weld it, if it is copper, any other metal that will stand the weld,—or we tin it.

Q. Suppose we take a galvanized tank such as the Seminole, how would you cure leaks in that?

A. If it is a matter of plate, we would probably caulk that, if it developed a leak, if it is a riveted tank, or thicker than a plate, we would caulk it. There are other ways to do it, however; you could put solder over the tank.

Q. Do you think soldering is a proper method of—soldering on the outside, is a proper method of stopping a leak in a tank to be used for gasoline?

A. I merely say that about—the statement of the Government men is you haven't done a job if you don't solder, completely, the edges of your tanks, whether it needs it or not; to cover all corners of sheet metal tanks with solder. Nearly all tanks are made covered with sold-

er. It may be completely wrong, but that's the way, it is considered good practice.

Q. I just asked if in your opinion that was good practice?

A. It is infinitely better practice than welding, I think.

Q. And is it better than caulking?

A. It depends entirely upon the condition, the place in the tank, and so forth.

Q. Now then let's refer back to this rubber hose for drawing off gasoline out of the engineroom. Do you approve that as proper practice on a boat, to run a hose out, connect it to a draw-off valve in the engineroom, run a rubber hose out and then disconnect it and put the hose away for future use?

A. I can't conceive of a much better way than—

Q. Don't you concede the very grave probability that in doing that, in disconnecting that hose, that a certain amount of gasoline would be spilled into the engineroom?

A. No. The man used to taking a fuel like gasoline, he knows he has got his hose filled with it; just as you go to a filling station and you see how carefully each time they do it; they have the old style hose they used to get it into the tank, just lift up and let it run through.

Q. You approve that as proper practice, do you?

A. No, I say I approve that as probably the best practice that would have answered—that would have served the Seminole in the duty that she had to perform—the best available practice. I don't think that the presence of gasoline in the vicinity of the Seminole was tended to make her safe as compared to a sailboat. I think that was the best method of serving those yachts. I think not very greatly superior to using a can of this type.

Mr. Underwood:

Indicating Exhibit 13.

Q. Then as I understand from your last answer, the drawing off of gasoline, either by hose or can, does add an

element of risk as compared—using your comparison, as comparable with a sailboat, for instance; it adds an element of risk, doesn't it?

A. Yes, the presence on the boat of gasoline at all is an element of risk, as compared to a boat without gasoline.

Q. And drawing it off in the engineroom would add a risk, as compared with not drawing it off in the engineroom—or not drawing it off at all, wouldn't it?

A. It would not add an increased risk if that duty was substituted by any other way or method of getting gasoline to the fishing fleet, from the ship.

Q. But suppose they don't take it off at all, that would be safer than to take it off even in the most careful way, wouldn't it?

A. I think so. I think if there is no gasoline needed for priming or any other thing, it would be safer.

Mr. Botts:

That is all.

Re-Direct Examination.

By Mr. Underwood:

Q. Just a few questions, Mr. Gibbs. In your experience in the construction and repair of vessels propelled by gasoline power, or tank vessels to carry gasoline, has it been necessary for you to know the flash point of gasoline?

A. Never.

Q. Does the flash point of gasoline enter into the calculations that you have had to make for the sizes of tanks, or the type of feed lines, or anything of that sort?

A. No.

Q. In your opinion is there any substantial hazard of getting gasoline vapor into the engineroom or into the bilges, by drawing it off from the drain valves, either into that can, Exhibit 13, or by means of a hose?

A. I don't think so. I would want it on my own boat.

Q. Mention has been made of your sea skiffs, and your use of copper tubing for the gasoline line. Why is it that you use copper tubing there?

A. Because there is an extremely small length of copper; the tank is built as a part of the engine, and with a tiny little length of copper, with two small fittings, there is virtually no head whatever, and no opportunity for the copper ever to be hit or twisted. Then the other reason is that the engine is gotten out on a manufacturing basis of the lowest possible cost; it is a price proposition.

Q. What is the length of the copper tube on that engine?

A. I would say offhand about six or seven inches, it may be as much as ten, I don't think so.

Q. You were asked a good many questions about the Fortuna; let me ask you a question about a boat which I think you repaired, a boat that belonged to Mr. DuPont; what was her name?

A. We have handled the work, a great many years,—the Nenemoosha.

Q. Do you know how to spell it?

A. N-e-n-e-m-o-o-s-h-a.

Q. Did you have anything to do with the installation or repair of a gasoline line in her?—Just yes or no.

A. I think we did; it was ordered done,—the work was ordered done.

Q. What type of boat was she, what power?

A. She was a large steel Diesel boat, with possibly seven or eight hundred horsepower.

Q. Did she have a supply of gasoline on board?

A. Yes, sir.

Q. Do you remember where the gasoline supply was?

A. On the deck.

Q. Was there a draw-off line?

A. Yes, sir.

Q. Where was it?

A. Down in the engineroom, under the control of the engineer.

Q. If an explosion occurred in the after part of the engineroom of the Seminole, and had upset Number One tank to some small degree, as you have observed in the photographs, would you expect any effect on the bulkhead between the engineroom and the tank compartment?

A. Explosion in the engineroom?

Q. Yes.

A. And the after part of the bulkhead?

Q. The after part of the engineroom.

A. Explosion is in the engineroom?

Q. Yes.

A. And you want to know what would be the effect—

Q. On the bulkhead between the engineroom and the tank compartment; if the explosion had any effect in deranging the position of Number One tank.

A. It would have pushed those plates away from the explosion, or in the direction of the bow of the boat.

Q. Have you examined Exhibits 3-X and 3-W?

A. Yes, sir, I have examnied them.

Q. Do those photographs show any displacement of Number One or Number Two or Number Three or Number Four gasoline tanks?

A. Not the slightest that I can detect.

Q. You have spoken about their being some holes in the engineroom floor. What holes do you know about, there, and what do you know about them?

A. The base of the engines are fastened to the scantlings of the boat, and timbers, which are not a part of the engineroom floor.

Q. Let's make it brief, Mr. Gibbs.

A. Wherever engines are installed, wherever these controls come through the engineroom floor, like clutch levers, couplings, and wherever the engineroom floor cannot be stepped upon,—as a rule that is a hole.

Q. Can you tell from your observation of what remained of the engineroom, whether there must have been holes through the engineroom floor to accomodate the two propeller shafts?

A. Yes there must have been.

Q. How about the flywheel?

A. Well, the whole engine.

Q. Engine itself?

A. Oh yes.

Q. How about the engineroom controls, those levers by which they were operated?

A. Oh yes,—slits.

Q. I think you inadvertently got your percentages and your proportions mixed in describing an explosive mixture of gasoline. Just so we will be clear about it, what is your understanding of the explosive range or mixture of gasoline vapor and air?

A. I understand that the range of gasoline vapor to air is above one and a half; not above six and a half.

Q. One further thing—

A. Percent.

Mr. Botts:

If it isn't in the record, do you know whether that refers to, by volume?

Mr. Underwood:

Just a moment, please, Mr. Botts, and then I will be through.

Q. I show you Libelants' Exhibit 12 and call your attention to a pipe which is indicated by an arrow, and ask you to assume that that was the pipe which lead from the back of the picture toward the foreground of the picture, and to the two draw-off valves. Do you see that pipe?

A. Yes.

Q. I will ask you to assume that it came from the starboard end of the manifold, a few inches to starboard of the drawoff valve from Number Four tank, and that that pipe was about six or seven feet long, from the place where it left the manifold itself and started back to port, to the place where it passed through the side of the desk. Do you visualize that situation?

A. Yes. You had the—what was your stand, can you tell me?

Q. The stand from the right-hand end of the manifold to the legs or the sides of the desk was six to seven feet; and I will ask you whether or not that in your opinion was proper support for that length of pipe?

A. What was the size?

Q. Half-inch diameter, half-inch pipe.

A. Yes that was sufficient.

Mr. Underwood:

I think that is all.

Re-Cross Examination.

By Mr. Matteson:

Q. This Nenemoosha that you spoke of is a Diesel vessel is she not?

A. Yes, sir.

Q. And she doesn't carry gasoline in her main fuel tanks, does she?

A. No, sir; she pipes it to the engineroom, from an auxiliary gasoline tank.

Q. There is an auxiliary gasoline tank?

A. She has a gasoline tank aboard for the uses that she has for gasoline; probably for the launches.

Q. Do you know whether they are used for launches, or not?

A. I know that she has launches and that they have to have gasoline.

Q. You don't know how the launches are supplied with gasoline, as a matter of fact, do you?

A. Yes I know that that pipe was designed to get gasoline for the launches; because the instructions were that all gasoline be lead to the place where the engineer alone could get it.

Q. How large a tank did they have?

A. I don't know, myself.

Q. Where is the Nenemoosha now, do you know?

A. I don't know that either. She has been in Jacksonville, last year..

Q. As a matter of fact, these various boats that you have mentioned, the only one that was designed by your firm was the Colonel, was it not?

A. Well I wouldn't say that even that boat was designed—it was largely by Colonel Greene himself.

Q. Then do you mean that all these boats that you built and have talked to us about, have been built to specifications, as you say the Fortuna was?

A. Many of them were, and many of them were built under this kind of an arrangement: that we would undertake to build a boat of such and such length, such and such speed, and with such and such other characteristics; we would be given a picture of the boat. Much of our Government work has been done on that basis, in which case we not only have to design the boat, but back up the design with as much as one thousand dollars per mile for failure to comply with the requirements of the owner, or the Government. A great many of the boats have been designed by our firm. Now in those designs we are given rather close specifications as to some of the details; the tank, for instance, must have a certain capacity. Now, the tanks must be tight, and it is up to us to make a design which will be not only satisfactory to the Government, but tight; and the speed—the lines must be of such form that the boat will make the speed. In a case of that kind I would say that we are designers, almost completely.

That is the situation with many of our boats. However, if the Government made a statement as to the tubing of the gasoline lines, we would not feel, as designers, responsible for the judgment that caused that line to be one material or another. For instance, the 75's, of which we built thirty, or approximately a million dollars worth, had brass pipes. The last boat we had, had copper tubing. Now I understand that that is to be substituted—the new specifications will come out with aluminium, brass, or bronze,—an alloy of those two; which we have already put in some portions of the last order of Government boats.

Q. Now Mr. Gibbs you have mentioned a number of yachts here to us that you have built; I have been trying to check them up here in Lloyd's Register as best I could, and the only one that I find that is designed by you, was the Colonel, and I find that she was a Diesel boat. Now am I correct in the assumption that, referring to yachts, that is the only one that you have mentioned that you have designed?

A. Well our yard does not go in much for the construction of yachts. We specialize in the construction and design of Government vessels; they are very similar to yachts; and Commercial vessels,—for oil companies: and the yacht repair business. For many years we have enjoyed the opportunity of having most of the yachts in our yard.

Mr. Matteson:
That is all.

(Witness excused.)

Mr. Underwood:
If your Honor please, I offer in evidence the paper which has previously been marked Respondents' Exhibit FF for Identification.

The Court:

Did you all get the matter of the plans straightened out?

Mr. Underwood:

We expect to have word on that this evening. Mr. Gibbs has telephoned his son to find the plans if they are there; and we expect to hear from him tonight.—I offer this letter, FF for Identification, in evidence; it is a letter which Mr. Hawkins testified that he wrote. I can't prove it was delivered to Mr. Pilkington, and I don't offer it as proof of anything that got to Mr. Pilkington. I offer it merely to prove that Mr. Hawkins wrote such a letter.

Mr. Botts:

I think that is immatterial.

Mr. Matteson:

He has testified to that.

Mr. Botts:

I don't see what it illustrates.

Mr. Underwood:

I offer it to prove that Mr. Hawkins, as an Officer of the Seminole Boat Company, was active in the business of trying to Charter the boat; he wrote that letter in pursuance of such activity. In other words, it wasn't a dormant, moribund corporation, but it was a working one.

The Court:

He has testified, hasn't he, that he did write such a letter?

Mr. Underwood:

Actually, I am not entirely clear whether he did or not.

The Court:

Well I will admit it. You can go into it a little more if you want to, and move to strike it.

Mr. Botts:

I don't think it has any materiality. I don't think it hurts whether it is in or not.

(The said paper so tendered, and previously marked Respondents' Exhibit FF for Identification, was admitted in evidence and filed as Respondents' Exhibit FF.)

Mr. Underwood:

As I read the record, your Honor, Respondents' Exhibit 5-N was merely offered by me for identification when Mr. Stein was on the stand, although my recollection is that I offered it in evidence. We all used it, so in order to complete the record, I offer it in evidence now.

The Court:

It will be admitted.

(The document previously marked Respondents' Exhibit 5-N for Identification, was admitted in evidence and filed as Respondents' Exhibit 5-N.)

Mr. Underwood:

The marking does not need to be changed, because it does not say, "For Identification", in the marking.—I have a number of corrections in the testimony of Mr. Munroe, which Mr. Matteson has agreed to, all but three. I am not sure whether Mr. Botts has had an opportunity to check them over or not.

Mr. Botts:

I haven't looked at them.

Mr. Underwood:

Well practically all of them are typographical; I don't know whether Mr. Botts will look at them and consider agreeing to them, in order to save time, or not.

Mr. Botts:

I don't want to take too much time; I won't bother with them.

Mr. Underwood:

Then may it be understood that Mr. Munroe's testimony be corrected in these particulars, with the exception of those three that Mr. Matteson questions, and about which I shall recall Mr. Munroe very briefly.

The Court:

Physically, how does that leave the record? You want somebody to be instructed to correct them?

Mr. Underwood:

I suggest that the stenographer correct the Court's copy, and make copies of this and furnish to everybody who is getting a copy of the record.

The Court:

Has Mr. Munroe gone over these?

Mr. Underwood:

Yes, sir.

The Court:

Just ask him in a general way about all except the three, and then in detail about the three.

3908 : Thereupon: WIRTH MUNROE was recalled as a witness on behalf of Respondents' and further testified as follows:

Direct Examination.

By Mr. Underwood:

Q. Mr. Munroe, you have read over, have you, that list of corrections to the record, with me?

A. I have.

Q. Let's speak of all but those three opposite which there is a question mark. Have you determined that the transcript of your testimony is inaccurate in those respects and should be corrected as represented?

A. It is inaccurate.

Q. Now turning to those three that Mr. Matteson has put a question mark opposite; on page 2298 I call your attention to this question and answer: "Q. Did you find any leaks in any seams or at any rivets anywhere?" "A. There were no leaks whatsoever in any seam or any rivet in that part of that tank".—I will say that that refers to your test of one of the tanks of the Seminole; last May. Have you any correction to make about that?

A. No, I want to strike out, "In the part of that tank"—"In that part of that tank".

Q. Did you find any leaks in any part of the tank proper?

A. None whatsoever except those that were mentioned; one in the threads of the filler pipe, and the crack in the discharge.

Q. Now on page 2301 I call your attention to the question and answer reading: "Q. What do you mean by 'improper threads'?" "A. The threads having been used for some time, the threads were naturally pitted and rusted, and they wouldn't make as perfect a connection as a new fitting." Do you have any correction to make, to that?

A. Yes, I believe, I may have used the word, "used", but I meant, "exposed"; because there was no pipe or plug or anything whatsoever in the threads at the filler pipe; they had been exposed to the air and rust, ever since the fire.

Q. Now on page 2397, I call your attention to a question as follows: "Q. You were saying that it was important to have a supply of gasoline available in the engineroom for certain purposes. It would be a very simple matter to have a separate tank on deck, in the vicinity of the engineroom, for storage of gasoline that the engineer might want to draw off for any purpose, would it not?" "A. You could have a tank on deck, yes; it would be handy". Do you have any correction you want to make to that?

A. Should have had the word, "Not handy", in there; that was my full intention in the answer.

Q. In other words, would it be handy if it were on deck?

A. It would not be handy to the engineroom.

Mr. Underwood:

That is all.

The Court:

As to that, it is a mechanical matter of handling, if Mr. Botts wants to look at them; and if they are to be made, the reporter may be instructed.

Mr. Botts:

I am willing to agree to the corrections that Mr. Matteson approves.

The Court:

Is it agreeable then that the reporter be instructed to use red ink and to be guided by this notation, and to "X" out with red ink, the transcript as it is, and correct it in red ink?

Mr. Underwood:

I think that is all right, so far as the Court's copy is concerned; and I would appreciate his making one copy for Mr. Matteson.

Mr. Matteson:

I have already made the corrections in mine.

The Court:

For that purpose, let this paper be preserved in the record, and let that be known as the COURT'S EXHIBIT 1.

(Witness excused.)

(The said Exhibit being in words and figures as follows:)

Munroe—Corrections.

2443	20	from top	Change "boat" to "day".
2445	9	bottom	Change "yes" to "no".
2448	1	top	Change to "The curved end of each pan".
2455	15	"	Change "construction" to "compartment".
2459	10	"	Change "grooved" to "curved".
"	18	"	Change "brace" to "base".
2467	18	"	Should be "bottom" of the side, not "seat".
2469	13 & 14	"	Strike out "in that part of that tank".
2470	26	"	Change "tank" to "tank's bottom".
2471	last		Strike out "not".
2472	12	from top	Change "used" to exposed".
2474	15	"	Change "widening" to "wedging".

2481	3	" bottom	Change "tank" to "desk".
2482	11	top	ditto
2492	16	from top	Change "tubing" to "pipe".
2497	8	"	Change "ceiling" to "sill".
2498	7	"	Change "dead throw" to "dead front".
2503	25	"	Change "under" to "in".
2504	10	bottom	Strike out "no".
2511	5	"	Change "impliedly" to "employed".
"	4	"	Strike out "in the employ of the widow" and insert "to remove the body".
2512	6	top	Change "morals" to "mouths".
2516	5	"	Change "Biscayne Blvd" to "Main Highway".
2528	4	"	Insert "not" after "would".
2555	7	bottom	Change "wood" to "crack".
2556	3	top	Insert "not where" before the first word.
2559	9	"	Change 1 to 2 and change 2 to 3.
"	13	"	Change "newell" to "Nuta".
"	16	"	ditto
2585	11	"	Change "side" to "sight".
? 2589	5	bottom	Insert "not" after "would". ?
2741	2	top	Change "can" to "could".
"	3	"	Change "after you" to "before removing".

Mr. Underwood:

At long last, we rest, your Honor.

Mr. Matteson:

There is one thing; when Mr. Simmon was on the stand he produced and there was marked as an Exhibit, some sheets which were merely a summary of some other re-

cords, he said he took from invoices. I don't take it that is evidence of anything, except there were at some time, invoices from which he made a summary. The best evidence of course would be the invoices themselves. I made that point at the time. Since then I have sent Mr. Underwood a letter asking for the production of the original document from which this summary was compiled. As a matter of fact I don't care an awful lot whether they are produced or not, except I make the point that the original documents are the best evidence, and that I shan't accept the summary as a substitute for the best evidence.

The Court:

Was Mr. Simmon a Respondents' witness?

Mr. Matteson:

Yes, sir; Simmon was the—they called him accountant,—or the man in the office.

Mr. Underwood:

He is an accountant by profession, anyway.

Mr. Matteson:

Anyway, he had some sort of a business position in the office, and he is the man who testified that he knew about the repairs that were made in 1927, and that the tanks were removed at that time and the bottoms taken out of them and a lot of work done in the engineroom, and what not; and in addition to that he testified that he had made up a summary from certain other records, and the summary was marked in evidence, with the understanding that it represented merely a summary of some other documents which hadn't at that time been produced.

The Court:

What is your response to that notice, Mr. Underwood?

Mr. Underwood:

If your Honor please, we have searched high and low, long before we got Mr. Mattesons', or Batchelor & Dyers' letter, and again since. I spent a good part of last Sunday looking, again; and as the record shows, half a dozen of us spent all of one evening and far into the night, at the office at 1315 Biscayne Boulevard, hunting for such things. We have not been able to locate them or identify them.

The Court:

Well in the absence of that, did I admit the summary?

Mr. Underwood:

There was no objection to that.

Mr. Matteson:

It was admitted solely as a summary of some other document.

The Court:

Are you satisfied with that search made now?

Mr. Matteson:

I take Mr. Underwood's word for it that they can't be produced; but I do make the point that the best evidence has not been produced, and I don't think what was produced is any evidence at all.

Mr. Underwood:

Our problem in the production of them, has been this: we have a lot of old vouchers, those of Merrill-Stevens are some; but these documents we are talking about, Exhibit 4-N, isn't it?

Mr. Matteson:

4-O.

Mr. Underwood:

4-N and 4-O, anything in the category, this Exhibit 4-O is a comparative statement of expenses; it deals in totals, and it does not give the name of the house from which any material was purchased, or the name of any member of the crew who worked at any particular time; it just deals in totals, by months and by years. Now it is a superhuman task, even if it could be done by a superman, to go through a batch of records now and by trial and error, add up bunches of figures on vouchers until you got the same figures that are on that statement. I don't doubt we have in the files at least some of the vouchers that were considered in making up those statements. So far as being able to produce one or a thousand vouchers, and say that numbers one to ninety-four are the ones used in support of a figure on page one at the top, and so on,—we just can't do it; it is not possible.

Mr. Matteson:

Well I didn't want the moment to pass without registering the fact that I had demanded the production of the originals, and that they haven't been or cannot be produced; and I am willing to let the record stand that way, as far as that is concerned.

The Court:

I believe the proper ruling to make would be to admit them, and if you wish—

Mr. Matteson:

I have no objection to their physically remaining in the record, because we have no jury here, and the matter is entirely for your Honor. As your Honor is aware, there isn't any such thing as reversible error in Admiralty. Both the District and Appellate Courts give to the evidence the weight it is entitled to under all the rules of evidence. I

don't see that it does any particular harm, but we may make proper comment on the evidence when it is cited.

(Thereupon the hearing was adjourned to be resumed at 9:15 o'clock A. M. of the following day, to-wit, November 17, 1939.)

Friday, November 17, 1939, 9:25 o'clock A. M.

Hearing was resumed pursuant to adjournment of the previous day.

3920 Thereupon: J. N. PATTON was recalled as a witness on behalf of Libelants, in rebuttal, and further testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Captain Patton, after the adjournment of Court in May, May 19th, when did you next see the Seminole?

A. I believe it was five or six days afterward.

Q. How did that come about?

A. I had business up at Nuta's Yard, on another boat; I happened to remark to Mr. Nuta, "How is the Seminole?" He says, Oh there was trouble—

Mr. Underwood:

I object to what Mr. Nuta said.

Q. Don't tell what anybody else said; but you were out there on other business?

A. Yes, sir.

Q. Did you see the Seminole on that occasion?

A. Yes, sir.

Q. And what did you observe?

A. I observed that one of the tanks was taken out of her.

Q. And where was the tank when you saw it?

A. Laying in the corridor of the tank compartment.

Q. What did you do?

A. Went up the following day and took some pictures of it.

Q. Well did you go on board the Seminole?

A. Not at that time I didn't. The following day, I did.

Q. The following day. Did you observe the condition of the tank at that time?

A. Yes, sir.

Q. What did you observe?

A. I observed that on the side seam it had been soldered at some time; and also, on the bottom seam there was portions of that, that still solder remained.

Q. How much of the side seam had been soldered?

A. I didn't measure it, but I imagine about 20 inches.

Q. And you say that you took some pictures of it at that time?

A. Yes, sir.

Q. Let me ask you this: did you observe whether there was any evidence of solder on the rivets at that time?

A. No, sir, there was none.

Q. You say there was none?

A. No, sir.

Q. And was there any solder,—any evidence of solder, on the side seam above the 20 inches that you speak of?

A. No, sir, none that I could see.

Q. Did you examine the tank for the purpose of determining where the solder was?

A. Yes, sir.

Q. Was there any evidence of welding on the tank?

A. No, sir.

Q. Are you familiar with both welding and soldering?

A. Yes, sir, and brazing.

Q. Is there any difference in appearance between soldering and welding?

A. Yes, a great deal of difference.

Q. What is the difference?

A. Well in welding, either electric welding or torch, a man has to feed his stick of welding material; it makes little lumps like little waves, as he advances the steel into the flame of the torch, it makes little lumps; I don't know as I can describe it. And in soldering, the soldering material, it can be soldered properly, you can make a smooth —you can draw your solder right along the seam, also run the solder in the seam, providing you can get the material that is soldered hot enough so that it will run.

Q. Is there any difference in color between soldering and welding?

A. Yes, sir.

Q. What is that difference?

A. Well your solder would look like the tarnished silver, in time. The welding would look rusty, unless it was painted.

Q. Well I am talking about fresh work, Captain.

A. The silver,—the lead solder would have a silvery appearance, shiny. The welding would be the same as raw iron.

Q. And would there by any—outside of the color, would there be any difference in the texture of the surface?

A. Yes, the welding would be a little wavy, where the solder would be smooth.

Q. In your opinion, could anyone with any familiarity with welding, be mistaken as to whether work was welding or soldering?

Mr. Underwood:

I object to that. He is asking this witness whether some other witness could be mistaken.

Mr. Matteson:

If your Honor please, there was one witness who testified in this case, Mr. Simmon, and he testified at great length after his observations.

The Court:

Do you want this argument in the record?

Mr. Matteson:

Well I don't care whether it is in the record or not. I think your Honor should have it in mind, because this trial has been so disjointed we may lose track of things. But this witness Simmon testified in great detail that he was there when these repairs were done in 1927; that the tanks were taken out of the ship at that time, the bottoms were taken out of the tanks; that the bottoms were replaced and welded in place; that he personally had had experience with welding and knew what welding looked like. And the question of the veracity of that witness, or the credibility of that witness, is exceedingly important in this case. Now when the tank has been examined it appears very clearly that there was no welding on the tank. I think that will be conceded by our opponents. There was some soldering. What I am doing is bringing out further a witness who is familiar with both classes of work; that there is such a difference between the appearance of the two classes of work that anyone that has any familiarity with those types of work at all, would not be mistaken about a point like that. I think that is very important; that is the reason I asked this witness.

Mr. Underwood:

If your Honor please, I don't object to what Mr. Matteson says he is doing, but I object to his question; because it asks of this witness in effect to tell whether another witness could be mistaken. I don't object to his bringing out any difference which he says exists in welding and

soldering; but I object to his asking this witness whether another person could be mistaken when he looked at it.

Mr. Matteson:

Will you read the question as it is framed?

(The question objected to was read by the reporter.)

The Court:

I think the question is all right. I overrule the objection.

A. A professional welder or tinsmith certainly could not be mistaken.

Q. Well I am not talking about a professional, Captain; I am talking about anyone that has ordinary familiarity with that type of work.

Mr. Underwood:

I object to that now, on the ground that it is leading. He got an answer he didn't like, and now he is trying to cure it.

Mr. Anderson:

He asks for an opinion, that the Court is just as able to form as the witness. The basis of opinion evidence is upon matters that the Court does not know.

The Court:

Of course one way you look at it, it is for the Court to determine from the facts proven, as to what an ordinary person could or could not have seen; but I construe the question as just another way of asking him that, and helping the Court to draw that conclusion. So I think it is not objectionable; I overrule the objection.

A. May I make that answer clearer?

(By Mr. Matteson):

Yes.

A. What I wish to convey is that some farmer that never saw a plate welded, might not be able to distinguish; but anyone around a shipyard or boiler works or iron works would certainly know the difference between welding and soldering.

Q. Now were there any evidences of red paint on the tank, when you saw it—

A. No, sir.

Q. —in May. From your observation of the tank at that time are you able to form an opinion as to whether there had ever been any solder on the side seam of the tank above the 20 inch space where the solder was apparent?

A. My opinion it never had been; no, sir.

Q. Why do you form that opinion?

A. Well had that been soldered above that space, and even under intense heat, enough to burn it off, it would still show the discoloration of the solder where it had been attached to the galvanized iron.

Q. From your observation of the tank are you able to form an opinion as to whether or not it was galvanized after being put together, or simply made of galvanized plates?

Mr. Underwood:

I am sorry; may I have the question read, please?

(The question was read by the reporter.)

A. I am of the opinion those tanks were made of rolled galvanized plates, then put together.

Q. Why do you say that?

A. Well if they were dipped, it would show signs in the seams and around the rivet heads.

Q. And were there any such signs?

A. No, sir, not that I could observe.

Q. Now from your observation of the bottom of that tank, are you able to form an opinion as to whether or not the bottom of the tank had ever been removed and replaced?

A. Not that I could find; no evidence to prove it to me.

Q. Well if it had been removed and replaced, is there anything that you would expect to observe?

A. Yes, they would have to remove the rivets with a chisel; they would have to cut the heads of the rivets off with a chisel, to back them out; and if that was done, there would certainly be some marks on some of the rivets that would show the chisel marks.

Q. Were there any such marks on the tank?

A. No, sir.

Q. Now did you say that you took some pictures when you were there in May?

A. Yes, sir.

Q. What is this picture that I show you?

A. That of the tank, looking from the bottom of the tank, forward. That's the tank that has been removed.

Q. That's the one that was lying on deck?

A. Yes, sir.

Q. What kind of film did you use to take these pictures?

A. Just this 35c film, in a box camera.

Q. You don't know the kind of film?

A. No, sir, I don't; I could find out where I buy it. Is there a film called Verichrome?

Q. You mean Verichrome?

A. Verichrome, I think that's it.

The Court:

When did you take these, now?

(By Mr. Matteson):

Q. Will you tell me just exactly when you took that picture?

A. May 26th; I marked the date.

The Court:

1939?

A. Yes, sir; that was within a week after we all went out.

(By Mr. Matteson):

Q. And on the back of this picture I notice you have written a description; it says, "Close-up of the bottom of Number four tank of the Yacht Seminole, showing side seam of tank, where seam had been soldered approximately 20 inches from the bottom". Is that a correct description of the picture?

A. Yes, sir.

Mr. Matteson:

I would like to have that marked as 189.

By Mr. Underwood:

Q. This black mark at the side of the tank, is a shadow, I take it?

A. I shadow of the bent frame, I believe.

Q. At any rate, that is a shadow?

A. Yes, sir.

Q. And you can't see the bottom of the tank at all?

A. No, sir.

Q. Just all black, is that right?

A. Yes, sir.

Q. You said a moment ago that this was taken a few days after we were all out there. You don't mean that did you?

A. I do.

Q. After who all was out there?

A. Judge Holland was there.

Q. This was taken after that, was it?

A. Yes. The tank was removed—no, wait a minute. No, I am wrong; I am twisted.

Q. Your memory is faulty on that? It is faulty on that?

A. Yes, on that.

Mr. Underwood:

I have no objection to the picture.

A. It was a few days after Judge Holland set a date for us, when Court adjourned.

(By Mr. Matteson):

Q. And is the date on the back of this picture, the date on which the picture was taken?

A. That is the date on which the picture was taken.

(The photograph so tendered, was admitted in evidence and filed as Libelants' Exhibit 139.)

Q. I show you a second picture; what is that?

A. That is standing on Number One tank, looking across the coal bunker or the tank compartment.

Q. And when was that taken?

A. The same date.

Mr. Matteson:

I now offer that in evidence.

Mr. Underwood:

Have you extra copies of these?

Mr. Matteson:

I will have some made.

(The photograph so tendered was admitted in evidence and filed as Libelants' Exhibit 140.)

(By Mr. Matteson):

Q. Now what is this that I show you, Captain?

A. This is standing in the alleyway, that is the passageway, looking forward to this tank.

Q. And what is the wall that appears at the left-hand side of the picture?

A. That is the steel bulkhead of the engine room.

Q. Is that the passageway wall?

A. This is the passageway; these are the frames.

Mr. Underwood:

Let's mark that, steel bulkhead of engine room.

The Court:

Separating what, Captain?

A. Separating the passageway from the engine room; the other side of the steel bulkhead is the engine room. This part is the starboard side of the coal bunker.

Q. Then I understand it, when you took this picture you were standing in the passageway that goes on the starboard side of the engine room?

A. Yes, sir.

Q. Looking forward?

A. Yes, sir.

The Court:

And that tank with the shadow on it, is the Number One tank?

A. Number Four.

The Court:

Number Four, yes.

Mr. Matteson:
I offer that.

Mr. Underwood:
I would like to ask one or two questions:

By Mr. Underwood:
Q. Now Captain Patton, in this photograph that is offered in evidence now, you said that this bulkhead at the left is the engineroom bulkhead; is that right?
A. No that part—that is the same bulkhead that goes along, forming the coal bunker, too.
Q. How many plates show in that bulkhead in that photograph? Two, isn't it?
A. Two; there is your angle iron.
Q. Now let's look at this Exhibit 140 for a minute; how many plates show in that same bulkhead there?
A. Two.
Q. For as a matter of fact, Captain, the tank compartment bulkhead, where it is adjacent to the alleyway, is made up of two plates isn't it?
A. That's right.
Q. And in this photograph that is offered in evidence, only those two plates show, and not all of them; isn't that so?
A. That is right.
Q. So that is not the engineroom bulkhead is it?
A. It is a continuation.
Q. But it isn't the engineroom bulkhead is it? It is the tank compartment, isn't it? Isn't that right?
A. No.
Q. Please answer the question.
A. Wait a minute.
Q. Well please answer the question; is it or is it not only the tank compartment bulkhead?
A. Yes, which is a continuation of the engineroom bulkhead.

Mr. Underwood:

I have no objection to the photograph.

(The said photograph so tendered was admitted in evidence and filed as Libelants' Exhibit 141.)

(By Mr. Matteson):

Q. And what is this next picture that I show you, Captain?

A. Looking down between tanks and Number One and Two, at tank compartment bulkhead, showing remains of 2 x 4 battens used to secure tank.

Q. Taken at the same time and place?

A. Yes, sir.

Mr. Matteson:

I would like to have that marked.

Mr. Underwood:

I have no objection.

(The said photograph so tendered was admitted in evidence and filed as Libelants' Exhibit 142.)

Q. I show you another picture, Captain, and ask you what that is?

A. That is looking down in the space where Number Four tank was taken out.

Q. Was that taken at the same time and place?

A. Yes, sir.

Mr. Matteson:

I offer that; any objection to this?

Mr. Underwood:

No.

(The said photograph so tendered was admitted in evidence and filed as Libelants' Exhibit 143.)

Q. I show you another picture, Captain, and ask you what that is?

A. Standing on Number Two tank looking across the top of the tanks, or where this Number Four was. Number Four you can just see it down there.

Q. That is looking toward the starboard side of the ship?

A. Yes, sir.

Q. The left-hand picture is toward the bow of the ship?

A. That is right.

Mr. Matteson:

I offer that; any objection to that?

Mr. Underwood:

I have no objection to that.

(The said photograph so tendered was admitted in evidence and filed as Libelants' Exhibit 144.)

Q. I show you another photograph, Captain, and ask you what that is?

A. That was standing on the float, taken from the float, looking at the starboard side of the boat. Here is the tank.

Q. As you have drawn an arrow, to Number Four tank, it shows the tank that had been removed; is that right?

A. Yes, sir.

Mr. Matteson:

I offer that.

Mr. Underwood:

Of course as to all these, your Honor, I object to the description on the back as having no binding effect on me.

I don't mind the witness telling what it is, saying what he did. But I don't think—I take it that in none of these has the description on the back been offered—just the photograph itself?

Mr. Matteson:

I think the description the witness has given has been practically the same.

Mr. Underwood:

Well I don't mind your having the witness describe it; I have no objection to that.

(The said photograph so tendered was admitted in evidence and filed as Libelants' Exhibit 145.)

Q. I have one more, Captain; what is that?

A. That picture is of the starboard side of the Seminole, showing the tank and tank compartment, taken from the dock,—or from the dry dock.

Mr. Underwood:

I have no objection to that.

(The said photograph so tendered was admitted in evidence and filed as Libelants' Exhibit 146.)

Q. This last picture, 146, Captain Patton, there seems to be a pile of pipe in the background of the picture; what was that?

A. Oh that is dredging pipe.

Q. Was that on the Seminole?

A. No, no; dredging out the river; stored it on the bank.

Q. That has nothing to do with the Seminole?

A. Oh no.

Q. All these pictures were taken at the same time and place?

A. Yes, sir.

Q. Now did you accompany the Court and Counsel on a visit to the Seminole in October of this year?

A. Yes, sir.

Q. And did you observe the conditions of the tank,—Number Four tank which had been removed—at that time?

A. Yes, sir.

Q. Was there any difference in the appearance of the tank in October, than when you saw it in May?

A. None that I could see.

Q. What have you observed with respect to the side plating of the Seminole, Captain?

A. You mean, the condition of it?

Q. Not the condition; what is there on the ship in the way of side plating?

A. Well she was a single-plated vessel one time, but they replated over the other plate.

Q. Had new plates put on over the old plates?

A. Over the original plates; yes, sir.

Q. Was that true on both sides of the vessel?

A. To be perfectly honest, I didn't look at the starboard side, but I did on the port.

Q. You did observe then on the port side?

A. Yes, sir.

Q. And is that true to the extent of the part of the ship which contains the enginerpom and the tank compartment?

A. Yes, sir.

Q. What did you observe of the tanks with respect to whether it had been caulked or not?

A. I am of the opinion those tanks had not been caulked.

Q. Why are you of that opinion?

A. Well if the seam had been caulked, it would show the indentation of the caulking iron on the edges.

Q. And did you look and see whether there was such evidence of caulking?

A. Yes, sir, I did; the sides and top and bottom.

Q. Was there any such evidence?

A. No, sir.

Q. Captain I think you testified that you went out to the Pilkington Yard on the day of the fire?

A. Yes, sir.

Q. Just to refresh our recollection will you tell us what time you got there, about?

A. It was just coming on dark, around seven o'clock.

Q. You were there while the fire was burning?

A. Yes, sir.

Q. And how long were you there at the yard, off and on, during that period of the fire?

A. I was there practically all the time until we got Captain Abel's body out; that is two days later.

Q. And were you on the Seminole at that time, during that period?

A. The day they took the body out I was, yes. You couldn't get on her while it was burning.

Q. Were you on the Seminole while they were working preliminary to that?

A. Yes, sir. I run the air pump for the diver.

Q. Now Captain there has been some suggestion here that the Seminole, before the fire, had in her engine room on each side, four two-inch pipes running from the deck just outside of the trunk, from the engineroom down through into the lower part of the bilge. The pipes on the starboard side are said to have run just outside of the engineroom and fireroom bulkhead in the passageway; and the ones on the port side, down from the deck into the bilge space. Did you see any such pipes there at the time of the fire?

A. No, sir, I didn't. You mean after the fire?

Q. Well at any time while you were there at about the time of the fire.

A. No, sir, I did not.

Q. Captain, referring to Exhibit 11, and the joining of Crane valve Number 150, with the part of the union which is adjacent to it, there has been a suggestion that that might have been tight if it were screwed up so that the face of the union came in contact with the valve. What can you say of that joinder of the union with the valve, as to whether it would be satisfactory, in your opinion, for a gas tightness, or not?

A. No, sir, it wouldn't.

Q. Why not?

A. Well the valve and the union does not tighten up on the close nipple, not on the threads. To get that tight you would have to screw that up so tight in making a joint out of this end of the union and this end of the valve; a pipefitter wouldn't pass that job.

Mr. Underwood:

I move to strike that out,—what a pipefitter would do.

A. Well I have done some pipe fitting.

Mr. Underwood:

Wait a minute, let the Court rule, please.

The Court:

I think that is proper; I mean, I think this motion is well taken, to strike.

(By Mr. Matteson):

Q. Well assuming, Captain, that it could be screwed up so that there would be at least a temporary fit between the union and the valve, what would you say about it?

A. Well a very slight jar would be very apt to loosen it.

Q. In your opinion, would that be a satisfactory connection for gasoline?

A. No, sir.

Q. Captain, I think that you have testified that you saw this set of valves at the time of the fire, or shortly after. Now of course there are some marks that have been put on that by the tools which I think you and Mr. Munroe used to break one or more of the joints. Outside of that—

A. No, all we did was take the bonnets off.

Q. You didn't break any joints?

A. No, sir.

Q. There are some tool marks here—

A. On the bonnet of the valves.

Q. On the bonnet of the valves, where you took the bonnet off?

A. Yes, sir.

Q. Outside of those marks, is the exhibit in the same condition as when you first saw it?

A. Yes, sir, except that they are loose; that is, these other connections are loose.

Q. Except that the joints have been broken?

A. Yes, sir.

Mr. Underwood:

I move to strike that out as leading.

Mr. Matteson:

I thought I was summarizing what he said.

Mr. Underwood:

A distinct departure from what he said.

Mr. Matteson:

Okay, I will withdraw it.

(By Mr. Matteson):

Q. Will you just tell us, Captain Patton, any respects in which these are different from the condition in which you first saw them?

A. All the parts are here, except for being scarred up with a Stilson wrench, and the joints broken,—in the same condition.

Q. What do you mean by the joints broken?

A. Well all these connections are loose.

Q. Well I mean, we may not understand the term, "broken", Captain?

A. Well they were all rigid when I first saw them.

Q. What is that?

A. They were all rigid; none of these joints were loose when I first saw them.

Q. Captain, there has been some testimony here about the necessity of priming engines such as the Seminole had. Are you familiar with the operation of such engines?

A. Yes, sir.

Q. In your opinion, how much gasoline would be required to prime those engines when they were cold?

A. Well I should say, two squirts with a squirt gun, in each petcock, would be ample. If you got too much in they wouldn't start at all.

Q. How much would two squirts of a squirt gun amount to?

A. Possibly a teaspoonful; less than that, I should say.

Q. Can you give us an opinion as to whether engines of that type would require priming if they were hot?

A. No, sir, not if they were hot, if the engines were in fairly good working order.

Q. Well there may be some confusion between my question and your answer. Do I understand that you say they would or would not require priming when they were hot?

A. Not when hot, no, sir.

Q. Captain, in your testimony given last spring, I think that you testified that in your opinion it was not proper to have draw-off valves for gasoline in the engineroom. Now it has been suggested that the engines of the Seminole required priming when they started,—when they

were started, either hot or cold. If that were the fact, would you consider that in your opinion it was proper to have draw-off valves for gasoline in the engineroom?

A. In my opinion it is a great hazard to have a draw-off valve in an engineroom for any purpose whatsoever.

Q. And in your opinion is it proper to have such valves in an engineroom, even if the engines require priming, both hot and cold?

A. You mean, draw-off valves in the engineroom?

Q. Yes, sir.

A. No, sir, I don't approve it.

Q. Now if gasoline were required in the engineroom for priming or any other purpose, is there any method by which a supply of gasoline could be kept safely in the engineroom for such purpose?

A. In a screw top approved can, yes.

Q. And have you in mind a type of can which you think would be proper and safe?

A. Yes, sir; that red can is approved.

Q. You refer to Exhibit 137?

A. Yes, sir. There are various types, but they are all screw top filler, and screw discharge,—screw caps on them.

Q. Do I understand that there are other types that you would also consider satisfactory?

A. Yes, sir, providing they have screw caps.

Q. There has been some suggestion of a can of this type, to be used directly for priming the engines. In your opinion, would the can be suitable for that purpose?

A. No, sir. That can is suitable to fill your squirt can.

Q. You wouldn't attempt to prime engines with it?

A. No, sir; you could not regulate your gasoline that you needed in each priming,—anything like that.

Q. It has been suggested that such type of can would be unsatisfactory because it might wear out. What is your opinion as to that?

A. I don't see where it would wear out. You have got that chafing piece on the bottom, and if it did wear out, after a great number of years, it started to leak, that can would be kept in an engineroom on the workbench, and if it developed a leak it would show signs of gasoline on the workbench, and would call the man's attention to the fact it was leaking. I have known of cans like that to be in service for eight or ten years.

Q. Are such cans expensive, Captain?

A. That one cost $3.50.

Q. It has been suggested, Captain, that the fact that this can was fitted with a flexible metal outlet for pouring gasoline through, would be unsatisfactory; the flexible metal outlet might leak or might wear so that it leaked?

A. Then you could remove that plug.

Mr. Underwood:

Will you read the answer?

(The answer was read by the reporter.)

A. Remove this plug and put another piece of flexible tubing in it. Another thing, if it did leak, it would only leak at the time you were filling your squirt can.

Q. Is this piece of flexible hose any essential part of the can for this purpose?

A. It is only to convey your gasoline from your tank to your squirt can when it is in that position. When it is in that position your plug valve is closed.

Q. Do all of the types of cans that you refer to, that are on the market, which might be used for this purpose, have flexible hoses attached to them?

A. No, some that have spouts on them; but the majority of them have the flexible hose.

Q. In your experience, have you found any objection to the use of a flexible hose in that type of can?

A. No, sir.

Q. Captain, it has been suggested here that the fact that at times it was customary for the Seminole to supply gasoline from her tanks to other fishing vessels, or other vessels which might be accompanying her; would that in your opinion make it proper to have a draw-off valve for gasoline in the engineroom?

A. No, sir.

Q. Why not?

A. You have that danger of gasoline; the hoses might leak, might burst,—though there is very little pressure on it; you have still got your draw-off valve in the enginerocm.

Q. What is your objection to that?

A. A bad fire hazard. I don't believe in loose gasoline below decks in any engineroom or in any hull.

Q. Now is there any other method by which—which could be used for supplying gasoline from the tank of a vessel like the Seminole, to other vessels, which would not involve handling it below deck?

A. Yes, sir; you could hook up a transfer pump from your fuel line, your manifold, leading it up and discharging on deck through a hose.

Q. In that event would there be any loose gasoline handled in the engineroom?

A. No, sir.

Q. Where would you put your pump?

A. Pump could be mounted on your engineroom bulkhead.

Q. Now Captain you gave some testimony before, with respect to ventilation. Now with respect to the tank compartment, first, it has been suggested that the four holes at the top of the bulkhead between the engineroom and the tank compartment, through which the filler lines passed, four holes in that compartment, in that bulkhead, at a lower level where the feed lines came out from the gasoline tanks, and the square opening at

the bottom of the bulkhead, which lead from the engineroom floor to the space under the tanks, would constitute adequate ventilation for the space forward of the engineroom in which the tanks were located; what is your opinion as to that?

A. It is insufficient ventilation.

Q. What is that?

A. Very insufficient. It isn't what I would call thorough ventilation.

Q. Now Captain, it has also been suggested that as far as ventilating the engineroom—the space under the tanks, that that ventilation in the upper part of the engineroom, consisting of windows, cowl ventilators, hatch and skylight, would be adequate, because it is said that there is a force known as convection, which causes the gases which might accumulate in the lower part of the vessel, either under the floors, or just above the floors, to rise, due to variations in temperature, so that they would be carried out by the ventilation in the upper part of the engineroom. In your experience, can you tell us whether such an action occurs on vessels, which would make the ventilation in the upper part of the engineroom, adequate?

A. Ventilating the upper part of the engineroom, cross draft through the windows, might have some small effect on the bilges. It is my opinion that to get the gas out of the pockets in the bilges, you want a through draft; a ventilator going to the bilge, and an exit or exhaust ventilator to take it out. You have got to stir up those heavy gases in the bilge to get them out of there.

Q. And stir them up, how?

A. With air, a current of air passing.

Q. And in your opinion, is there any other way of securing adequate motion of air in the bilges, other than by installing ventilators such as you have suggested, leading to the bilges?

A. Install exhaust blowers. But in my opinion, the natural cowl ventilators ventilation twenty-four hours a day, goes on without switching any blowers, and all that thing,—that's my opinion.

Q. Well the point I was asking you about is, in the absence of some induced circulation through ventilator, either natural or forced, in your opinion would those gases in the bilges be dissipated and carried off?

A. No, sir, I think they would stay there. All bilges have pockets; this heavy gas gets in there and you have got to stir them up to get them out of there. Variations in temperature may lift some of it, but very little.

Q. Did you observe the bracing of the tanks in the tank compartment?

A. There wasn't much left of the wood braces. There had been 4 x 4's in there on the forward and after side, none that I could see on the sides.

Q. Without the bracing to the sides, would you consider that the other bracing—I mean, between the Number One tank and the port bulkhead, and between Number Four tank and the starboard bulkhead—would bracing be adequate to hold those tanks steady, in your opinion?

A. You mean, on the sides of the tank?

Q. Yes.

A. I just didn't catch that.

Q. I mean, assuming that there were saddles or braces, —separators, between Number One and Number Two tank, Number Two and Three, Number Three and Four, but that there were no braces between Number Four and the starboard bulkhead, or between Number One and the port bulkhead; do you think that such bracing would be adequate to hold the tanks steady?

A. No, sir.

Mr. Underwood:

I object to that on the ground there is no evidence in the case that there were no such braces.

CLERK'S COPY.

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Vol. V

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 246

CHARLES CORYELL, ET AL., PETITIONERS,

vs.

JOHN S. PHIPPS AND GEORGE J. PILKINGTON

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 20, 1942.

CERTIORARI GRANTED OCTOBER 12, 1942.

VOLUME V.

TRANSCRIPT OF RECORD

UNITED STATES
CIRCUIT COURT OF APPEALS

FIFTH CIRCUIT.

No. 10185

CHARLES CORYELL, ET AL.,
Appellants,

versus

JOHN S. PHIPPS and GEORGE J. PILKINGTON,
Appellees.

Appeal from the District Court of the United States for the Southern District of Florida.

(ORIGINAL RECORD RECEIVED DEC. 17/41.)

Mr. Matteson:

The testimony is that those that have examined the ship, have not been able to find any evidence that there was any such thing; while there has been evidence of other braces.

Mr. Underwood:

The ship has been through a fire.

Mr. Matteson:

And Mr. Underwood's witnesses have testified that there was no fire, to speak of, in the tank compartment, at least in the lower part.

The Court:

Read the question.

(The last question was read by the reporter.)

Mr. Matteson:

The question as to whether there was such bracing, or not, may be a fact that you will have to determine, from the evidence or otherwise; but I think I am entitled to ask the question, on that assumption, so the opinion will be here.

The Court:

You mean, Mr. Matteson, that there is a theory as to which that hypothesis could be sustained?

Mr. Matteson:

Yes.

The Court:

And with that, you are entitled to an opinion on that hypothesis?

Mr. Matteson:

Yes.

The Court:

I think that is reasonable; overrule the objection. Just generally speaking, I call your attention to this; as the examination is going on, I am endeavoring to require the proponent of questions to incorporate to his witness, hypotheses which call for an answer. On cross examination I have now adopted a different rule, as you probably have noticed. On cross examination I think a witness who is being examined should call attention to any missing element which he thinks should be incorporated.—You may answer the question.

A. If there were no braces between the bulkhead and Number One tank, no such bulkhead on Number Four tank, those tanks would be unstable if the vessel was rolling. In other words, if they weren't there, they should be.

Q. Now Captain, it has been suggested here that the fact that condensation might accumulate at the bottom of the Seminole's gasoline tanks, in V-shaped sections around the inverted bottom, which if it occurred would form a protecting seal of water which would protect the tank against corrosion. In your opinion is that so?

A. In my opinion, if they didn't get water in there in the first place, you wouldn't have corrosion.

Q. Do you think the presence of the water would be any protection against corrosion?

A. Well you would protect it this way; if there was corrosion there,—some water in there, exposed to the atmosphere, you would increase the corrosion.

Q. Now it has been suggested, Captain, that these tanks as constructed, and as you have observed them on the Seminole, in their new condition, would be good for a hundred years, or for at least a period beyond the life of the vessel. What is your opinion with respect to that?

A. I don't agree with that.

Q. What has been your experience with respect to galvanized tanks?

A. Well I have seen the galvanized tanks of that type, start leaking in seven and eight years; might get fifteen years out of them, might get twenty, according to the thickness, the care that they had. I have inspected manifolds of galvanized tanks, also copper tanks, that I found leaking; but the copper tanks leaking, that was due to fittings letting go, and solder; and on galvanized it is usually due to rust.

Q. Have you had any experience that would indicate the extent to which galvanized iron tanks, due to the gasoline, corroded?

A. Well, the houseboat Fortuna, for example, I inspected her, found three of the gasoline tanks rusted through; one of them had a hole you could put a derby hat through the bottom.

Q. How large was it?

A. As I recall it, it was two-foot in diameter by seven-foot long.

Q. What sort of a hole did you say you found in those tanks?

A. Along the bottom you could almost put a derby hat through the bottom; rusted and corroded away; that is in the one tank. There were two other tanks leaking. I recommended they renew all of them.

Mr. Underwood:

I object to what he recommended.

(By Mr. Matteson):

Q. When was it that you made that observation?

A. About two years ago.

Q. That would be in 1937?

A. Yes, sir.

Q. Did you make a survey of the Fortuna at that time?

A. Yes, sir.

Q. Will you tell me whether she had pans under her gasoline tanks?

A. Those gasoline tanks were in a lead lined box.

Q. What do you mean by that, Captain? Describe it to us.

A. Well it was a very large box, and lead lined; there was a lead that went from the box, that was down in the bilge, underneath the cabin floor.

The Court:

Do you want a ruling on that,—what he recommended? Or, are you satisfied to let it go as it is?

Mr. Matteson:

I am willing to have that stricken out.

The Court:

All right.

Q. With respect to the tanks that you observed on the Fortuna, were there any access plates on those tanks?

A. Examination plates?

Q. Yes.

A. Two on each tank.

Q. That is all.—Oh, may I ask this one other question; Captain, you have expressed various opinions on different things in the course of your examination, as part of the Libelants' case last spring. In view of anything that has transpired since, have you changed those views?

Mr. Underwood:

I object to that question, your Honor.

The Court:

It is pretty general.

Mr. Matteson:

Well if your Honor please, I simply—it is a very general question, I realize that. I don't want to extend the examination of this witness unduly; I just wanted to make it perfectly clear that he hasn't reneged on anything, that his testimony still stands without changes.

The Court:

Well I think there is a presumption that, once of one opinion, he remains that way.

Mr. Matteson:

All right.

Mr. Underwood:

Mr. Botts, have you any questions?

Mr. Botts:

I don't think so.

Mr. Underwood:

You are entitled to go first, you know.

Mr. Botts:

I will say this, that I may want to put him on with reference to a certain matter; but I didn't know he was going on this morning, and I don't know whether he has any information on the subject; and I am not going on a fishing expedition until I find out whether he is informed on the question.

Mr. Underwood:

It is the hunting season that starts Monday, not the fishing season

Cross Examination.

By Mr. Underwood:

Q. Captain Patton, were there any pans of any kind under the tanks on the Seminole?

A. Two pans.

Q. And they had rectangular angles at the outboard ends?

A. I think so.

Q. Rounded corners?

The Court:

As I understand it, so far as on the general line of interrogation now, Fred, you didn't want to ask him any questions?

Mr. Botts:

When the witness is through I want to speak to him and ask him—

The Court:

About another particular matter you had in mind?

Mr. Botts:

It is not concerning the matter he has been interrogated about this morning, at all.

The Court:

We did adopt that general rule and I thought we would follow that at this time; but of course I realize it is something else you have in mind, that you want to interrogate him before you did put him on as your witness.

Mr. Botts:

Yes, sir; it will take about a minute, either way.

Mr. Underwood:

Will you read the last question please?

(The testimony last preceding, was read.)

A. I believe they were.

Q. And Number One and Number Two tanks sat in one pan?

A. Yes.

Q. And Number Three and Number Four tanks sat in the other?

A. Yes.

Q. Is that right?

A. That is right.

Q. And the pans were bigger than the two tanks, of course?

A. Yes.

Q. So that there was a margin of pan all around the tanks, was there not?

A. Yes; that is, the lid came up.

Q. Did you observe whether those pans had been broken down or destroyed in any way?

A. Not that I could see.

Q. So that the tanks sat entirely within the pans, is that right?

A. No, the tanks sat on the wooden framework, which sat in the pans.

Q. But the tanks didn't extend beyond the margin of the pan at all?

A. No.

Q. That would leave the tanks several inches within the margin of the pans, is that right?

A. I don't know the exact distance, but they were inside of the lid of the pan.

Q. So if you were down below looking up, you couldn't see any of the bottoms the tanks, could you?

A. I don't think you could.

Q. Well it is clear that you couldn't, isn't it?

A. Yes.

Q. Now Captain I want to read you a question and answer that was put to you before, on Page 841: "Q. Could the tanks be inspected from underneath?" "A. I looked in there and it appeared to me to be metal on top of angle irons; but you could see pretty clearly all the bottom of Number One tank. I just looked in there out of curiosity, at that time." —Now is it true or is it not true?

A. It is not true.

Q. —that you could see the bottom of Number One tank?

A. No.

Q. Is it true—

A. I thought it was the tank, at the time, but I stand corrected on that.

Q. How do you account for the fact that you said that you "Could see pretty clearly all the bottom of Number One tank"?

A. Well I twisted my neck up there, and could tap it, and found it was metal; I assumed it was the bottom of the tank.

Q. Do you mean to tell me that you can't tell the difference between a pan that is as big or bigger than two of those tanks, and the bottom of the tank itself?

A. Yes, if I had a flashlight and went underneath there.

Q. You didn't have a flashlight?

A. No.

Q. And you didn't go underneath?

A. No, I just looked up and tapped it and found it was iron, and assumed that was the bottom of the tank.

Q. What shape was the bottom of this pan, Captain?

A. Well, oblong.

Q. Well, the bottom was flat, wasn't it?

A. Yes.

Q. But the bottoms of the tanks weren't flat, were they?

A. No, they were not.

Q. And you testified before that they were not flat, but concave, didn't you? Now how did you know they were concave bottom tanks if you looked under there and could see nothing but the pans?

A. Well in the engineroom you could see down in the pan and see the row of rivets; so it must be a concave bottom.

Q. You now say that you could not see the bottoms of those tanks at that time?

A. Not at that time, no, sir. What I assumed was the bottom of the tank, was the sheet iron, the pan.

Q. And you couldn't see the concave bottom?

A. Not at that time, no; not until you pulled one out.

Q. Well now Captain I refer you to another question and answer, on Page 861, of your previous testimony: "Q. This hole in Number Two tank, what was that?" "A. When I looked in there I could see what appeared to be metal under the tanks, all of the tanks, excepting a portion under Number Two tank, where you could look up and see the concave part of the tank." Is that true?

A. In the dusk I thought it was; in that darkness.

Q. This was dusk, now?

A. Well it is dark underneath that tank.

Q. And you had no flashlight?

A. No, at the time I had no flashlight.

Q. Well you didn't say, at the time when you were previously questioned, that you thought you could see the concave bottom, did you?

A. I know it was a concave bottom, and I thought was the bottom that was showing.

Q. Well now Captain, are you so inexperienced that you can't tell the difference between a flat bottom of a pan and the concave bottom of a tank?

A. I didn't go under there and examine it; you need overalls and a diving suit to get under there,—and a flashlight.

Q. Was your examination of the rest of the boat, of a similar kind?

A. Not where I could see it plain.

Q. You weren't entirely frank with us about that on your previous testimony, were you, Captain?

A. About the bottom of the tank?

Q. Yes.

A. I didn't think it amounted to much.

Q. I see, your testimony is frank or not frank, depending upon how important you think the matter is; is that correct?

A. In a way, yes, sir,—on the tank.

Q. Oh, you limit it to the tanks, do you?

A. Yes, the tanks alone.

Q. Nothing else, of course?

A. My testimony is correct; but I didn't pay much attention to the tanks, I admit that.

Q. But you didn't tell us that before, did you, Captain?

A. I wasn't asked. Had I authority to go up there and—

Q. You did stick your head in the space underneath the tanks and pans, didn't you, Captain?

A. I got down as far as I could without getting all messed up, and looked up.

Q. Well now Captain, that doesn't quite answer my question. Did you or did you not stick your head under the space below, in the space below the tanks and the pans?

A. Yes, as far as I could without getting dirty.

Q. Well now you know what your head is?

A. I think so.

Q. You know what this space under the tanks and pans, is? Is that right?

A. Yes.

Q. Did you or did you not put your head in that space under the pans and the tanks?

A. Yes, I stooped down and looked up. You mean, the framework where the tanks were?

Q. I want an answer to this specific question which I have put to you three times. Did you or did you not put your head under the tanks and the pans in that open space below?

A. Yes, I went down and looked,—from down below, up.

Q. And you saw nothing that you recognized, that you recognized as a drip pan?

A. No.

Q. Or, a pan of any kind?

A. No one knew much about the drip pans at the bottom of the tanks until you took Number Four out.

Mr. Underwood:

I move to strike that out, as not responsive.

Mr. Botts:

I think it illustrates the situation, if the Court please.

Mr. Underwood:

It certainly doesn't, Judge; because my witnesses testified to there being drip pans under the tanks, before Number Four tank was taken out. These people have just been caught out of bounds, that is all. They have said there were no pans; and I have demonstrated beyond any possible doubt that there were pans; they are there today. He says nobody knows.

The Court:

I think that motion to strike is proper; granted,—that portion of the testimony, what no one knew.

Mr. Underwood:

That is what I refer to.

Q. Now Captain, in your examination in May, 1939, did you obtain anybody's permission to go aboard the Seminole?

A. Yes.

Q. Whose?

A. Louis Nuta's. I asked him if I could go aboard, and he said, "Help yourself".

Q. You are quite clear about that?

A. Positive.

Q. You know who Louis is?

A. Oh, yes, I know who Louis is.

Q. Couldn't be any mistake about it being somebody else?

A. Only one Louis Nuta.

Q. Did you measure the height of the ash that remained in the tank compartment around Numbers One, Two and Three Tanks?

A. No, sir.

Q. Was it approximately 20 inches?

A. I couldn't say.

Q. You don't know?

A. No.

Q. What is the process of galvanizing a tank after it is manufactured?

A. After the tank is all built?

Q. Do you understand what I mean when I say, after it is manufactured?

A. Yes.

Q. That means, after it is manufactured?

A. Yes. They pickle a tank, to make the plating clean, and then there is a hot bath.

Q. First they dip it in acid and clean the plates, is that right?

A. That is what they call it, a pickle.

Q. And they take it out of that, is that right?

A. Yes.

Q. And then they dip it again in something else, is that right?

A. I have only seen them dip it once, in acid.

Q. You have never seen them dipped in anything else but the acid?

A. Dip in the zinc,—the galvanizing.

Q. First they dip it in acid?

A. Well it is a pickling bath.

Q. Then they dip it in something else?

A. Yes.

Q. What is that something else?

A. It is mostly zinc.

Q. What else is it?

A. I couldn't say; it is a galvanizing, that's all I know.

Q. Well what are the constituents of that material they dip it in?

A. I believe it is mostly zinc.

Q. What is the rest of it?

A. I couldn't say.

Q. Don't know?

A. No.

Q. A man of your experience, you don't know that?

A. I am not a galvanizer,—though I have seen lots of it done.

Q. You are a pipefitter, are you?

A. Yes, I am a pretty good pipefitter, too.

Q. What is the effect of that dipping in that zinc—and other things that you don't know? It adheres to the tank, is that right?

A. You have reference to the pickling, first?

Q. No, we are past the pickling now, and I don't want to talk about that any more.

A. Dipping it in the zinc puts a layer of what they call galvanizing.

Q. Over the whole tank?

A. Over the whole tank. They also use a spray method too, now.

Q. Do you know at what temperature zinc melts?

A. I can look it up in the book; I don't keep all those melting temperatures in my head.

Q. That is what the reference books are for, isn't it?

A. That is right.

Q. Suppose you do look it up. I think Mr. Matteson has a copy of Kents'; will you do that?

A. It is a low temperature.

Q. Do you want to approximate it, and let us look it up later on?

A. No, I would sooner you would look it up in the book; that's what I would do if I wanted to know.

Q. Captain, I suppose you have seen rivets burned out of various kinds of steel plating, haven't you?

A. Yes, sir.

Q. The process is to take an acetylene torch, put it in the middle of the rivet head; it burns right through in a minute, doesn't it?

A. Very shortly, depending on the size of the rivet.

Q. The process wouldn't leave any chisel marks, would it?

A. No, if she didn't blow up with it.

Q. You have seen that process used on tankers, haven't you, Captain?

A. Not without the tanks were thoroughly cleaned out and passed by chemical test.

Q. But you have seen it used on tankers, haven't you?

A. Yes, many.

Q. Of course if you were burning out the rivets in the bottom seam of the Seminole's tanks, you would not be burning into any gas filled chamber, would you?—you can answer that yes or no, can't you Captain? You wouldn't be burning into the tank, would you?

A. No, but you would be heating the metal.

Q. But you wouldn't be burning into the tank, would you?

A. Not into the body of the tank, no; that is on the bottom row.

Q. Yes, that is what we are talking about, the bottom row. How far down do you say the side plating of the Seminole is double plated now?

A. I can't say. I did look at the strake by the window.

Q. That is the first strake?

A. Yes.

Q. The first row of plates, counting down from the top?

A. From the window, yes. That is the only one I examined. No doubt she has got more in her, but I didn't see.

Mr. Underwood:

I move to strike out from "—No doubt", onward.

The Court:

I think that is proper.

Q. Did you ever operate any engines of the size of those in the Seminole?—any Winton engines like those?

A. Personally operate them? No. I am familiar with them, though.

Mr. Underwood:

I move to strike out the latter part of the answer, as not responsive.

Mr. Matteson:
What was the latter part of the answer?

(The second sentence of the last answer was read by the reporter.)

Mr. Matteson:
I think that is perfectly proper.

Mr. Underwood:
If your Honor please, I asked him the straight and simple question about whether he had ever operated them.

The Court:
That is true, but I don't think the voluntary statement is objectionable; I deny the motion to strike.

Mr. Underwood:
Can we agree that the melting point of zinc is 787 degrees Fahrenheit?

Mr. Matteson:
Yes.

(By Mr. Underwood):

Q. Captain, you spoke of the possibility of using a pump on the feed manifold system, to run gas up on deck; do you remember that?

A. Transfer pump.

Q. Well you would have a fitting where the line lead from the feed manifold to the pump, wouldn't you?

A. Union.

Q. And you would have, even if you used copper tubing, you would have another fitting—

A. I would use iron.

Q. Iron pipe?

A. Yes, the same as your manifold size, if you wanted to get a stream of gasoline.

Q. Iron pipe, not brass?

A. That is not a feed line.

Q. You wouldn't use brass pipe on that?

A. No.

Q. Why not?

A. Well you are just continuing this iron pipe; you might continue with the same size and material.

Q. Is it your understanding that the feed line on the Seminole was made up of iron pipe?

A. No, brass. I am speaking about this here; if you put a transfer pump from this line up on deck.

Q. But Captain, you are indicating the—

A. This iron pipe.

Q. You are indicating the valve marked Crane 150?

A. No, I am speaking about this iron pipe in here.

Q. But you are speaking about—

A. Dispense with all this hazard, and hook your transfer pump on this fitting. I have recommended that on several jobs, and it works very satisfactorily.

Q. Then you would have another connection where the pipe came in contact with the pump, wouldn't you?

A. Yes.

Q. And you would have various connections in the pump?

A. Just the inlet and discharge.

Q. Those would be the only two places where a pump could possibly leak?

A. No; you have a stuffing box there.

Q. You would have to manage to keep that tight, wouldn't you?

A. Sure; keep everything tight in an engineroom.

Q. Any other place where the pump might leak?

A. No, just the one stuffing box; that is assuming that your gaskets were put in properly.

Q. Then you have your riser from the pump?
A. Going up through the deck.

Mr. Underwood:
I think that's all.

Mr. Botts:
Judge, if you suspend a minute, so I might confer with this witness, I might have one or two questions.

(A brief informal recess was held.)

By Mr. Botts:
Q. Captain Patton, you have testified that you arrived at the scene of the fire while the conflagration was still in progress, and remained there almost continually until the body of Mr. Abel was recovered?

Mr. Underwood:
I dislike to interrupt, but is this Captain Patton called as a witness for Pilkington?

Mr. Botts:
I don't know, he is just here. You can put it down any way you want to, making him mine or anybody else's.

Mr. Underwood:
Anybody else but mine. I think we ought to have it clear whose witness he is, though.

The Court:
Mr. Botts is calling him, so he will be regarded as a witness for Pilkington.

(The last question was read by the reporter.)

A. Yes, sir.

By Mr. Botts:

Q. Do you recall the occasion when the Seminole and surrounding cooled down so it was possible for someone to go aboard her?

A. Yes, sir.

Q. And do you recall whether you were with the first people that went aboard the Seminole after she became cooled off enough?

A. Yes, sir, if not the first; I am not sure; I was there all the time.

Q. You were there at the time, and were among the first?

A. Yes, sir.

Q. I will ask you, at that time, if you observed the position of the tanks of the Seminole?

A. Yes, sir, I did.

Q. Did you observe the position of the tanks of the Seminole on the occasion when the Court and counsel visited the Seminole at Nuta's Boat Yard in October, I believe it was, of this year?

A. Yes, sir.

Q. I will ask you whether you can state from your observation on this occasion of your first visit to the Seminole, after the fire, and the visit out there at Nuta's Boat Yard, whether, save for the tank that had been removed, the position of the gasoline tanks in the Seminole was the same on those two occasions?

A. Yes, sir, as far as I could see.

Q. Well now I ask you whether you observed?

A. I did; yes, I looked at them.

Q. And was the position the same?

A. Yes, sir.

Q. I call your attention to a photograph—these are all in evidence?

Mr. Matteson:

I don't think it is.

(By Mr. Botts):

Q. I call your attention to a photograph—

The Court:

Mention it.

Q. It isn't in evidence and ask you if you took that photograph?

A. Yes, sir.

Q. Does that photograph correctly exhibit the condition and location of the tanks of the Seminole upon your visit immediately after the Seminole had cooled down—that is, your first visit?

A. Yes, sir.

Mr. Botts:

We offer it in evidence.

Mr. Underwood:

I take it by your testimony, Captain, you mean that this photograph correctly represents the position and condition of the tanks when the photograph was taken, August 13, 1935; is that what you mean?

A. Yes, sir; they hadn't been moved any.

Mr. Underwood:

I move to strike out, they hadn't been moved any.

Mr. Botts:

If he knows it, he can state.

Mr. Underwood:

I have the right to cross examine about it at the moment. This was taken August 13, 1935?

A. Yes, sir.

Mr. Underwood:

And the tank in the foreground is the starboard tank?

A. I think it is the port tank. Have you got any more of those others?

Mr. Underwood:

The tank at the bottom of the photograph is the port tank?

A. I believe so, yes.

Mr. Underwood:

Number One tank, is that right?

A. Yes, that's right. There is that mass of hyacinths over there.

Mr. Underwood:

I have no objection to the photograph.

(By Mr. Botts):

Q. And you say this was taken on August 13th, and correctly exhibits the condition immediately after the fire?

A. Yes, sir.

The Court:

That makes it unnecessary for the Court to rule on your motion to strike.

Mr. Underwood:

Quite so.—What will that number be?

(The photograph so tendered was admitted in evidence and filed as Respondent Pilkington's Exhibit 16.)

(By Mr. Botts):

Q. When you visited the Seminole the first time, after the fire, I will ask you if you observed any evidence of

an explosion having occurred; and if so, just answer, did you observe any such evidence?

A. Yes, sir.

Q. Now then with respect to the tank compartment, did you observe any particular evidence of an explosion in connection with the tank compartment?

A. Yes, sir; the bulkheads were pushed,—separated; pushed up.

Q. You mean, pushed away from the tanks?

A. That is right.

Q. So that the walls of the tank compartment had—

A. Expanded.

Q. Bellied out?

A. That is right.

Mr. Botts:

That's all.

By Mr. Underwood:

Q. When you say, bellied out, do you mean that the fair shape of a flat plate, had been changed, or that the two bulkheads were just further apart at the top than they were at the bottom?

A. That is right.

Q. The latter?

A. The latter, yes, sir. The bulkheads were bellied out, including the plating too.

Q. And that's the only evidence you saw of an explosion in the tank compartment?

A. Except for the tanks being misplaced. There must have been an explosion there to push them out of place.

Q. How many tanks were misplaced?

A. One that I know of.

Q. And only one that you know of, is that right?

A. I would have to take—

Q. Is that right?

A. I wouldn't admit but what the others were slightly misplaced; but there was one—.

Q. All I want to know is this, Captain; do you say that they were or do you say that they weren't?

A. They were.

Q. The others were misplaced?

A. One, to a great extent; I don't know about the others; I didn't put a line on them.

Q. Let's take them up one at a time. In the first place, you got there on the afternoon of the fire, after the Fire Department had gone; is that right?

A. That's right.

Q. And you say the first time you saw the tanks, Number One was misplaced,—out of place; is that right?

A. Yes.—No, Number Two tank was out of place.

Q. How about Number One?

A. Well, comparing Number Two with Number One and Three, Number Two was greatly out of place. I didn't line up all the rest of them.

Q. Did you run a line on any of them?

A. No, I did not. But I run my eye and could see that Number Two was well out of place.

Q. You are sure about that?

A. Pretty sure; it is a long time ago.

Q. You are sure aren't sure, Captain; please tell me what it is.

A. I wouldn't trust my memory; I would trust to the photograph.

Q. I can read photographs with some degree of accuracy; I want your memory. What is it, now?

A. Four years and a half is a long time to remember those details.

Q. Yes, and I appreciate you may be uncertain about a lot of things. Now what is your memory on that?

A. My memory would say, Number Two.

Q. And that Number One was not misplaced?

A. I wouldn't swear to that.

Q. Captain, you really don't know which is which, at this time, do you?

A. I will depend on the photograph.

Q. Well, Captain, I think it is fair to say to you that the Court is going to depend in some measure on the photographs, too; but we would like—I at least would like to have your memory.

A. I will say at least one tank was misplaced.

Q. Which one?

A. I think that was Number Two.

Q. Well we have got two things which you say are evidence of an explosion: One is the bulkheads, and the other is Number Two tank. Is there anything else?

A. No, except hearsay, and I can't quote that.

Q. That is right. What was it that indicated to you that this particular tank was out of place?

A. They didn't line up.

Q. At what point? Are you referring to the place where the valve came through the hole, or at the top or where?

A. No, that shows that it is Number Two tank; the draw-off valve, at the base of the tank, near the base of the tank, is centered in the hole in the bulkhead, and the other three are nearly so, but it is very much out; in fact it was sheared of, that valve, Number Two.

Q. Well did you observe that on the day after the fire?

A. No, two days afterwards. We were busy pumping her out, trying to get Captain *Thomas'* body.

Q. This observation refers to June 27 then?

A. Two days after the fire.

Q. The second day after the fire?

A. I believe so. The diver tried to get them the following day but couldn't find them; we had to pump her out.

Mr. Underwood:
That is all.

Mr. Botts:
That is all.

Mr. Matteson:
That is all I have.

The Court:
Captain let me ask you this question; maybe it is very academic: but assuming that there was a spark from the knife switch.
A. Yes, sir.

The Court:
The position of which in the engineroom was considerably above the engineroom floor; and assuming that there was gasoline vapor confined solely to the bilge of the boat; could that spark have been communicated to the gaseous substance in the bilge?
A. Yes, sir; it has been proven by the laboratory of the New York Fire Department—

Mr. Underwood:
If your Honor please, I hesitate to interrupt.

The Witness:
Isn't this off the record?

The Court:
I just want your idea.

The Witness:
Is this going in?

Mr. Matteson:
Yes, sir.

A. Yes, sir. With the strong gasoline fumes in a bilge, it might be too strong to ignite; but with that mixture of air, and him passing around through there, very probable that he started up the proper mixture, that sparking of a switch made the explosion. That was my opinion, two days afterwards, when I was able to investigate it. If I live to be a hundred years old I will always think that is what started it.

The Court:

You spoke of a possibility of there being gaseous substance in pockets in the bilge?

A. Yes, sir; I mean by that, many boats have web frame, intercostals, which form pockets down below decks.

The Court:

Assuming that the gaseous substance was confined to the pockets and had not been disseminated in the atmosphere, or the air, to which the spark could have had access, that is horizontally in contact with the atmosphere at that point; if the gaseous substance was confined to pockets in the bilge, could there have been any contact between this spark and the gaseous substance in the bilge --in the pocket in the bilge?

A. I don't know as I can explain that, but to my mind the denser gasoline vapors would be against the skin of the ship, and gradually decrease in density, to the top of the engineroom.

The Court:

Well do you assume then that on the theory that gas is heavier than air, and it had in the first place descended to the bottom-most part of either the bilge or the engineroom, to which it had access; is that a correct assumption, according to your ideas now?

A. My idea is that the bilge was full of a strong gasoline mixture, and so was the engineroom.

The Court:

Well let me ask you this; assuming that there was some opening through which gaseous substance could pass from the engineroom to the bilge, would, according to your ideas, and your teaching and learning on this matter of gaseous substance, and where it would locate,—would that gaseous substance go to the bilge and remain in the bilge, to the point that it would not remain in the engineroom?

A. The denser part of it would, your Honor. Gas can only get so dense until it liquefies; and I am of the opinion there was enough gasoline in the entire bilge of that Seminole, that the whole engineroom was a strong gasoline mixture.

The Court:

Well I am speaking about it now from the theoretical standpoint.

A. Well now, I don't know whether this should go in the record, but the night Mr. Botts and Miller and I went up to the hospital—

Mr. Underwood:

I am sorry, I will have to object to that.

The Court:

Don't get into hearsay.

A. I was an eye-witness.

The Court:

That is all right; I want your views from the theoretical standpoint.

A. I believe the whole engineroom—

The Court:

I am not asking you what your views are as to this particular case; I am asking you, from the theoretical

standpoint; that is all I am interested in now; I mean, from my questions to you,—just theory.

A. Have I answered that sufficient?

The Court:

Yes. Would the fact that according to your theory, now, that there could be a denser solution in the bilge, than from a higher portion, to wit, in the engineroom—

A. Yes, sir; you might have—

The Court:

In theory, would that be necessarily brought about by some circulation of air, or some outside influence, that would have brought about that rising of a portion of the more dense solution at the base, to wit, in the bilge, higher in the engineroom?

A. Yes, sir, that is quite right; that boat, even under a shed, in my opinion is insufficient ventilation. I admit that there was some ventilation, if you were to stir that up.

The Court:

I caution you, please, in answering my questions,—I am dealing in my questions to you, from a theoretical standpoint. We have had testimony here based upon hypotheses that there was no circulation. What I am interested in asking you about is, assuming that from a theoretical standpoint it was airtight,—assuming an airtight situation.

A. Then I believe the gas—

The Court:

Then would the dense solution at the base of the compartment, or apartment, wherever gas was confined, would it remain as dense solution until the volume of it had increased to the extent that the space occupied by the dense solution would naturally be increased?

A. Yes, sir, I believe it would.

The Court:

Well I gather then from your answer to my theoretical question, that, assuming that there was no outside influence in the way of circulation of air or heat or convection, or whatever it may be called,—nothing of an outside influence; if there was a denser solution at the base of the apartment or compartment, more so than there was at a higher point in the compartment, it would necessarily be brought about by some outside influence?

A. Yes, sir.

The Court:

Now—

Q. What you mean, your Honor, is some outside influence would have to stir up the thick stuff?

The Court:

That is right.

A. Either mechanical force or ventilation, or draft, or something—yes, sir, that is quite right.

The Court:

Well now is this correct; can you dissociate in your mind the mental picture of the engineroom and the bilge of the Seminole as you have it pictured, as it must have been at the time of the fire, or conflagration, or whatever it was started; but picturing that it was a boat, as distinguished from that particular boat; that it was a vessel, with an engineroom, and with a bilge, and with tanks in which gasoline was kept, in which there was a knife switch. Now from a theoretical standpoint, am I correct in this: that if a spark was emitted from the knife switch on the wall of such a theoretical boat, that either one of these two situations must have existed. That either the gaseous substance which in the first place was heavy enough to descend to the bottom of the available

space,—that either that gaseous substance in its density had increased in volume to the extent that it had arisen to the point even or in proximity to the knife switch; or else that there was a lessening of the density at the bottom, which lessened density had counteracted and gone into the upper portion of the apartment of the boat,—of the vessel, and that therefore according to what you have stated as to outside influences, that there must have been some method of outside influence to have brought about that situation? Now is that a fact?

A. Do you want me to give my opinion?

The Court:

Yes; it seems to me that that is—

A. Either could cause it.

The Court:

Sir?

A. I believe either way, as you describe it, could cause an explosion.

The Court:

Well my thought is that one or the other must have done it. Now am I correct in that?

A. Yes, sir; I am inclined to think that the first thing happened.

The Court:

I am not asking you, Captain, which in your opinion did happen; I am asking you, from a theoretical standpoint, is it a fact that one of those conditions must have existed?

A. Yes, sir, that is quite right.

The Court:

Now to go over that again; either the dense solution must have increased in volume sufficiently to have ele-

vated in the open apartment, to have occupied continually more space as its volume increased?

A. And richer.

The Court:

And richer; or else if it was a fact, in this theoretical case, that was a more dense solution at the base, as compared with a like solution at the top,—that that condition, of a more dense situation at the bottom, compared with the lighter solution at the top, was brought about by some outside influence?

A. Yes, sir.

The Court:

That is all I care to ask.

By Mr. Botts:

Q. In other words, as I understand it, Captain, if the air in the surface,—I mean in the bilge of this—and not the Seminole, but of any vessel, any boat, if it remained calm and stationary, without motion, then the heavier gas—

A. You said, air, Mr. Botts?

Q. All right, if the contents of the vessel was not being agitated in any way, whether it was gas or air, and there was in that an explosive mixture of gasoline and air, when it rose to the point equal to the knife switch, if the knife switch emitted a spark, it would explode?

A. Correct.

Q. So as I understand it, if there was this explosive mixture down in the—

A. Bilge.

Q. In the bilge of the vessel, and had risen to a constant level—

A. In other words, built up.

Q. Equal with that of the knife switch, that some current of air might have caused a swirl of air to come up and explode it, is that correct?

A. That's right.

Mr. Botts:

That is all.

By Mr. Underwood:

Q. Captain Patton, Mr. Matteson has said that I might use these photographs of his. Is that one that you took?

A. Yes, I took that.

Q. You took it on July 31, 1935?

A. That's right.

Q. And it is a photograph of the draw-off valve?

A. That's the same.

Q. I show you another one; did you take that?

A. Yes, sir.

Q. July 31, 1935?

A. That's right.

Q. And that's a photograph—

A. Of these fittings down here.

Q. Two of these fittings?

A. Do you want a copy of these?

Q. No, not these, it is the other. Where did you take these photographs, Captain?

A. This is an old bedspread hanging on to the side of my car, or the window of the car. That was in Coral Gables it was taken.

Q. These were taken out in Coral Gables?

A. Yes.

Q. At your house?

A. Yes, sir.

Q. Did you just get the fittings out of your house and hang them up on the back of your car?

A. I didn't get them out of the house.

Q. Where did you get them?

A. Let's see; I think I got them from Mr. Miller.

Q. Gary Miller? You mean you got them from him just before you took them?

A. Yes, sir, shortly.

Q. Within a day or two?

A. Yes; I didn't keep them out there, I didn't want them.

Q. I just want to get it straight, Captain. You got these contrivances that are shown in these two photographs, a day or two before July 31, 1935, from Mr. Gary Miller of Fort Lauderdale?

A. I believe that's right, yes, sir.

Mr. Underwood:

I offer those two exhibits.

Mr. Botts:

No objection so far as I am concerned.

Mr. Matteson:

No objection.

The Court:

They will be admitted.

Mr. Underwood:

The first one is a photograph of Exhibit 11.

(The said photograph was admitted in evidence and filed as Respondents' Exhibit 5-T.)

Mr. Underwood:

The next is a photograph of Exhibits Numbers 2 and 17.

(The said photograph was admitted in evidence and filed as Respondents' Exhibit 5-U.)

Mr. Underwood:
I have no more questions.

Mr. Matteson:
That is all.

(Witness excused.)

Mr. Botts:
Before I forget it, I would like to offer in evidence these two exhibits that have been marked 13 and 14 for identification, and concerning which the stipulation with reference to testimony was offered yesterday. Any objection to these, Mr. Underwood? I am just offering these in evidence now that we have that stipulation yesterday afternoon; 13 and 14 in evidence, instead of for identification.

(The said two exhibits were admitted in evidence and filed as Pilkington's Exhibit Numbers 13 and 14, in evidence, respectively.)

3983 Thereupon EDWARD S. THIBAULT as a witness on behalf of Libelants' in rebuttal, was sworn, and testified as follows:

Direct Examination.

By Mr. Matteson:
Q. What is your full name?
A. Edward S. Thibault.
Q. Where do you live?
A. Miami.
Q. And how long have you lived here?
A. Since '22.

Q. What is your business, Mr. Thibault?

A. Ship builder.

Q. In 1927, where were you employed?

A. I was superintendent of Merrill-Stevens Dry Dock Company.

Q. Have you lived here continuously since that time?

A. Yes.

Q. As superintendent of Merrill-Stevens shipyard at that time, what was your duty,—what were your duties?

A. Why I run the yard; in every capacity except the office; in charge of all construction.

Q. Repair work?

A. Repair work.

Q. Do you recall the yacht Seminole?

A. Yes.

Q. Being at the Merrill-Stevens yard, the latter part of 1927?

A. Yes.

Q. Was she also there earlier in the year, do you remember?

A. Yes, in the spring—some time in the spring.

Q. Now particularly with reference to the work that was done the latter part of the year, can you tell us what the nature of that work was?

A. Renewing shell plating, bottom shell plating, side shell plating.

Q. At that time—who was in charge of the work on the Seminole?

A. I was in direct charge, with the foremen of the different classes of work.

Q. Mr. Thibault, in connection with that work that was done at your yard, were the gasoline tanks removed from the Seminole at any time?

A. No.

Q. Was any work done on the gasoline tanks of the Seminole?

A. I don't think so.

Q. Was the side plating removed from the ship?

A. No, sir.

Q. You spoke of renewing bottom plating. What part of the ship were the bottom plating renewed?

A. When we started out, we started to remove the bottom plating on the after end of the ship, under the engineroom and back there; and when we got out we found we had to renew practically the whole bottom.

Q. Afterwards there was some done in the forward part of the too, you say?

A. Oh yes.

Q. Were the floor frames,—were the floors and frames under the engineroom and the tank compartment forward of the engineroom, removed at any time?

A. Why forward of the engineroom,—forward of the main window, where the water tanks was, we did renew some pieces of frames; but not in the after part of the boat at all.

Q. Was any work of that character done in the space under the tank compartment, or in the engineroom?

A. No.

Q. What was done with respect to the side plating of the Seminole?

A. Why we originally was going to renew the guard irons, some of the guard bars; and after we got them off, the top of a sheer strake was bad in spots, so we made it double, put another plate right on top of it; made good connections and put a guard bar on.

Q. Was that side plating that was covered with new plating,—was that removed at all?

A. The old plating was not removed.

Q. Was the bulkhead between the engineroom and the tank compartment, removed?

A. No.

Q. Were the engines taken out of the—main engines taken out of the engineroom?

A. No.

Q. Was any work done on the fuel piping in the engine-room?

A. Not that I recall, that there was anything done with that piping.

The Court:

Was she a coal or gasoline boat at that time? Was she a coal burner at that time?

Mr. Matteson:

Gasoline.

Mr. Thompson:

1922, your Honor, it is in evidence she was changed.

Mr. Matteson:

This is 1927 we are talking about.

Q. Was any electrical work done in the ship?

A. We might have done a little, but I don't remember what it was. I don't think any great amount.

The Court:

The witness spoke just now about water tanks. Are you referring now,—did you mean the gasoline tanks, when you said just now, water tanks?

A. No, sir, I meant water tanks.

The Court:

Where were those tanks?

A. In the forward part of the boat.

(By Mr. Matteson):

Q. What was done in respect to the water tanks?

A. Why after we got the plate off the bottom we found there was stops of the frame that was bad; and to get

in there to do the renewing, to renew the plate, we had to juggle the tanks around in there, move them from place to place so we could work.

Q. You say some repairing was done on the frames there?

A. Some slight, on a few frames; put in a few patches.

Q. The space where these water tanks were, was that forward of the space where the gasoline tanks were?

A. Yes, it was forward.

Q. Were the big cylindrical gasoline tanks of the Seminole taken out of the boat at that time?

A. No, they weren't taken out.

Q. Were the water tanks taken out?

A. No.

Q. Just moved around?

A. Just juggled them around so we could work around them, underneath.

Q. There has been a suggestion, Mr. Thibault, that the gasoline tanks were taken out and laid on the ways beside the ship, and that the bottoms of at least two of them were taken out and replaced. Will you tell us the fact with respect to that?

A. No, we didn't take them out or do any work on them.

Mr. Botts:

Will you read the answer?

(The answer was read by the reporter.)

(By Mr. Matteson):

Q. Was there any work done in the way of raising the level at which the gasoline tanks of the Seminole stood at that time?

A. No.

Q. Now Mr. Thibault it has been suggested that Merrill-Stevens did not keep any proper or accurate record

of the time of the men employed on that job, or what they did. Will you tell us what records were kept at that time?

Mr. Underwood:
We object to that on the ground that the records are the best evidence.

Mr. Botts:
We are not asking the contents of the records.

The Court:
Overrule the objection.

A. Go ahead?
Q. Yes, go ahead and tell us what the records were.
A. We had a system there of daily time slips for each man.

Mr. Underwood:
I object to the system; the question goes to the records kept on this particular job.

Mr. Matteson:
I think we are entitled to describe the system.

Mr. Underwood:
I don't think so.

The Court:
You would have to tie it up.

Mr. Matteson:
Yes, we are going to tie everything up as far as it can be.

Q. Well let's confine it to this particular job, Captain. Will you tell us what system you had with respect to keeping time and records of the work done on that job?

A. Each man made out a daily time slip, with the description of the job that he was doing, and the time that he spent on that job. His foreman that was directly over him took the time slips each night, went over them; if he found any discrepancies he would straighten it up with the man; and they were turned into my office and I went over them. If there was any notations on any of them slips, there was any question about it, it was straightened up before it went into the Accounting Department; and by ten o'clock the inspector on the job got a copy of the previous day's work,—time and materials, storeroom slips and so on; so if there was any question about these things, they was there to catch it.. And if they were all right, there was no question about them, he okayed the slips, and he kept one copy, the other copy went into the office. And as I understand it, the bills was made up from them daily time slips.

Mr. Underwood:

I object to what he understands as to how the bills were made up, and move to strike it out.

The Court:

You mean to say Mr. Thibault that that was actually done, or what you understood was done?

A. It was done; there is no question about that. It was done.

The Court:

You are not just describing the system, but what was done on the Seminole job?

A. The bill was made up from them daily reports.

The Court:
Overrule the objection.

(By Mr. Matteson):
Q. Now to whom did you refer when you said, inspector?
A. Captain Nelson, the owner's representative on the job.

The Court:
Wait a minute, read that answer.

(The answer was read by the reporter.)

(By Mr. Matteson):
Q. You said something about at ten o'clock, the records was ready for the owner's representative; what did you mean by that?

Mr. Botts:
He said by ten o'clock.
A. We tried to have them,—the office tried to have them out by ten o'clock, so that they would know what time to go into the office to get them; and if they didn't get in there shortly, they were hunted up and handed a copy of it.
Q. Ten o'clock, what day?
A. Every day, of the previous day's work.
Q. I show you these documents, comprising Exhibit 4-L. I think you have seen those before?
A. Well I don't know whether I have seen them before or not. If there wasn't any question, these bills would never come to me. These originals was made up—
Q. I am not referring to the system at the time. Have you seen these before, these particular papers, before this minute, do you recall?
A. No, I don't.

Mr. Underwood:

Referring to Exhibit 4-L.

Q. Well then, will you look at them and tell us what they are?

A. These are copies of our daily time slips; the hours, daily time of each man, independent. When they make up these bills, they take it, if it is carpenters, two carpenters or four carpenters or five carpenters, they would take the total time and put it on the bill; otherwise it would be too long, to bill each individual man on the bill.

Q. Now Mr. Thibault are those the bills representing the work that was done on the Seminole in the latter part of 1927, beginning June 20th?

A. Well we hauled that boat out first for a survey, originally, in the spring some time; I don't know whether it was April or May, somewhere along there; and we made a survey and ordered materials. Then the boat didn't come until the latter part of the summer; August I guess—or September. It says here, August 25th hauled out.

Q. Mr. Thibault I call your attention to the fact that as you go through these bills, under the labor charges, where you have, classification of labor, such as carpenters, helpers, electricians, boilermakers, or what not, in practically every case there is after the labor charge, a statement evidently—for instance the word, staging, after carpenters; what does that indicate?

A. Well that is building staging; that there would be staging, building staging to do the work on.

Q. Did these designations indicate the kind of work on which the men were engaged during the time for which the charge is made?

A. For that day, yes.

Q. Well taking these bills as a whole, do the designations placed on the labor charges in the bill, correctly show the work that was done by the men?

A. Absolutely.

Q. Now it has been suggested Mr. Thibault on this particular job, Merrill-Stevens had no supervision of the men, but simply assigned a certain number of men to Captain Nelson, and that the work of the men was done under the direction of Captain Nelson. Will you tell us what the fact is with respect to that?

A. The work was done under my supervision. I didn't see every rivet that was driven or every hole that was drilled or every nail that was driven. We had foremen on the job, and while Captain Nelson was the owner's representative, and inspector on the job, we done the work and put in the kind of plates that he designated. As far as having direct charge of the men, Captain Nelson didn't have any direct charge of the men.

Q. And who kept the records of what the men were doing?

A. Why as I say, we kept them ourselves, made up these daily time slips, and gave Captain Nelson a copy of them every morning.

Q. Are you still connected with Merrill-Stevens?

A. No.

Q. When did you sever your connection with them?

A. The spring of '34.

Q. Do you know where the original records from which these bills were made up, are now? Do you know?

A. No, I do not.

Q. Mr. Thibault, if the Seminole tanks,—if the gasoline tanks of the Seminole had been removed from the vessel and deposited on the slipway, and was later restored to the vessel, would there have been any charges that Merrill-Stevens would have made for that work, that would have appeared on the bill?

A. Absolutely.

Q. What sort of charges?

A. Well, charges the same as on this other one. Charges for hoisting, if we had had to remove plates or frames to get them in, it would have been mentioned. If we did move them out, there would have been charges for steaming,—freeing from gas, which we had no facilities for doing; we would have had to send them out. We didn't have steam enough to do it.

Q. You would have had to send the tanks somewhere else?

A. Somewhere where they had a steam plant, to steam them.

Q. Would there be any charges for transportation of the tanks?

A. Absolutely.

Q. Would there be any charges for steaming the tanks?

A. Absolutely, there would.

Q. About steaming the tanks, what does that amount to?

A. Well they say that clears them.

Q. I mean, how long do they have to be steamed?

A. Well, that is problematical, I guess.

Q. What was the usual practice?

A. I have never seen any that were steamed out that I thought was absolutely safe to put fire around them.

Q. Well is that the usual method of freeing them for work?

A. I think so, yes.

Q. Do you know how long it takes to steam them?

A. No, I couldn't say.

Q. Do you remember Mr. Simmon?

A. I believe I have seen him, I don't know that I ever spoke to the man in my life. I have heard of him.

Q. Could the gasoline tanks have been removed from the Seminole, through the side or bottom of the vessel, while on the ways, without the side plating or the floor frames or plates being removed?

A. No, sir, they could not.

Q. Would it have been practical to have removed them through the bottom of the vessel?

A. No.

Q. On the ways?

A. No.

Q. Why not?

A. After you got them down you had no place to get them out.

Q. You mean the vessel—

A. The keel of the vessel was not over 4½,—between 4½ and 5 feet off the ground, in the first place.

Q. And there wasn't room?

A. The railway was there in the road.

Q. Were any trays made to be placed under the tanks of the Seminole?

A. No, sir.

Q. Were there any trays placed under the tanks of the Seminole?

A. No, not at Merrill-Stevens at that time.

Q. Would it have been possible to place trays under the tanks of the Seminole without first removing the tanks?

A. I don't think so.

Q. Can you give us any idea with respect to the relative cost of removing bottoms of the tanks of the Seminole and testing—examining the tanks and placing them back and re-riveting them,—the necessary incidental expenses that would be involved, as compared with the cost of new tanks?

A. Well even if you placed new tanks, you would have to go through the same procedure to take the old ones out.

Q. Without the procedure for taking them in or out, of course you would have that; but including the expense of steaming, and taking rivets out, re-riveting them, whatever was needed in them, could you give us any idea of the relative cost of that operation as against the cost of new tanks?

A. No, I don't know that I can.

Q. Do you remember whether there were any zinc plates placed on the Seminole at that time?

A. Yes, sir.

Q. Can you give us any idea of the number of them?

A. No, I don't know as I know the number of them. There was plenty of them placed around the struts and the shaft logs and over the shafting between the shaft log and the struts; and over the wheel.

Mr. Underwood:

I am sorry, I can't hear you Mr. Thibault.

A. I say, there was plenty of them placed over the wheels and on the struts and on the shaft log, that project from the hull that the shaft came through; both sides of the boat, you know; it was a twin-screw.

Q. Were they placed at any other parts of the ship that you recall?

A. No, I don't.

Q. If the rivets were taken out of the bottom of the tank, and then the bottom of the tank were replaced and re-riveted, can you tell us whether or not the same sized rivets would be used?

A. No, sir, they would have to be larger rivets.

Q. Have to be a larger rivet?

A. Reamed for larger rivets.

Q. Why would that be?

A. Well most of the holes, when you drive a rivet, a hot rivet into a hole, you swell your material enough that when you drive that cold rivet out of there you de-

face that hole more or less; so you would have to ream them and use a larger size rivet.

Q. Were you at one time employed by the Gibbs Gas Engine & Power Company?.

A. Yes.

Q. Did you have something to do with the construction of the Fortuna?

A. Yes.

Q. What did you have to do with that?

A. Well I was superintendent of construction at that time,—Gibbs Gas Engine Company.

Q. Do you remember the type of gasoline tanks that were placed in her?

A. They were brazed steel tanks, called the Jennie Steinway.

Q. Were they cylindrical tanks?

A. Yes.

Q. And they were galvanized, do you remember?

A. I don't remember.

Q. Did you afterward have something to do with the building of the Fortuna?

A. Yes, I lengthened her out, here in Miami; about seven feet on the after end.

Q. When was that?

A. '25 I think; fall of '25.

Q. Was any change made in her gasoline tanks at that time?

A. No, sir.

Mr. Underwood:

I didn't hear an answer to that last question.

(The last question and answer were read by the reporter.)

Q. Did the alterations affect the part of the boat where the gasoline tanks were?

A. No.

Q. Gasoline tanks were not disturbed?
A. Not disturbed.

Mr. Matteson:
That's all.

Cross Examination.

By Mr. Botts:
Q. Mr. Thibault, will you tell us what is the nature and extent of your experience as a shipbuilder?
A. Well I have been at it over 50 years.
Q. And where did you get your early experience?
A. I learned my trade as a ship carpenter in Marine City, Michigan, in the Wm. B. Marley plant.
Q. And have you ever worked for any of the larger ship-building companies?
A. Oh, yes; I worked for several of the Lake companies; worked for Wm. Kraft & Sons.
Q. Philadelphia?
A. Yes.
Q. How long did you work for them?
A. Oh, about three years, during the Spanish-American War, and after.
Q. What kind of work did you do?
A. At that time I had charge of the lining; that is what they call the lining; that is laying out shell plating; lining out plates for the shell plating.
Q. You were in capacity as a foreman or superintendent of that work?
A. Not superintendent; they used to call us "five-eighters" in those days.
Q. Did you do any loft work?
A. Oh, yes.
Q. What do you mean by that?
A. Well that is taking the architects' drawings and offset of of the vessel to be constructed, and reproduc-

ing them full size for getting out the shapes, forms and so on.

Q. Now then you stated that you worked for the Gibbs Gas Engine Company and for Merrill-Stevens in Miami. Did you ever work for any of the other boat building or drydock companies in Florida?

A. In Florida?

Q. Yes.

A. No.

Q. Didn't you work for Merrill-Stevens in Jacksonville at one time?

A. I worked at Jacksonville, but that is all the same company.

Q. But I distinguish between Miami and Jacksonville. How long did you work for Merrill-Stevens in Jacksonville?

A. I came down to Jacksonville in the fall of 1906, and finished up their drydock, and I stayed with them,—I was to stay with them two years, but I stayed nearly three; then I went into a little boat building place of my own.

Q. Operated your own establishment over in South Jacksonville?.

A. Yes, I operated that until the war came on, then the Shipping Board came in there and took everything I had,—my machinery and my lumber and my men. I was doing all the essential work,—yacht work; and then that is what I hooked up with the Gibbs Gas Engine Company.

Q. Well you have been in the ship building and boat building and repair, for over 50 years you say?

A. Over 50 years.

Mr. Botts:

That is all.

By Mr. Matteson:

Q. Are you employed by anyone now?

A. I am working on my own hook now.

Q. Doing ship building?

A. Boat work.

By Mr. Botts:

Q. Trying to get back to where you were before the Government caught you?

A. Yes.

Mr. Anderson:

That is a long way off.

By Mr. Matteson:

Q. Just one more question, Mr. Thibault. Would it have been possible to have done work on these tanks on the ways alongside of the Seminole?

A. No, sir.

Q. Why not?

A. Wasn't any room on the ways. Another thing, we wouldn't monkey around with gas tanks close to where men was working.

Mr. Matteson:

That is all.

(Thereupon the hearing was recessed until 1:45 o'clock P. M. of the same day.)

Friday, November 17, 1939, 1:50 o'clock P. M.

Hearing was reconvened pursuant to the noon recess, and the witness THIBAULT resumed the stand and further testified as follows:

Thereupon:

Cross Examination.

By Mr. Underwood:

Q. Mr. Thibault, how do you happen to be here today?

A. Why, Mr. Matteson over there asked me to come.

Q. When did you make his acquaintance?

A. Oh, some time about a month ago.

Q. Who introduced you to him?

A. Captain Patton.

Q. When did you meet Captain Patton?

A. Oh, I have known Captain Patton for several years, I don't know just how long.

Q. When did you first talk to Captain Patton about this case?

A. About a month ago, when he asked me.

Q. Have you seen any of the records of the Merrill-Stevens Company with reference to the work that was done?

A. When?

Q. Since 1927.

A. No, only I have seen them here this morning.

The Court:

Talk a little louder.

A. Only that I seen here this morning.

Q. Referring to this batch of bills?

A. Yes.

Q. Exhibit 4-L and perhaps this little batch of bills?

A. Yes, I imagine.

Q. Exhibit 4-M. Now you looked at these for about five minutes this morning, didn't you?

A. That is all.

Q. And that is the first time you have seen those bills since 1927, is it?

A. I don't even know whether I have seen them in 1927.

Q. At any rate, if you did see them in 1927, you didn't see them until this morning?

A. Not until this morning.

Q. It was in August of 1927 the Seminole was hauled out on the marine railway, was it?

A. It was the latter part of the summer, some time.

Q. And it was on the marine railway, and not a drydock; is that right?

A. Railway drydock.

Q. But she wasn't in a proper drydock, was she?

A. It is a railway drydock; that is a proper drydock, a railway drydock.

Q. You mean, it is a combination?

A. There is three kinds of drydocks; a graving dock, floating drydock, and a railway drydock.

Q. Suppose you tell us what this was?

A. This is a carriage that works on rollers, that rolls down in the water and floats the boat on it; then pull her up out of the water.

Q. You mean that she is placed on the carriage of the railway while afloat in the water?

A. Yes.

Q. And then she is hauled out?

A. She is hauled out, cradle and all.

Q. There isn't any structure out of which the water is pumped?

A. No.

Q. Such as in a, strictly speaking, drydock?

A. No.

Q. How many such marine railways were there at that time?

A. Two.

Q. Were they side by side?

A. No.

Q. How far apart were they?

A. Oh, I imagine the number one railway at that time was four or five hundred feet from number two; but at the same time they were digging a slip for number three railway next to this number two.

Q. Which marine railway was the Seminole on?

A. Number two.

Q. Do you remember how long she was on the marine railway, out of the water?

A. Oh, I imagine she was out there eight or nine weeks.

Q. You did quite a lot of steel work on her, didn't you?

A. Yes, sir, we did.

Q. I think you said that included the bottom and side shell plating, is that right?

A. Bottom and sheer strake shell plating, yes, sir.

Q. Suppose you tell us just how far up,—start at the keel and go up; how far up did you work?

A. Came up from the bottom to the turn of the bilge where places were bad; and then the sheer strake, which is the top strake on the boat; the top strake and the main hull structure.

Q. Is it your recollection that you took off any plates below the sheer strake and above the bilge?

A. No, took none,—removed none of them.

Q. You mean your recollection is that you didn't remove any of those?

A. Absolutely.

Q. Quite clear about that?

A. Quite clear.

Q. Have you refreshed your recollection from looking at any other papers of any kind?

A. No.

Q. And you are not at all clear that you ever saw these bills before, is that right?

A. No, sir.

Q. You now have no recollection of ever seeing them?

A. No, I can't say that I have.

Q. How many men were employed in Merrill-Stevens plant, approximately, during the late summer and fall of 1927?

A. Oh, we probably had between 50 and 60.

Q. And how many jobs besides the Seminole were done between August and through the balance of that year?

A. I don't remember that.

Q. That was the busy season for your business out there then, wasn't it?

A. At that same time we were building them steel sheds, and also building number three railway.

Q. Have you any idea now what other jobs were in the yard at that time?

A. No, I couldn't remember.

Q. Can you remember the name of any other vessel that you worked on at that time, during that interval?

A. Not unless someone called my attention to it.

Q. What was the shape of these tanks that you worked on in the Seminole?

A. Cylinder tanks, water tanks. We didn't work on any gasoline.

Q. You say they were cylindrical tanks?

A. Yes.

Q. Sure about that?

A. I am almost positive of it, yes.

Q. Have you any recollection as to what their capacity was?

A. No.

Q. What did you do to them?

A. I didn't do anything to them but take the piping away so we could work around them, to get at the rivets and the shell plating.

Q. Where were they?

A. Under the cabin floor and the forward end of the boat.

Q. Did you do any work on the top side at all?

A. Yes, we put a double strake and new guard irons, new guard bars.

Q. Apart from the steel work now on the passenger's or crew's quarters, or on the deckhouse?

A. Yes, I believe we did do some general work all over, around in different parts of the boat.

Q. Do you remember what that was?

A. No, I can't remember the details of it.

Q. Did you do any work on the anchor or the anchor chain?

A. Possibly, I don't know.

Q. Do you remember that?

A. I don't remember that, no; I wouldn't remember that little item.

Q. Draw the tail-shafts?

A. I wouldn't swear to that.

Q. Don't remember that. What was the deckhead of the engineroom constructed of?

A. The what?

Q. The deckhead of the engineroom. The deckhead; do you know what that means?

A. I don't know what you mean.

Q. Well what was the roof of the engineroom constructed of?

A. I guess that was a wooden deck, I believe.

Q. Is that your recollection?

A. Yes; may have been steel beams.

Q. Were you in the tank compartment where the gasoline tanks were?

A. No.

Q. Do you know what the roof of that compartment was constructed of?

A. No.

Q. Do you know what was situated above the engineroom?

A. Nothing I believe except there had been a skylight sometime or other, over the engineroom; just an open deck.

Q. You mean there had once been a skylight there but there was no skylight at that time?

A. I believe when she was steam, there was a skylight there.

Q. But at the time you were in her, there wasn't any skylight?

A. Not that I remember.

Q. What was above the tank compartment?

A. The Captain's stateroom.

Q. You remember that?

A. Yes.

Q. Did Nelson live on the boat while you were working on her?

A. Several men on the boat; whether they stayed there night and day, or not, I don't know. They were on the boat in the day.

Q. What other steel work did you do besides steel plating?

A. Why we patched up some frames, renewed some bad frames in the forward end of the boat; put new guard bars around her on the top strake. That is all the steel work we done. I think we done a little rail stanchion work; maybe a little general repairs, and something like that. I wouldn't remember them little items.

Q. You say you patched up some frames?

A. Yes, forward.

Q. Do you remember which frames those were?

A. I don't remember which ones, but they were in the forward part of the boat, under the water tanks.

Q. Under the water tanks?

A. Under the water.

Q. Do you remember whether you patched up any frames any place else?

A. No, I don't.

Q. Sure about that?

A. Absolutely.

Q. How long since you have been employed by Merrill-Stevens?

A. I left the spring of '34.

Q. What was the occasion of that?

A. Well I just left, I just wanted to change.

Q. What have you been doing since that time, Mr. Thibault?

A. Well part of the time I wasn't doing anything particular; part of the time working on my own hook.

Q. What are you doing now?

A. Rebuilding a boat.

Q. Whose boat?

A. Belongs to Peters; 60-foot sight-seeing boat.

Q. Do you have a plant of your own now?

A. No, I rent space in Nuta's yacht basin.

Q. Where?

A. Nuta's yacht basin.

Q. How old are you Mr. Thibault?

A. Seventy,—past.

Q. I would like to have it a little clearer, just what your job was at Merrill-Stevens in 1927.

A. Well I was General Superintendent in charge of all operations in the yard.

Q. Were you in charge of the construction work that was going on for Merrill-Stevens as well as the repair of vessels?

A. You mean, construction work in the yard?

Q. Yes.

A. No, not in charge of it so much, except seeing that they were doing it according to contract, that's all.

Q. Was that your job?

A. Absolutely.

Q. Was your job to see that number three marine railway which was being constructed then—

A. Absolutely.

Q. —was constructed according to the plans?

A. According to my plans that I made myself.

Q. What was this other job that was going on?

A. Building them steel sheds.

Q. Was it your job at that time to see that they were properly constructed?

A. Absolutely.

Q. How many sheds were there?

A. Well there was about 56,000 square feet under coyer down there. They are practically all connected; they run different sheds, but they are all under one roof.

Q. All steel framework?

A. All steel.

Q. You inspected those things every day, did you?

A. Absolutely. Put in our own foundations, contracted for, the erection of the building.

Q. Now did you have occasion during that summer and fall to do work on other boats besides the Seminole?

A. Oh, I believe we did. We always was doing work on other boats.

Q. Some of them would be afloat I suppose?

A. Some afloat, some in dry storage, some in wet storage.

Q. You did work on vessels that were afloat, as well as vessels that were dry?

A. Oh, yes.

Q. Were you personally in charge of all the work that was done on all those vessels, too?

A. I was the General Superintendent. I didn't see every nail that was driven or every hole that was bored or every rivet that was put in; that was an impossibility.

Q. Were the gasoline tanks taken out of any other boat between the first of August and the end of December, 1927?

A. No; no gasoline tanks were taken out of any boat, no.

Q. Did you ever take a gasoline tank out of a boat?

A. Yes.

Q. Quite sure you didn't do it that year?

A. No; I took a gasoline tank out of a boat this year.

Q. Well I am thinking about 1927 Mr. Thibault. Quite sure you didn't take a gasoline tank out of any boat at all in that year?

A. Not that I can remember. There might have been some little boat there that had a five or ten or a fifteen gallon tank that came out; I wouldn't pay much attention to that.

Q. Then you might have taken a gasoline tank out of some boat?

A. We might have.

Q. You don't remember whether you did or not, is that right?

A. I don't know.

Q. I suppose you were around the yard every day?

A. Every day.

Q. All day, every day?

A. No, I can't say that I was right in the yard all day every day, but I was in the yard most of the time every day.

Q. Did you inspect every job every day?

A. Absolutely.

Q. No question about that?

A. No question about that.

Q. Who was the foreman that you spoke of this morning?

A. Well we had a gang of the iron workers from Jacksonville; a man by the name of Reinahan was fore-

man of that crowd. Then we had A. R. Saruis that was foreman of the carpenter gang,—laborers.

Q. Do you have only one gang of iron workers?

A. Well, what do you call a gang?

Q. Well, whatever the terms are.

A. A gang can consist of two men or it can consist of fifty men.

Q. Well you had one foreman for the steel work, did you?

A. One foreman for the steel worker's, yes.

Q. And you might have had several gangs working under him?

A. We had two or three gangs of riveters, and we had lay-out platers, that lay out the plates, and fellows to punch the holes, and so on.

Q. Then if steel work was going on elsewhere than on the Seminole, one foreman would have charge of the Seminole and the other work too?

A. No.

Q. That is not right. Well what is right? You tell me.

A. Well if we had other jobs of steel work going on, there would be another foreman on the job.

Q. Did you have more than one foreman there that fall?

A. That is all the steel work we done.

Q. From the first of August until the end of December, is that right?

A. Yes.

Q. What was his name?

A. Callahan, or Reinahan; he come out of the Jacksonville yards; they sent the steel working crowd down here from Jacksonville.

Q. Where is he now, do you know?

A. I suppose, in Jacksonville, I imagine.

Q. Now you say these men kept their own time?

A. No, sir, I didn't say they kept their own time. They made out their own time slip, submitted it to their foreman.

Q. That would be Callahan, or whatever his name was?

A. Whoever he was; and they checked them over, and they were returned to me.

Q. Every day?

A. Every day.

Q. Now is that the ordinary routine you are talking about?

A. Absolutely that is the ordinary routine, every day.

Q. What was the routine on the Seminole, do you remember that?

A. The same as that, exactly, every day.

Q. Sure about that?

A. Absolutely.

Q. And do you mean that you would look them over every day?

A. Absolutely.

Q. Every time slip in the yard?

A. Every time slip in the yard went through my hands before it went into the office.

Q. What were the working hours there at that time?

A. Eight hours a day.

Q. What time did that start and stop?

A. From eight to twelve, twelve-thirty to four-thirty.

Q. Four-thirty you would get all these cards?

A. Yes; I would get them at four-thirty, no, it would be about five o'clock. Lots of times I wouldn't get through with them until eight o'clock the next morning, because I didn't have that kind of hours; I went to work at seven o'clock.

Q. You looked over every time card?

A. Every one.

Q. And what did you do with them?

A. After I satisfied myself they were all okay, they were turned into the office.

Q. Okay in what respect?

A. That the times were right, and the charge to the right job, that particular part of the job.

Q. What do these time cards look like?

A. They are printed slips, with the location for a man's time,—his straight time and overtime, and so on, on it; a place for a description of the work that he worked on, and a place for the number of hours.

Q. You indicate a slip about eight inches high?

A. No, I imagine they were about 4½ x 7.

Q. Four and a half by seven?

A. Something like that.

Q. A man had his name on there?

A. Absolutely, it had a name, a job that he worked on.

Q. The name of the boat or boats that he might work on that day?

A. Name of the boat.

Q. The number of hours on each?

A. Yes.

Q. What else?

A. Wasn't anything else for him to put on.

Q. Now the foreman, what did he put on? Anything at all besides his okay?

A. Foreman looked over them and okayed them, and if there was anything they couldn't agree, he made a notation on that time slip.

Q. In the ordinary course he wouldn't put on anything but his okay, unless there was some discrepancy?

A. If he was satisfied they were all right, he okayed them; if not, there was a notation made on that particular slip; and I took it and the next morning we cleared it up.

Q. The ones there was a dispute about, you looked at?

A. I looked at them all and had to okay them.

Q. You had to put your okay on every one?

A. Every one.

Q. How many would there be in the course of a day?

A. According to the number of men.

Q. Well how many?

A. Well we would have anywhere—

Mr. Botts:

At what day are you talking about? Fix a day.

(By Mr. Underwood):

Q. Can you fix a day?

A. Certain date? No.

Q. Well what would an average day be? How many time slips?

A. How many time slips? Probably about fifty.

Q. The Superintendent of the yard looked at every one?

A. Absolutely every one of them.

Q. What did you do with them?

A. I turned them into the office; that is what they made the bills out by.

Q. Did you ever see them again?

A. Not necessarily.

Q. Did you have anything to do with the making up of the bills?

A. No, nothing in the world.

Q. You never have been in the Accounting Department, have you?

A. What?

Q. You have never been a part of the Accounting Department, have you?

A. No.

Q. I still don't quite understand the purpose of your putting your okay on these daily time slips. Were you in a position to check each slip as to the number of hours each man put on each job? Were you?

A. Absolutely.

Q. That is to say, if John Jones, carpenter, put down eight hours on the Susie Bell, and his time slip came to you for your okay, you would know whether he had put eight hours on the Susie Bell?

A. I would absolutely know if that carpenter had eight hours on the Susie Bell; I would absolutely know it.

Q. And you would know it from what?

A. From my own experience, and knowing how to take care of the men.

Q. If you had fifty men in the yard working on a particular day, whose time slips you looked over, you would know of your own knowledge when you came to check over those time slips, how many hours each man had put on each job?

A. If I wasn't satisfied—

Q. Is that right?

A. Just wait a minute.

Q. Well I am not asking you about, if you are satisfied. Will you read him the question, please?

Mr. Matteson:

If your Honor please, I think the witness is entitled to answer it and make his explanation.

Mr. Underwood:

Well, to answer it, certainly; but he hasn't answered it.

Mr. Botts:

You didn't give him a chance to answer it.

Mr. Underwood:

He wasn't answering.

The Court:

Will you read the question?

(The last question was read by the reporter.)

A. Can I answer that in my own way?

The Court:
Yes, sir.

A. If I had any doubt, in running over them time slips, if there was any doubt in my mind, then I took that time slip, went to that man's foreman and that man, and we got it straightened out right then before it was okayed.

(By Mr. Underwood):
Q. Well I am afraid you haven't quite understood my question, Mr. Thibault. Suppose you had fifty men working in the yard on a particular day, one of them was John Jones, a carpenter, and he was working on the Susie Bell. At the close of that day would you get a time slip from him which says, "John Jones, Carpenter, Susie Bell, eight hours"? Would you know of your own knowledge that he had spent eight hours on the Susie Bell?
A. Sure.
Q. Would you remember, at the close of each day, what time he checked in the morning and what time he checked out at night?
A. Just a certain time he had to check in; he couldn't check in any other time.
Q. Suppose he put six hours on the Susie Bell and two hours on some other boat, on his time slip, would you know of your own knowledge what time he left the one and went to the other?
A. I expect I would, because I would be the fellow that would assign him to the job.
Q. It wouldn't be the foreman?
A. Not on jobs like that; I did that myself.
Q. So you want us to understand, do you, that at the close of each day, you would know how many hours each man in the yard had spent on each job?

A. After checking up his time slips, yes.

Q. Well, only after checking up his time slips?

A. Sure.

Q. Do you remember how much of the bottom plating you renewed?

A. No, I don't remember. I know the total number of plates was somewhere around seventy, on the job.

Q. Were they scattered all over the boat, or all concentrated in one section?

A. On the sheer strake, they went all the way around the boat; and under the bottom, on the end, I think on the ends of the boat, there was some left,—some of the old plating left.

Q. Well you said something about renewing plating under the bottom, forward. Do you remember how much plating you renewed up there?

A. I don't remember the exact number of plates, no.

Q. Did you renew the bottom generally, forward?

A. Yes, generally. We opened up quite a big body of it, I know.

Q. How much amidships?

A. Some of it run back amidships, and ran all along on the bottom.

Q. And how about aft?

A. Same way.

Q. Well let's see; how about the strake next to the keel; did you take all the plates out on either side?

A. I don't remember whether we took them all out or not.

Q. Well did you take out any under the gasoline tanks?

A. I don't even remember that, but I imagine we did.

Q. Take out any under the engineroom?

A. Oh, yes.

Q. Are you sure about that?

A. Yes.

Q. Do you remember how general that was?

A. Pretty general under the engineroom, I believe.

Q. You wouldn't go so far as to say you took them all out under the engineroom, would you?

A. No.

Q. Do you remember whether she had a generator in the enginercom?

A. I don't know whether she did or not; I had nothing to do with that.

Q. Take out any plates under the generator?

A. I don't know. That is in the engineroom I suppose, and I expect we did.

Q. Took out any plates under the engines themselves?

A. I think so.

Q. But you didn't take up the engines?

A. No, we didn't take the engines out.

Q. Do you remember how the engines were bedded?

A. That has got nothing to do with the plating, how the engines are bedded. They don't touch the plating.

Q. Do you remember how they were?

A. No, I can't say that I do.

Q. Well how did you get to the plates, under the engines, to rivet the plates back on?

A. There is plenty of room under there; them engines are probably that high.

Q. Lots of room under the engines, were there?

A. Yes.

Q. Practically about a foot?

A. Yes.

Q. A man could work under there without any trouble?

A. Yes.

Q. Since we have been discussing this, Mr. Thibault, have you thought of the names of any of the other boats that were there from the first of August to the end of December, 1927?

A. We had at that time approximately a hundred boats in the yard; I don't know that I could. I might offhand

name a few of them. We probably had a hundred boats; the yard was full of storage, at the time.

Q. Have any of the photographs of the Seminole been shown to you recently Mr. Thibault?

A. I think I have seen a couple, some time ago, down there around Nuta's yard; they was showing some of them pictures. Whether it was Pilkington's yard, I don't know; I have seen some of them from somebody, but I don't remember who.

Q. Then as I understand it Mr. Thibault you haven't seen the Seminole since this job was done in 1927—early 1928?

A. Oh, yes, I have seen her lots of time.

Q. I mean, to work on her?

A. No; I don't know that we ever hauled her out after that, or not. She was hauled out a couple of times a year; I don't remember when the last time was.

Q. You say she had been surveyed in the spring of 1927?

A. Yes, if I remember rightly they went over it and we made them up a—

Q. I am sorry, but I am afraid the reporter is having difficulty in hearing you.

A. She come in there for a survey and we ordered plating and angle bars and so on, like that, which we expected, and after we hauled out they found out they had to remove extra plates and had to put double that, if I remember rightly.

Q. Do you remember who made that survey?

A. That was made directly under Captain Nelson's supervision.

Q. Anybody else participate in it, as far as you know?

A. He was the man that said what was to come out. We gave him the men to help him.

Q. Did you go over the job with him at that time, to decide how much plate to get, and that sort of thing?

A. Yes; I think, if I remember rightly, we made him up a plan showing the number of plates, so he could submit to his owner, the number of plates that had to be removed.

Q. Was there a survey written up?

A. I don't remember.

Q. Were the plates marked and numbered?

A. They were on this plan, yes.

Q. How long since you have seen that plan?

A. I have never seen it since.

Q. Then you don't remember doing any work on the Seminole from the time you finished this job in 1927 or early 1928, is that right?

A. No, I don't remember whether we ever hauled her out after that or not.

Q. Well when did she next come to your attention in any particular way?

A. Why I don't know, unless when she burned up up there at Lauderdale.

Q. You remember reading about that in the newspapers I suppose?

A. Yes.

Q. Then the Seminole was next brought to your attention when Captain Patton called on you about a month ago?

A. No, I had seen her every day for the last couple of years.

Q. I mean, the next time you had any conversation about her?

A. Oh, I guess I have had conversations about her with different people, in an offhand way I guess; I don't know.

Q. About the work that was done in 1927?

A. No.

Q. You hadn't considered this 1927 work since the time the job was finished, until Patton called on you?

A. No; not in any particular way, I don't suppose I have.

Q. Hadn't discussed it particularly with anybody?

A. No.

Q. Well what you have given us here today is your recollection after twelve years, approximately?

A. Well it is very easy to recollect.

Q. Is that right?

A. Yes.

Q. Unrefreshed by any written documents; and you began thinking about that work for the first time when Captain Patton called on you about a month ago; is that right?

A. Yes.

Mr. Underwood:

That is all.

Re-Direct Examination.

By Mr. Matteson:

Q. Mr. Thibault you said something about it was easy to recollect; what did you mean by that?

A. Why because it was a job out of the ordinary for that yard. We had no facilities ourselves for doing steel work, and it was the only real job of steel work that the yard ever done. That's why it is easy to recollect it.

Q. You spoke of several men being on board the yacht at the time the work was done. Do you refer to members of the crew?

A. If I remember rightly, there was an engineer aboard, and some of the crew aboard.

Q. Do you remember who the engineer was at that time?

A. I think it was a man by the name of Brown.

Q. Do you remember any of the others?

A. No, I don't remember any of the crew's name.

Q. These plates that were renewed, of course it is abc to you, but are these on the outside of the ship?

A. Outside, absolutely.

Q. On the outside of the frames?

A. Yes, absolutely.

Mr. Matteson:

That is all.

Mr. Underwood:

In order to rivet the plates on the outside, you have to have a man both outside and inside, didn't you?

A. Yes.

Mr. Underwood:

That is all.

By Mr. Matteson:

Q. Of course, whenever you do any riveting, you have to have a man on each side?

A. If you rivet, yes.

Q. And the man on one side operates the hammer, the man on the other side holds—

A. The "holder-on".

Q. So the "holder-on" holds the tool against the rivet, to hold it in place?

A. The head of the rivet.

Mr. Matteson:

That is all.

(Witness excused.)

4026 Thereupon L. T. BROWN was recalled as a witness on behalf of Libelants, in rebuttal, and further testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Mr. Brown, were you on the Seminole in 1927 when the Seminole was at the Merrill-Stevens yard for some work, in the latter part of that year?

A. Yes, sir.

Q. What was your position there?

A. Chief Engineer.

Q. Were you there during the whole period of the repairs, in the latter part of 1927?

A. Yes, sir.

Q. Did you receive pay, were you on the payroll I mean, of the Seminole, at the time?

A. Yes.

Q. Were there any other members of the crew on board?

A. Yes, there were several that I remember,—that I recall.

Q. Do you remember who they were?

A. The Captain and myself, and my oldest boy was on,—that I know definitely. I couldn't swear to the other names, but there was several of the deck crew retained.

Q. Was that during the whole period of repairs?

A. Yes.

Q. In the course of about what part of the year did that work begin, do you recall?

A. I don't recall exactly; along during the summer, it seems; the latter part of the summer.

Q. Now during that period of repairs there at the yard, were the gasoline tanks of the Seminole removed from the vessel at any time?

A. Gasoline tanks?

Q. Gasoline tanks.

A. No, sir.

Q. Was the position of the gasoline tanks changed?

A. No, sir.

Q. Were the tanks elevated,—that is, put in a higher position, two or three feet?

A. No, sir.

Q. Was the bulkhead separating the space where the tanks were, from the engineroom, removed?

A. No.

Q. Were there any trays installed under the tanks in the Seminole at that time?

A. None whatever; during that job?

Q. During that job.

A. No, sir.

Q. Were the engines removed,—the main engines of the Seminole?

A. The main engines were not moved; no, sir.

Q. Tell me what work was done in and about the engineroom during the period of the repairs that I speak of?

A. I pulled the generating set, which is a small Winton, from under the Engineer's room, and set it out just to the port side of the port main engine. Of course that necessitated making new timbers for her, and bolting it in; but that was just simply moved from one position to the other, to make it more accessible. Put in a new workbench; and a small auxiliary set was built,—I built it out of some pieces I had around there,—an old engine and an old motor that I used.

Q. Who did the work in moving the generator?

A. Well I did most of it myself, with the help of a man from the yard, for a while; possibly two men for a while; that is the yard,—the Merrill-Stevens furnished. I would say one or two men for one or two days, but for a short time, to help on the job.

Q. Any of the members of the crew assist you?

A. Well I worked that boy of mine wherever I could work him; he was possibly helping too while we were moving it.

Q. In connection with the moving of the generator, did that involve any alterations or changes, anything else in the engineroom?

A. No, I wouldn't say any changes that did not affect the generator itself.

Q. Was any electrical work done?

A. The generator wires were possibly lengthened out, a matter of seven or eight feet.

Q. Was that all?

A. That's all.

Q. Were any changes made in the gasoline piping from the tanks?

A. The only change in that generator of mine, taking out the old line and running a new line to the new position.

Q. Was the gasoline piping renewed at that time?

A. That part was; I put in copper tubing as I remember it.

Q. For the generator?

A. For the generator.

Q. Any of the rest of it changed?

A. No, sir.

Q. Prior to the time that you went to Merrill-Stevens for repairs, had you had any difficulty in the gravity feed of gasoline from the tank to the main engines?

A. No, sir.

Q. Was the side plating of the Seminole removed in the way of the engineroom and tank space at that time,—any of the side plating?

A. No, there was no side plating removed.

Q. Was there some bottom plating?

A. Yes, part of it.

Q. Were the floor frames or plates removed under the engineroom or tank compartment?

A. No, sir.

Q. With the side plating in place, and the floor frames and plates in place, it would have been possible to remove the gasoline tanks from the Seminole through the bottom or sides of the ship?

A. No, it wouldn't.

Q. Was any work done on the gasoline tanks at all at that time?

A. None whatever.

Q. What construction of the vessel was over the tank space or the space where the gasoline tanks were, can you tell me?

A. Amidships there was the after end of the forward deck house, which was used as a Captain's cabin.

Q. Can you point that out on this plan which we have here, Phipps Exhibit A?

A. There is your tanks, engineroom and the tanks; across here would be the Captain's room; it set directly above here. It seems to be a little bit long, but the Captain's room would come right about in there somewhere. That may be just right; I guess it is.

Q. And the Captain's room to which you refer is the room that is marked "Captain's Stateroom" on the plan, on the upper half of the sheet, is that right?

A. That is right. This is the forward deck house, or the music room as we called it.

Q. That is forward of the Captain's Stateroom?

A. Forward of the Captain's stateroom; and this Captain's room extended back to the smokestack, which we installed at Palm Beach; we installed a toilet and wash stand and shower bath and the smokestack; that extended out in here.

Mr. Underwood:

In the engineroom.

Q. Was there any opening through the tank space to the Captain's room or the deck over the tank space?

A. No, sir.

Q. Was any part of the deck or the Captain's cabin, over the tank space, removed at this time, during this period of repairs?

A. No, sir, there was none of this removed; no, none of it.

Q. Was there any means of access to the tops of the tanks through the Captain's room or through the deck, over that space?

A. No, sir.

Q. No way of getting at them at all?

A. No way of getting at them at all.

Q. Was there any way in which you could get at the air vent lines on the tops of the tanks to do any work on them or inspect them?

A. No, sir; they were forward of the engineroom bulkhead.

Q. And under the Captain's cabin, or the deck, as you described?

A. Yes.

Q. It has been suggested Mr. Brown that during this period, between midsummer and the end of the year, while these repairs were under way, that the gasoline tanks were removed from the vessel and that two of them were laid alongside of the vessel, on the ways, or on the dock, and that the bottoms of at least two of them were removed so that the interior of the tanks could be examined. Will you tell us what the fact is with respect to that?

A. The tanks were removed and placed?—I think it has been covered, hasn't it? They were not removed.

Q. They were not removed.

A. No, sir.

Q. Then the work that I described was not done?

A. No, sir.

Q. During that period did you ever see a pile of rock or residue or any other substance from those tanks that was piled outside the vessel in any place whatever?

A. From the tanks?

Q. Yes.

A. No, sir.

Q. Were the main engines removed—

A. Removed?

Q. Yes, were the main engines removed or disturbed in any way?

A. No, sir, they weren't moved even in the engineroom.

Q. If the bulkhead between the engineroom and the tank compartment had been removed, was there anything in the engineroom that would have to be moved out of the way for that to be done?

A. Move the bulkhead?

Q. Yes, if you were going to move that bulkhead out, was there anything in front of the bulkhead you would have to move out of the way?

A. There was a workbench, and bilge pump; one of the auxiliaries; log desk, which don't amount to much; and a set of batteries,—two sets of Edison batteries against the bulkhead.

Q. How were the batteries fixed with respect to the bulkhead?

A. They were in shelves that were fastened in some way to the bulkhead.

Q. Mr. Brown do you remember the passageway that ran along the starboard side of this ship beside the engineroom?

A. That is this one.

Q. Marked "passage" in the lower diagram on this plan, Exhibit A?

A. Yes, sir.

Q. Do you remember that passageway?

A. Yes, sir.

Q. I want to ask you with respect to the bulkhead that ran along that passageway, separating it from the—separating the passage from the engineroom and from the space where the tanks were: the side of this bulkhead, the passageway side,—can you tell me whether that was sealed, or whether there was some joiner work or paneling or woodwork on it?

A. That was a steel bulkhead, with the seams showing into the engineroom; that is the frames were on the engineroom side. It was perfectly plain in the passageway.

Q. A plain seal?

A. Yes; yes, sir.

Q. Painted I suppose?

A. Painted.

Q. Mr. Brown it has been suggested here that on the Seminole there were four two-inch pipes leading from the deck above the engineroom down through this passageway, in the points that are marked with white dots on this exhibit. Do you see the points?

A. Yes, sir.

Q. Were there any such pipes,—I might add that these pipes terminated on the deck above, with gooseneck fittings, so that they turned over and faced down to the deck, and that the pipes lead down through the passage, to the bilge of the engineroom. What is the fact with respect to that?

A. They were not on there when I knew the ship.

Q. Not up to the time you left her?

A. No, sir.

Q. Now it has also been suggested that there were in the engineroom of the Seminole, four similar pipes on the port side, leading from the deck above, and finished on the deck above in the way I have described, leading down into the engineroom on the port side, in approximately the locations indicated by those white dots that appear on that side of the diagram. Will you tell me what the fact is with respect to that?

A. They were not there when I was there.

Q. Mr. Brown there has been some testimony about the necessity of priming the engines of the Seminole. Will you tell us from your experience what necessity if any there was for priming the engines of the Seminole?

A. Well they were slow speed engines, air starter, and it was necessary to give them a little gas in the priming cups, which were furnished, one on each cylinder, to start the engines whenever I started up from a cold start.

Q. Was it necessary to prime them when they were warm or hot?

A. No I don't remember ever priming them when they were hot.

Q. Did you find it necessary to prime them when they were hot?

A. No, sir.

Q. Now with respect to priming those engines, how much gasoline would be required or be used to prime a single cylinder?

A. A teaspoonful would be sufficient, possibly be more than enough.

Q. What did you use to prime the cylinders with?

A. An ordinary squirt can.

Q. What was the capacity of that squirt can?

A. Between a half and a pint; possibly a half pint would be nearer to it.

Q. And how many primings could you get out of a squirt can of that size, for the engines of the Seminole, when it was necessary?

A. Well I don't konw as I ever measured or counted the number of times, but I would say, several starts.

Q. Several starts out of one canful?

A. Yes.

Q. Did you have two cans, two squirt cans in the engineroom when you were there?

A. Two—

Q. Squirt cans?

A. Oil and gasoline; I only had one gasoline can.

Q. In connection with that work at Merrill-Stevens in the summer and to the end of the year in 1927, can you tell me whether the cabin on the after upper deck was built at that time?

A. No it wasn't built at the same time we did the bottom work.

Q. When was it built, do you know?

A. I couldn't give you the date, but it seems it was the summer previous.

Q. Was there any cabin built on the Seminole in connection with this work at Merrill-Stevens that year, 1927?

A. No I don't remember any.

Q. Have you made trips on the Seminole to the Pilkington Boat Yard at Fort Lauderdale?

A. Yes, I think, one.

Q. And can you tell us approximately the difference from the mouth of the river to Pilkington's yard?

A. Three miles would be a fair estimate.

Q. Do you know a place there called the Bend,—referred to as the Bend?

A. Below town, or above town?

Q. Well I imagine it is below town.

Mr. Underwood:

I object to that as leading.

A. Well there is a Tarpon Bend below town, and there is another big bend; I don't know which one he is referring to.

Q. Let's call it the lower bend.

A. That is Tarpon Bend.

Q. That is above the mouth of the river?

A. That is above the mouth of the river just a short distance.

Q. Can you give us an estimate of the amount of gasoline that would be required to navigate the Seminole from the mouth of the river to Pilkington's Boat Yard?

A. Not over twelve gallons; I wouldn't think it would take that much; but I wouldn't say over twelve gallons,—depending on conditions.

Q. Why do you think it might take as much as that?

A. Just depending on how many times it ran aground, or how much handling they had on the bends.

Q. Now it has been suggested here, Mr. Brown that the construction of the Seminole was such that she was quite rigid, and was stiff, and would not have much motion in her hull in a seaway. What can you tell us about that?

A. No motion in the hull? In the framing or the—

Q. In the hull or the framing; in the structure of the vessel.

A. Well, sir I have seen her in a blow when the Captain and myself were the only two that stayed with it; the rest of them were so seasick on account of motion that they couldn't stand it; and the cabins would be weaving to such an extent that you could see the movement, especially the forward deck house, which we called the music room.

Q. Well in ordinary operation, laying aside storm conditions, can you tell us whether that would be noticeable to any extent?

A. No I don't say it would weave in ordinary conditions; but where you would really get a roll and a pitch, you could notice it.

Q. Can you tell me whether or not there were any noticeable virbrations from the engines of the Seminole when they were in operation?

A. I wouldn't say, from the engines, any more than from the entire vibration set up by the engines, you could feel it through the entire hull of course—through the entire ship.

Q. Did you notice any effects on the equipment in the engineroom, from the vibration you have spoken of?

Mr. Underwood:
I object to that as calling for a conclusion.

Mr. Matteson:
Talking about observation.

(The question was read by the reporter at the direction of the Court.)

The Court:
I overrule the objection.

A. Well sir we did have quite a number of little jobs come up, which could be attributed to vibration; such as loose joints, such as that.

Q. What do you mean by loose joints? Loose joints where?

A. First one place and then another; you would have water piping and gas piping and exhaust pipes, and such as that. It is part of the engineer's job to keep up with that stuff, and at times it got to be quite a job.

Q. I think on your previous examination Mr. Brown you told us the extent of your experience on gasoline boats. Will you tell us, from your experience, whether or not it is a common thing in gasoline boats to find it necessary to tighten pipping, including fuel piping, against looseness or leaks?

A. It depends a great deal on the installation. In the average boat you don't have that trouble.

Q. Did you have that on the Seminole?

A. Yes.

Mr. Matteson:
That is all.

Cross Examination.

By Mr. Underwood:

Q. What kind of engines were they Mr. Brown?

A. They were Wintons.

Q. How big were they?

A. Rated at 125 horsepower each.

Q. Do you remember the size or weight?

A. No, sir, I can't remember the exact bore and stroke on those engines.

Q. Do you know how heavy they were?

A. I do not.

Q. Remember how many revolutions they made at full speed?

A. They made around 360 to 70, full speed, with the wheels we had on her when I was on her.

Q. Would it be eight inch bore?

A. Would be—?

Q. Would it be?

A. I couldn't say if it was eight or nine. I did have the exact specification of them at one time, but that has been quite a while ago.

Q. Is that about right?

A. I would imagine that is a little bit under, if anything. It may have been a nine inch bore, if we were just guessing at it.

Q. How about eleven inch stroke? Is that about right?

A. Yes it could have been a twelve inch stroke; it is quite a throw.

Q. Would you say that they weighed about 10,000 pounds apiece?

A. I wouldn't say; I have got no way to estimate the weight.

Q. You are not familiar enough with such engines to approximate their weight?

A. Well I don't say that I am not familiar enough, but I wouldn't make a guess at the weight of those engines, not knowing the weight of them.

Q. Do you want to say whether 10,000 pounds was approximately right, or do you know?

Mr. Botts:

I object to repetition; he has answered the question once.

The Court:

Well he is on cross examination; he is testing his knowledge. I will overrule the objection.

A. Well that would be about five ton of engine, ten tons complete: Why if we want to get at the weight, why we are guessing pretty close. That is all I could say.

Q. Were they good engines?

A. For their time of being built.

Q. Was there any better engine at that time?

A. I don't believe there was.

Q. Now in ordinary operation in Florida waters, while you were on the Seminole, did you observe any movement of the cabins on deck when she was going up and down?

A. Ordinary operation?

Q. Going up and down the Miami River?

A. Oh no, no.

Q. Up and down Biscayne Bay?

A. No.

Q. Going down to the Keys, fishing?

A. No, sir.

Q. That was something that happened under what kind of circumstances?

A. In a seaway.

Q. Now you spoke about this after cabin being installed; do you think that was in the summer of what year?

A. I think, as you ask, it was in the summer of '26. It seems to me that it was put on before we made the trip to Andros Island, which was made in July of '26.

Q. Where was that done?

A. Merrill-Stevens, as I remember it.

Q. What else was done there at that time?

A. Sometime during that change-over; without having the exact dates, the cabin space below was all rearranged.

Q. Anything else that you remember?

A. In the line of work at any time, you mean?

Q. No, anything else that you remember was done about the time this after cabin on deck was installed?

A. Well it seems that it was along about that time, which may not be the exact—the same job, the forward deck house was changed a little bit; it seems it was lengthened, forward, but I don't remember the exact date on that.

Q. I don't quite understand what it was that was lengthened Mr. Brown.

A. The forward deck house.

Q. Any other work done at that time, that you recall?

A. The only big job that I recall. There was a boat deck put on there in the place of the old canvas awning, sometime about the time that work was done; whether that was done at Merrill-Stevens or Palm Beach, I can't recall.

Q. What was the shape of the water tanks?

A. There was three water tanks, rated at 500 gallons each, that were approximately three feet high, and whatever size it will take to make about 500 gallons; which was seven or eight feet one way and three of them fit in the forward bilges.

Q. They were flat bottoms and flat tops?

A. Flat bottoms and tops and sides.

Q. Rectangular tanks?

A. Yes.

Q. Were there any cylindrical water tanks?

A. No, sir.

Q. Do you know of what the deck over the tank compartment is made?

A. No; the floor of the Captain's room was wood, which was over it; and the deck on either side was wood; canvas covered.

Q. Do you know whether that was set on steel, or not?

A. No I can't say.

Q. What was the Seminole's crew doing at Merrill-Stevens when she was there the summer of 1927—and fall?

A. Chipping rust; cleaning up in general.

Q. What else besides chipping rust and cleaning?

A. Painting inside, as the job got farther along.

Q. What else?

A. Well I don't know of much else they could do.

Q. Were you on her?

A. Yes, sir.

Q. The whole time?

A. Yes, sir.

Q. Quite sure about that?

A. Yes. If I hadn't been I wouldn't have said so.

Q. Well do you remember what you testified about when you first came on the stand last March, about the time you left the Seminole?

A. I came back the next day and corrected that, if I remember, sir.

Q. I didn't ask you that.

A. Well I am answering you that way. I said I left her in '27, and I remembered when I got home and checked up and found it was '28; and I came back the next day on the stand, after that, and said it was '28 instead of '27. Now that was not done to cover up anything.

Q. Why do you say that?

A. Because you led me on to it, the way you asked the question, I didn't understand it.

Q. I led you on to what?

A. Do I remember what I said?

Q. What did I lead you on to?

A. You make out like I left her in the summer of '27 the way I understand it.

Q. Well did you?

A. I did not. You will find that on the record, that I came back and corrected it.

Q. But you first testified you left her in '27, in the spring, did you not?

A. You have got that record; I don't know what I said, now.

Q. Do you remember? Do you remember?

A. Do I remember what, sir?

Q. Will you read the question?

(Preceding question was read: "But you first testified you left her in '27, in the spring, did you not?")

A. I don't remember whether I said, spring or summer, but I said I left her in '27.

Q. And you came back the next day and said '28?

A. I did.

Q. The first time you were wrong by a year?

A. Which is a very easy mistake to make.

Q. Couldn't be mistaken about the removal of these gasoline tanks, though?

A. No, sir.

Q. Couldn't be mistaken about that?

A. No, sir.

Q. You were there all the time?

A. I was there all the time that job was under way.

Q. When did the job begin?

A. I couldn't give you the date exactly.

Q. Well, about.

A. It was during the summer, some time.

Q. And when did it end?

A. Late in the fall, some time.

Q. Were you still on her when the job finished?

A. Yes, sir.

Q. Where did she go from Merrill-Stevens?

A. Darned if I know. We went down the river and we laid off of Seybold's place for awhile; and we made cruises, and we came back to Seybold's; and I don't know where we did go.

Q. Where was she when you left her?

A. At Seybold's.

Q. What was the occasion of your leaving?

A. That might bring on talk, but I don't mind talking. The Captain fired me, and I went down to the office to find out why I had been fired, and they says "Why somebody must be crazy; you are not the one that is fired, it is him that we are after". I says "Well I am fired, anyway". And they told me to go back home and sit easy and not pay any attention to it.

Q. Who told you that?

A. Mr. Simmon and Mr. Scott. So I went back home, and they notified me in a day or two to meet Captain Willie Baker down there at a certain time during the day about lunch time and Captain Nelson would be gone. Several days after this—after I was fired. I went back and met Willie Baker, and Mr. Simmon was there, and put Captain Nelson ashore with his bag and baggage. Without any warning he turned to me and told me "Now you and Captain Baker are in charge of the boat"; so I went back aboard, and with the understanding that I had a job from then on. Nothing against me whatever, and they had everything cleared up. And in a week or so after that, Willie Baker and his boy and my boy, several of Willie Baker's friends,—I don't know how many, and myself, took the boat to Lauderdale, tied her up at Pilkington's.

We got up there and left her there, and we all came back. And I went back the next day; I think Captain Baker went back with me; we went up there and started laying her up.

Q. That was in 1928?

A. '28. We started laying the boat up in Pilkington's shed. We took down one of the masts, or maybe—yes; and backed her into the shed.—No, we headed her in the shed that time; and I stayed on her for about a week, laying up, with the understanding I was to be with her. And Willie Baker and Mr. Simmon came up there I think it was a Saturday, told me to pack up and get ready to go to town with them. So we went right on to town and they paid me off. So I didn't know what it was all about, I couldn't find out what it was all about, and I requested an audience with Mr. Scott; and they would not tell me anything, and wouldn't even let me see Mr. Scott.

Q. Did you ask Mr. Simmon what it was about?

A. Yes, sir; he didn't know.

Q. What did he say?

A. He didn't know.

Q. Did he say he didn't know?

A. He said he didn't know.

Q. You tried to get to see Mr. Scott?

A. I tried to get to see Mr. Scott, and Mr. Scott was always too busy to see me.

Q. You never did see Mr. Scott?

A. Not after I was let out.

Q. Well this work at Merrill-Stevens in 1927 as you remember it, began in the summer and was completed in the fall, is that right?

A. Late in the fall, I would say; I don't remember just what month.

Q. I don't want to get into a quarrel with you about when fall ends and winter begins; but, about when?

A. It seems to me we were off by Christmas, but I am not sure.

Q. Do you remember whether you were still there at Christmas?

A. No I couldn't say.

Mr. Underwood:
That is all.

Mr. Matteson:
That is all.

(Witness excused.)

4049 Thereupon: GEORGE F. KLEIN as a witness on behalf of Libelants, in rebuttal, was sworn and testified as follows:

Direct Examination.

By Mr. Matteson:

Q. What is your full name?

A. George F. Klein.

Q. What is your occupation?

A. Iron worker.

Q. And how long have you been engaged in that occupation?

A. About fifteen years.

Q. And who do you work for now?

A. A. L. Hardie, Hardie's Iron Works.

Q. What other concerns have you worked for?

A. G. M. Dykes; Coral Way Iron Works; Hull-Molton; Arrigoni.

Q. When you say, iron work, what does that include?

A. Well general blacksmithing; general repairs on everything; welding, acetylene, electric.

Q. Soldering?

A. Soldering.

Q. Do you operate—do you do punching of plates?
A. Yes, sir.
Q. Drilling?
A. Drilling.
Q. All kinds of iron work?
A. That is right.
Q. Do you work in copper and bronze, too?
A. That's right.
Q. Are you familiar with tank work too?
A. Do a little of it yes, sir.
Q. Did you accompany us with the Court when we went out to the Seminole in October of this year?
A. I did.
Q. And did you observe the tank that had been removed, in place, and laid on its side at the forward part of the Seminole?
A. Yes.
Q. What did you observe with respect to that tank, with respect to solder?
A. Well I noticed it had been soldered up maybe about eighteen inches on the side there; and solder in places on the bottom.
Q. Well now was there any evidence of solder above the eighteen inch place that you speak of, on the side of the tank?
A. No I couldn't say that there was.
Q. It has been suggested here that there may have been solder on the side of the tank above that place, on the side, and that it was caused to run off by the heat of a fire through which this tank went. Will you tell us what you know about the effect of heat in removing solder from a soldered surface?
A. If they had been soldered all the way up, it would have shown signs of solder on it yet.
Q. Why was that?
A. Because in my cases where I remove solder, you have to use a steel brush, with heat, to remove the solder.

Q. What do you mean by heat?

A. With a torch.

Q. You mean that you attempt to remove it with a blow torch?

A. That is right.

Q. You have to use—

A. A steel brush in order to knock it off, when it is hot.

Q. In other words, it does not run off readily?

A. No.

Q. By that, do you mean that none of it comes off, or that you can't get it all off?

A. Well yes some of it will come off, but you still have your tinning on there; you have to tin it first in order to solder it.

Q. And is that what you have to remove with a wire brush?

A. Well a certain percentage of that yes, sir.

Q. You spoke of soldering, that you observed in the bottom seam of the tank. Tell us just what you observed there.

A. It was soldered in places; it wasn't soldered completely around.

Q. You mean the solder wasn't there when you observed it?

A. That is right.

Q. How extensive were the places where solder wasn't there?

A. What is that?

Q. How extensive were the places where solder wasn't there?

A. Well there was places that would average two and three inches there, that wasn't soldered.

Q. Did you notice the rivets around the bottom seam of the tank, as to whether they had been soldered or not?

A. No I don't think they were.

Q. Did you measure the tank compartment space there, the width of it from one end of the ship to the other?

A. Yes.

Q. To see the clearance of the tanks in that space?

A. About a half inch.

Q. On each side?

A. Yes, sir, at most a half inch.

Q. What is that?

A. I say, at the most, about a half inch.

Q. Now will you tell us whether there is any difference in appearance between welding and soldering? I am talking about fresh work, now.

A. Soldering would have a bright color to it; where your welding, if you are welding two pieces of iron together, you have the same color as iron.

Q. Is there any other difference in appearance between solder and welding?

A. You would have a bright color and a dark color.

Q. Any difference in the surface that is produced,—the kind of a surface that you get?

A. Why you would have a rolled edge if you weld it.

Q. What do you mean by a rolled edge?

A. What we call a bead; you would have a bead on there,—a rough bead on there.

Q. A rough bead?

A. Yes, sir.

Q. It wouldn't be smooth?

A. No.

Q. And solder—

A. Soldering would be smooth.

Q. Is there any difficulty in telling the difference between soldering and welding?

A. No, sir, anybody can tell the difference.

Mr. Underwood:

I move to strike that out, what anybody could tell. I don't think I could.

Mr. Matteson:

That is a kind of an expression, if your Honor please, that expresses the witness' view on that subject.

The Court:

It is clear enough to the Court, but it may be subject to a technical objection. I will strike it.

Q. Was there any welding on the tank, that you observed?

A. No.

Q. Had the tank been caulked, could you tell?

A. No it hadn't been caulked.

The Court:

You mean this difference is plainly visible?

A. Beg pardon?

The Court:

The difference between soldering and welding is plain to see; is that what you mean?

A. Well it is plain to see. Soldering, why it shows up more or less like nickel plating; and welding, you have the same appearance you have in your tank. You can take a pocket knife and cut soldering off; where you couldn't if it was welded. Take a piece of glass and scrape it off, for that matter.

(By Mr. Matteson):

Q. Have you ever done soldering on a steel tank?

A. No, sir.

Q. Of this size?

A. No, sir.

Q. What is that?

A. No, sir.

Q. In your opinion, would soldering be practical on a steel tank as large as that?

A. I would say no; not on a tank.
Q. On a steel tank?
A. No.
Q. Why do you say that?
A. Well it is never recommended. If it was on brass or copper it would be different.

Mr. Matteson:
That is all.

Cross Examination.

By Mr. Underwood:
Q. You say you are employed by Hardie's?
A. Yes, sir.
Q. What is your job there?
A. Well I am more or less looking after all the work that comes in there.
Q. I am sorry, I am having difficulty in understanding you:
A. I look after more or less all work in the shop.
Q. You mean by that, that you do it yourself?
A. Yes, sir.
Q. You handle the tools yourself?
A. That's right.
Q. And you work for him at a weekly wage?
A. Yes, sir.
Q. Does he have a foreman in the shop?
A. Well no; that is what I say, I more or less take care of that end of it. I am not considered foreman, but I look after his business. He is in and out.
Q. Hardie himself is the boss?
A. That's right.
Q. Any other people that work in that shop?
A. Yes, sir.
Q. How many?

A. Well sometimes we have four, and sometimes as high as fourteen or eighteen.

Q. You work with those fellows?

A. What is that?

Q. You do the work with those other men?

A. Yes.

Q. In other words you are a workman and not a foreman, is that right?

A. Yes.

Q. Did you ever make a galvanized iron tank?

A. No, sir.

Q. Did you ever test one?

A. Test water tanks; no gas tanks.

Q. Never tested a gasoline tank?

A. No, sir.

Q. Ever test a galvanized iron tank out of a boat?

A. No, I wouldn't say out of a boat; no.

Q. Have you had any experience working on boats?

A. No, sir.

Q. You haven't done any work on galvanized iron gasoline tanks?

A. No, sir.

Q. When you apply solder, what tools do you use?

A. Use a soldering iron.

Q. That is the only tool?

A. The only tool, yes.

Q. What else do you use?

A. Use acid.

Q. And what else?

A. Solder.

Q. You clean it off with acid, first?

A. Clean with acid first.

Q. Then you put the solder and the soldering iron together on the spot?

A. That is right.

Q. What kind of soldering iron do you use, now?

A. Copper.

Q. Where does it get its heat?

A. Heat it with a fire; have a blow torch.

Q. You heat it with a blow torch?

A. That is right.

Q. And then you use it for awhile until it cools off?

A. That is right.

Q. You have seen these electric soldering irons haven't you?

A. Yes, sir.

Q. You can plug them in in any 110 volt circuit; is that right?

A. That is right.

Q. It does not take a great deal of heat to melt the stuff, does it?

A. No, sir.

Q. Did you ever calculate how much heat?

A. No I wouldn't say. I would say about 450 degrees.

Q. Is that part just a guess, or have you ever approximated it with a thermometer or any device?

A. No I haven't; only a guess.

Q. Now have you tried to take solder off with a blow torch?

A. Yes, sir.

Q. And how big a flame does the blow torch shoot?

A. Not a blow torch; acetylene torch.

Q. Have you ever punched a rivet out, burned a rivet out with an acetylene torch?

A. Yes, sir.

Q. How big a flame does that torch make?

A. According to the size rivets you are cutting out.

Q. What is the biggest flame you have ever seen,—normally I mean, from an acetylene torch?

A. That long. (Indicating.)

Q. How big around? As big around as my pencil?

Mr. Matteson:

About three inches.

Mr. Underwood:

Three or four inches. I was thinking more of diameter.

A. You are talking about—welding and cutting is two different things. When you weld,—when you are cutting you only have a flame about like that.

Q. What I am thinking about is the flame you may have to use in melting solder.

A. Oh, in melting solder you use a blow torch, not a cutting torch.

Q. How big a flame do you get from the welding torch?

A. Well you can use any kind of a type you want to, on that. Use a flame say a half-inch long; because it does not require an awful lot of heat.

Q. What is the biggest you have ever used?

A. Oh I would say around three-quarters to maybe an inch.

Q. And how big around is that flame?

A. Well that would run from a quarter of an inch on down to a point. It tapers out as you come up.

Q. You mean the biggest diameter of that flame would be a quarter of an inch?

A. Yes.

Q. That does not heat much of the metal surrounding the point where the flame is put, does it?

A. Beg pardon?

Q. That doesn't heat much of the metal around the place where the flame is directed, does it?

A. Well I should say it would heat up to two and a half inches, if you want to get it heated; because you have to work the torch back and forth.

Q. The reason you say solder does not run off except with a wire brush, is because it runs away from the place where you have your flame and gets cool and solidifies again out on the margin; is that right?

A. No I wouldn't say that.

Q. Isn't that what it does?

A. No it will drop right off.

Q. When it runs down the side of the tank—assuming you are burning—

A. No it won't run down the side of the tank, because there is no place for it to hit.

Q. You think not?

A. No, sir.

Q. What is it of the solder, that stays on the tank, that you have to brush off with the wire brush?

A. When you are doing any kind of soldering, you have got to do what you call tinning your iron first. In other words, you have got to put a light coat on the surface.

Q. Light coat of what?

A. Solder, on your surface. When you get your metal good and clean, you have got to put a light coat on there first before you can get the rest of it to stick.

Q. First you put a light coat of solder?

A. That is right.

Q. Then you put some more solder; is that correct?

A. That is right.

Q. When you put your flame on there, what is it that stays?

A. The tinning will stay on there.

Q. The first one will stay on there, even against the flame, will it?

A. Yes, sir.

Q. That is pretty tight stuff then isn't it?

A. Oh yes.

Q. Stand a lot of pressure?

A. Well I wouldn't say it would stand a lot of pressure, no. I haven't really checked it.

Q. Have you ever soldered a cylindrical tank?

A. A which?

Q. A cylindrical tank.

A. No.

Q. Ever burned the solder off of a cylindrical tank?

A. No, sir.

Q. You were on the Seminole last month, and you saw this tank when the rest of us were out there, and you looked at the bottom?

A. Yes.

Q. And you saw the place where the end of the bottom plates, and the end of the inverted crown in the bottom—

A. That is right.

Q. Met, more or less?

A. Yes.

Q. Did you observe that they did not, one come down as far as the other?

A. Yes.

Q. You observed there was a little angle between them?

A. Yes you could put your fingernail in there some places.

Q. Now is it your recollection that there were some places in that angle that had no solder at all?

A. Yes, sir.

Q. Are you quite clear about that?

A. Yes, sir.

Q. Absolutely no solder at all?

A. No solder.

Q. You don't mean that there were no plates—that there were merely some places that had more solder than others, or less than others?

A. I would say there was some places where there had been no solder.

Q. Where did you take any measurements of the tank compartment?

A. On the west side of it.

Q. Which side would that be?

A. On the opposite side to where we got on the boat

Q. And from what point did you measure?

A. Right down at the bottom; where the boat stopped off, rather.

Q. Well between what points did you measure?

A. Measured the inside of her.

Q. Where did you have to get to, to make that measurement?

A. Down inside.

Q. What did you use to measure it with?

A. A rule.

Q. What kind of a rule?

A. A six-foot rule.

Q. What type of six-foot rule was it?

A. It was a steel rule.

Q. A steel rule?

A. Yes; combination steel and aluminum, I think--alloy.

Q. It wasn't one of these wooden folding rules?

A. No, sir.

Q. Did you measure the distance between the tank and the bulkhead itself?

A. No; that was a hard proposition to do, because the tanks looked like they had been moved.

Q. I show you a photograph, Exhibit 5-J; is that the space you were in?

A. Here is the space I was in, right along here.

Mr. Underwood:

The witness indicates on the blueprint Exhibit A, the same space shown in Exhibit 5-J:

Q. Is that right?

A. Down inside, right here.

Mr. Matteson:

He indicates the space between the port tank and the port side of the ship. I don't know whether he is satisfied yet that this is the same, or not; but I will agree that it is.

A. Right down at this point here.

Q. That is all right. Well now the testimony in this case is, and I will ask you to assume that this photograph, Exhibit 5-J, is a photograph of that space which you have just pointed out on the blueprint:

A. Yes, sir.

Q. Can you show me on that photograph the points between which you measured?

A. No, I don't see them.

Mr. Matteson:

Does the witness understand this is looking down?

Mr. Underwood:

I was afraid to tell him that.

Q. This is a photograph, Mr. Witness, taken looking down. This white object at the bottom is Number One tank; it is the side of the tank, which I now show you on the blueprint Exhibit A.

A. There is two angle uprights right in this corner here where your plates, bolt or rivet to; I didn't notice what they did. I took the distance from where the two angles was fastened on to the plates, right across at this point. I can't see the angles there at all.

Q. I call your attention to the corner on this photograph.

A. I see it now. I didn't see the way it was.

Q. Here is another angle right here.

A. I measured right against the side of this ship, across these two angles here, from the plate.

Q. From the plate to where?

A. Over there. From the plate, not from the angle; from plate to plate.

Q. Now do you orient yourself? Do you recognize this picture here as the place where you were?

A. I see now; but I don't see the other angle over here.

Q. Indicating the forward part?

A. That is right.

Q. You say you measured from the plate at the left-hand side of the picture, adjacent to the angle?

A. That is right.

Q. Over to a similar point on the other side?

A. To a plate over there.

Q. What measurement did you get?

A. I am pretty sure it was forty-two and a quarter inches; I wouldn't be positive.

Q. Well what is your recollection about that?

A. I will say forty-two and a quarter inches.

Q. Well your testimony and answer to Mr. Matteson's question didn't give us that measurement; it gave us a clearance. You didn't measure the clearance direct, did you?

A. That is what I say, you couldn't measure the clearance direct, because that was buckled up there.

Q. Whether you could or not, you didn't?

A. That is the only point in the ship where you could really measure the inside of that space there.

Q. Whether you could or not, you didn't measure the actual clearance itself did you?

A. No, sir, because that was buckled up; you couldn't.

Q. Did you measure the diameter of the tank?

A. I measured it but I couldn't say what it was, now.

Mr. Underwood:

That is all.

Re-Direct Examination.

By Mr. Matteson:

Q. Let me get this clear. You said that you measured and reached a result, and the clearance was half an inch on each side?

A. Yes.

Q. How did you get at that? Just what was your process?

A. Well I measured the tanks, but I can't recall just exactly what the tank was.

Q. And then you measured the space?

A. Yes.

Q. And how much difference was there between them?

A. Well I figured it out where you would have a good half inch; about a half inch clearance.

Q. Well you mean there was twice that difference between the diameter of the tank and the width of the compartment?

A. Why you wouldn't have—there wasn't an inch difference between the tank and the space, is what I am getting at. I don't recall exactly what the tank measured, but I know there wasn't an inch difference between the tank and the space.

Q. Did you notice the size of the rivets in the tank?

A. Three-eighths.

Mr. Underwood:

I object to that; not proper re-direct.

The Court:

Well I will overrule that.

Q. Was there any difference in the size of the rivets on the side and the bottom of the tank?

A. I will say there was. They seemed to vary. It is hard to say.

Q. I mean, the size of the rivets.

A. Oh no, the rivets were the same.

Q. Three-eighths?

A. Yes, sir.

Mr. Matteson:

That is all.

Re-Cross Examination.

By Mr. Underwood:

Q. You say you measured the tank?

A. I measured the tank but I can't recall exactly what the measurement was, now.

Q. Which tank?

A. I measured the tank that was laying down on the side.

Q. Where did you measure it?

A. At the bottom.

Q. You don't remember the measurement?

A. No I wouldn't say the exact measurement; I can't recall.

Q. Did the heads of the rivets measure three-eighths inches across?

A. Oh, no.

Q. What measurements did you get on the heads?

A. Well they vary, because they were hot,—put in there hot.

Q. It is your opinion that they were three-eighths?

A. That is right.

Mr. Underwood:

That is all.

(Witness excused.)

Mr. Matteson:

If your Honor please, I have come to a point where I have got to ask the privilege that has been asked before, on other points in this case. I have a small point that I want to establish in the record, but the only two witnesses who can establish it are Mr. Dyer and myself. We hate, either of us, to be obliged to retire as counsel in the case, but I would like to call Mr. Dyer to testify on this point

at this time; if there is no point to be made on the ground that counsel are involved.

Mr. Underwood:
Certainly not.

4068 Thereupon: DAVID W. DYER as a witness on behalf of Libelants', in rebuttal, was sworn and testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Mr. Dyer what is your profession?

A. Lawyer.

Q. Are you a member of the Bar of the Sstate of Florida?

A. I am.

Q. And a member of the firm of Batchelor & Dyer, of counsel in this case?

A. I am.

Q. I show you Libelants' Exhibit 78 for identification, also known as Phipps' Exhibit Z, which was offered in evidence in connection with the testimony of Mr. Hawkins on May 9, 1939; and ask you if you saw it on that date?

A. I did.

Q. This exhibit was also referred to in the testimony of Anderson on May 12. Will you tell me what observations you made in respect to this exhibit, between those dates?

A. I made an observation that one night between those two days, you had taken this particular exhibit to your hotel room, and during the evening both yourself and myself went through the exhibit in detail, and at that particular time the first two sheets of the exhibit did not contain any initial over the line. Entered, either on the

first page or on the second page; and the two sheets further down, dated I believe June 22nd, 1935, did not have any initials above that line.

Q. Did you again observe this exhibit on May 12, at the time Mr. Anderson was examined with respect to it?

A. I did.

Q. And what did you observe in respect to it at that time?

A. I observed that on the first and second pages, above the line marked Entered, the initials E. J. A., or whatever they purport to be, were there,—were on it at that time.

Q. On both the first and second pages, vouchers 103 and 102?

A. Correct.

Q. Was any record made, that you know of, with respect to the signatures appearing on the various sheets of that exhibit?

A. There was.

Q. Will you tell us what that was?

A. Before we sent that exhibit over to Mr. Underwood's room, on the evening that we were looking it over, you made a record of the individual sheets, and specified on that record where they were signed, where they were not signed, where they were entered, made, approved, and so forth.

Q. I show you this document, Libelants' Exhibit 109 for identification, taken out of this envelope; ask you whether you can tell me what that is?

A. That is the schedule that was made up by you at that time, that night, in which it was signified what were on these individual sheets of this exhibit.

Mr. Matteson:

That is all.

Mr. Underwood:

Mr. Botts?

Mr. Botts:

No questions.

Cross Examination.

By Mr. Underwood:

Q. Did you check Exhibit 109 for identification, against the vouchers themselves, Mr. Dyer?

A. You mean, did I check this against this?

Q. That is right.

A. I did not, that night.

Q. Did you at any time before Mr. Anderson testified?

A. No, sir.

Q. Did you make any personal memorandum of your own?

A. I did not.

Q. What you say is, as I understand it, that the initials E. J. A. opposite the word, Entered, on voucher 103, were not there when you first saw it?

A. That is correct.

Q. You say the same thing about exhibit—about voucher 102, voucher 101 and the first page of voucher 100; is that right?

A. No.

Q. You tell me what is right.

A. I say the initials did not appear on voucher 103, which is the top voucher; nor on 102, which is the next voucher; nor on two others farther down, under the date I think of June 22, 1935; this voucher, and this voucher.

Q. The last two that you refer to on which no initials appeared, are the two pages constituting voucher 96, is that right?

A. Yes, sir.

Q. 97, 96?

A. That is right.

Q. Now of course on voucher 96 there aren't any initials today, are there?

A. No, sir.

Q. Then the only changes that you say you observed in these vouchers are on 103 and 102?

A. That is correct.

Q. Could you be mistaken about any part of that?

A. I don't believe so.

Mr. Underwood:

I just wish I could get the tone of your voice in the record.—That is all.

(Witness excused.)

Mr. Matteson:

If your Honor please, if I may take the stand and let Mr. Dyer examine me.

Mr. Underwood:

Why don't you just state it on the record; would your testimony be substantially the same as his?

Mr. Matteson:

Substantially the same.

Mr. Underwood:

I will stipulate on the record that Mr. Matteson's testimony would be substantially the same as Mr. Dyers' on that point.

Mr. Matteson:

There is just this much about it; Mr. Underwood seems to think there was something inconclusive about Mr. Dyer's last statement. There is nothing I ever was more sure of in my entire life than I am sure of this; and if there is going to be any comment made on that point, why I would want to have the privilege of testifying.

Mr. Underwood:

Place that on the record, if you like; I don't mind. You can be sworn and testify if you want to.

The Court:

Whatever you say.

Mr. Underwood:

I am perfectly content to put your statement on the record, and say that would be your testimony; whatever you want to do.

Mr. Matteson:

All right. Then if your Honor please, I would like to add this much, if it is agreeable to Mr. Underwood: that I did actually make this memorandum and checked as I made it, and made certain of its accuracy; and also that the entries in the first column thereto related to initials or lack of initials opposite the word Entered. Initials in the second column refer to the space immediately beneath, headed Detail Posting; in the third column, refer to whatever appeared opposite the legend, Made by; and the final column, whatever appeared opposite the words Approved by; on the voucher. That dashed lines were used to indicate blank spaces; and that with respect to the first two, the stars indicated my emphasis at the moment, of the lack of any signatures at all appearing on the first two sheets,—vouchers 102 and 103.

Mr. Underwood:

Maybe we can shorten that a little bit: those are the only two discrepancies that you noted?

Mr. Matteson:

Yes.

Mr. Underwood:

You will remember Mr. Anderson said that he initialed this one, the top one, as I recall it?

Mr. Matteson:

That is correct; he finally admitted that he did that, and denied positively that he did the second one on 102.

Mr. Underwood:

That is correct.

4074 Thereupon: JOHN A. THOMPSON was recalled as a witness on behalf of Libelants', in rebuttal, and further testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Mr. Thompson you have already testified as to your qualifications and your experience, so I will just ask you if, as part of your experience, you have had occasion to examine and analyze bills for repairs on work on vessels?

A. I have sir.

Q. And how much experience of that kind have you had?

A. Well it has been more or less continuous all through, even up to today.

Q. Have you had a great deal of that to do?

A. Oh yes, considerable.

Q. Have you examined repair bills relating to the work on the Seminole in 1927, which has been marked as Exhibit 4-L and 4-M?

A. I examined photostatic copies of them.

Q. You did your work from photostatic copies?

A. Yes, sir.

Q. You have those copies, have you?

A. No, I can have them here in the morning; I left them at the hotel.

Q. Will you tell us Mr. Thompson, in summary form what you find as an analysis of these bills, was the work that was done on the Seminole, as represented by those bills?

A. Well generally speaking, I didn't pay much attention to the prices. I separated the bills, went through them at great lengths, and I found that there were 724 designated items totalling 14,646 hours.

Q. That refers to labor items?

A. That is labor and material—no, that is labor items; that is right, labor items. I may say that possibly it would be—to be meticulously correct, 723; because there was one item that I took the liberty of incorporating in there, because it seemed obvious to me it was merely an omission on the part of the stenographer, because there were similar items before and similar items after; but the actual items then would be 723, if you wish. Of the none-designated items I found six, totalling 48 hours; that is with the exception of the items I have just mentioned.

Q. What are the items you just mentioned?

A. I haven't that note here; I could let you have that in the morning, with the details.

Q. When you say, designated, what do you mean?

A. That is that the labor item has specified against it the purpose for which the labor was used.

Q. Yes.

A. The comparison of that is for each hour not designated, 304 hours designated, or roughly about one-third of one percent of the labor items were not designated. On the whole I think that bill was particularly well itemized, and fairly clear for anyone with reasonable experience to go through and check it.

Q. Well now by going through and checking up, can you give us an analysis of the work represented by those bills as they stand?

A. I haven't analyzed them as to prices, at all. What I did, I checked to see if they had designated small items; for instance, there were 48 labor items less than two hours, each with a designation; and I won't give you the whole range; but there are three items with as low a charge as half an hour, and those are designated. The labor items were particularly well marked out as to the job the labor was spent on. And that covered these 48 labor items, each less then two hours, covering ten separate trades. So I concluded that as it was not one particular charge, it was a good many,—I see particularly the whole of the trades in it, it meant the large items were just as carefully kept. Then there were 716 items, labor or materials, each less than $1.00; and that seems a fairly good split-up as to the price. There are 60 items of labor and materials each less than ten cents, the lowest being an item for two cents, which is quite a cut of a bill. It seems on the whole the bills were excellently designated as to the work they cover,—the part of the work. I then checked up the rivets; there were 2261 pounds of rivets charged, and no three-eighths rivets of any quantity were supplied at all. All these rivets were half-inch or five-eighths.

Q. Could rivets of that size have been used on the gasoline tanks of the Seminole?

A. No, sir.

Q. Why not?

A. They are too large for the lap of the tanks. I then checked up the zinc plates referred to in evidence; I find they were supplied and machined in two separate batches; the first batch was charged upon September the 2nd, in a quantity of 96 pounds, and the machining on that first batch was finished on September the 9th. The second batch was charged up on October 22nd, some six weeks later, totalling in weight,—amounted to 79 pounds; that was the material on the 22nd, and the labor on that item

was finished on the 25th. That gives a total of zinc plates of 175 pounds.

Q. If the plates averaged four to five pounds apiece, how many plates would that make?

A. Well if they had an average of five, the larger figure I think, mentioned by Mr. Munroe, which I agree with as being a fair average of zinc plate for a boat of the size, that would actually mean 35 plates. I have analyzed the accounts for the account of welding rod used; there is a total weight, with the exception of a small item I think in November, of I believe a pound and a half, bronze welding rods,—I call them brazing rods,—of iron welding rods; a total weight of nine pounds. The first was supplied; that is a charge, it would be more correct to say, because I only refer to these bills,—it was charged on September 23rd, and that was of one pound, welding rods. I have the details of the rest if you desire them. I checked up the oxy-acetylene gas that was supplied; there was a total charge made of 3520 cubic feet of oxygen and 1545 cubic feet of acetylene; the proportion is approximately 2.28 cubic feet of oxygen to one of acetylene. There was none supplied from October—that is oxy-acetylene, supplied from October 26 to November 9, when 220 cubic feet of oxygen and 251 cubic feet of acetylene were charged. I checked up the patch bolts, which I noticed on the Seminole; I found that they commenced to deliver those on October 10th, that is just only four; the actual delivery of any of them in quantity commenced October 22nd. Total number used, 5313. The riveting was completed on the boat on October 25th, with the exception of four hours on November 2nd and three hours on November 3rd.

Mr. Underwood:

Sorry, Mr. Thompson; give me that first date; riveting finished when?

A. On October the 25.

Mr. Underwood:

Except what?

A. Excepting four hours on November 2nd and three hours on November the 3rd.

Mr. Underwood:

Thank you.

A. I then looked into the amount of electrical work that was charged. I have eliminated from the electrical work a certain item that appeared I think on the First or Second day; it appeared obvious to me was running wires for the purpose of carrying on the repairs. That was charged to the boat, but obviously it was not part of the boat; it was wires run for purposes of carrying on repairs. I have not included that work in these figures, your Honor. Electrical work actually in connection with the boat commenced on September 27th; two 40-watt bulb lamps supplied. On December 2nd, 12 feet of fixture wire. On January 4th, 8 feet of high-tension wire. The total cost of those three items amounted to $2.12. I find no trace in the bills, of any other electrical work. About the engines, the work on the engines, a Maxim Silencer, that is an item apparently I should think for one of those smaller engines, was supplied, on August 30th, and labor was charged on September 1st. On October 1st an exhaust fan was supplied,—I don't know where for. But the only labor, engineer's labor charged in this boat, was charged up on October 26th and November the 18th. On the first date, five hours charged for machinist in the engineroom; the purpose is not stated, more than that. November 18th there is one hour charged, for drilling brasses. A total engineer's time on this job was six hours. I have more details, your Honor, but—oh there is the piping. As regards the piping, and fittings; there was no fuel pipe of any kind supplied, according to these bills; that is, from my reading of them. I have a com-

plete list here of all the piping and with the exception of—I haven't the details here, but I can bring the details. It was all water piping, with a possible exception of 3.89, but I am satisfied from items in that amount of 3.89, that that was also water piping, or plumbing piping of some order. The remaining pipe and fittings are all definitely rail fittings, stove pipe, exhaust pipe, or water pipe. Total labor 475.78, and total materials of 189.29, making a grand total of 665.07. I think that is all I have here at present.

Q. Aside from these few items, are you able, from your analysis of the bills, to tell us the general work that was done on the vessel?

A. Yes, sir. I have what I call sequence repairs; I don't wish to burden the record unduly, but I will do as much as you wish me to do.

Q. Don't go into too much detail, but the general picture reflected by the bills.

A. From the bills it seems evident to me that the renewal of the bottom was contemplated prior to April 29th, because on that date she was drydocked, hauled on the slipway, to get things ready; hauled on the slipway for measuring, at least. There is no boilermaker charge; but there is a foreman, one man, charged on several days; total hours 24½ hours for foreman,—not foremen; foreman and helpers, 180 hours.

Q. Will you go just a little bit slower, Mr. Thompson, it will be easier on the reporter.

A. On that particular occasion the Seminole was docked on May 3rd, and I assume that an estimate was given and an order placed, in some form, between May 3rd and June 13; because on June 13, plates, angles and rivets were charged to the yacht,—that is in considerable quantities. On August the 25 she was hauled out on the dock; there was practically very little work done on that day. The second day they started cutting out cement, cleaning the bilges. The carpenters started removing the

wood guard; that went right around the boat, if you remember. On the 27th the removal was completed, and on August 28th guard angles were removed. I was a little puzzled first when I looked at those bills, because there was some work done on side plating for three or four days, just about this period; and then the side plating disappeared. But from an item I think on August 28th, I have assumed that the boilermakers' labor charged for those three or four days,—I can get the actual date, from August 28th to September the 1st, was really the removal of the guard angles; because on one of the days the guard angles were mounted. On August the 29th they started cementing the bottom,—putting cement on the bottom, inside.

Q. Just tell me what is cementing the bottom, so we will know.

A. Well cementing the bottom is a mixture,—depends upon the builder; we generally use a fairly good mixture, about four to one sand; some people use a weaker mixture, some use a better mixture; if you are putting in a thin layer; if you have a thick, you may put in a richer mixture first, and finish off later on; that is a protection to the floor.

Q. That is on the inside?

A. That is on the inside; apparently they were protecting some plates at that time. I won't give you all the items, but on the—there are a few peculiar items. On September 21st there was labor charged on water tanks apparently, one hour, and they started removing cement again. On October 4th a shell expansion plan was charged for.

Q. What is a shell expansion plan?

A. Well it isn't a true expansion; it is expansion in one direction only. They take the profile of a ship, the plan, and then expand as far as the breadth and depth are concerned, and give you a series of lines running fore and aft, showing the seams of the plates, and the butts.

Q. What is it used for?

A. The purpose is for—generally they know the sizes of plates required for each part of the boat, which the shall expansion covers.

Q. Is that usually prepared before repair operations are undertaken?

A. It is nearly always repaired for a building operation; and in a heavy repair operation it is generally supplied or prepared; it is a very useful plan for a foreman to have.

Mr. Underwood:

What date was that Mr. Thompson?

A. I have it October the 4th Mr. Underwood.

Mr. Underwood:

Thank you.

A. Then—

(By Mr. Matteson):

Q. What does the supplying of the plan of that date, indicate?

A. It indicated to me that some additional work was to be done; and that was confirmed by the fact that on October 12th to the 20th, 60 percent extra steel,—that is extra over and above what they had ordered in June, was charged. It looked as if they found additional work and had given another big job. The boilermarkers finished on the bottom of this boat on the 26th of October, and with the exception of those guard angles I have mentioned, that is the first mention in the accounts of any work being done on the sides. The work was finished on the bottom on the 26th of October and the sides were commenced. On the 28th she was undocked. I think the rest will probably burden the record.

Q. Did you find in your analysis of these bills any items that could be attributed to removal of the gasoline tanks on the vessel?

A. No, sir.

Q. Did you find any items that could be attributed to removal of floor frames or plates in the vessel?

A. That is a double question, Mr. Matteson. I would like them separated, if you don't mind. I saw no trace in the bills of any work on floor plates.

Q. Just tell us what, in your technical language, you mean by floor plates?

A. Running across; the bilges come around here and around there; you have a plate running right across, a straight plate. Those are known as floor plates.

Q. Is that standing on each side, standing at right angles to the bottom of the boat?

A. At the bottom of that is the frame angle, on the top, generally on the other side, but it may be on both sides, double, what we call reverse frames. I saw no record in the accounts of any work having been done in connection with the floors, or their removal. But there are items in the bills in regard to angles, angles were charged up; and it is possible, if not probable, that certain parts of the frames were renewed,—the frame angles.

Q. If none of the floor plates, as you call them, were removed from the vessel, wouldn't it have been possible to take the gasoline tanks out through the bottom of the vessel?

A. No, sir.

Q. Do the bills show what was done with the side plating of the vessel?

A. Well I wouldn't say that the bills would show that. The bills indicate that there was a considerable amount of boilermakers' work on the sides of the boat; the bills do not indicate the exact nature of that work. With the exception that they would indicate that a considerable num-

ber of patch bolts were used after the side plating was dealt with.

Q. What are patch bolts?

A. We call them on the boat,—they are screw bolts extending,—for the purpose of attaching a patch to another plate, or a plate to a plate, instead of riveting or welding,

Q. Mr. Thompson you were present I believe with counsel and the Court at the examination that was made of the vessel in October. Did you at that time observe the side plating of the vessel? Did you at that time observe it?

A. Yes I did.

Q. And what did you observe with respect to it?

A. I found that the sheer strake had been doubled on both sides and attached to the original sheer strake by patch bolts.

The Court:

What is that term? Sheer what?

A. Sheer strake, is one member of one of the principal girders of a ship. It comes adjacent and near to, and will extend above the main deck of a ship. You have the side plating of a ship, where your deck comes like that, your Honor. That first strake from the main; because you may have several upper deck sheer strakes; this is the main deck sheer strake. It is attached to the deck plating or the deck stringer plating by means of a gun'le angle, and that is known as the sheer strake. It comes from the old term, sheer plank in a boat; the top plank, you put the sheer in.

Q. As applied to the Seminole Mr. Thompson what was the sheer strake or plating on the Seminole?

A. It was the sheer strake of the main deck of that ship.

Q. Was it the topmost row of plating along the side of the ship?

A. Oh yes.

Q. Now—

A. It is rather unusual construction there,—a construction I am not so used to; but I am quite prepared to admit it was a sheer strake.

Q. Now if it was the fact that the side plating, the original side plating of the vessel was not removed, but doubler plates, or additional plates were fastened on the outside of it, would that work be accounted for by the items you have mentioned in the bills?

A. Yes, sir.

Q. If the side plating,—the sheer strake, had not been removed from the vessel, would it have been possible to have taken the gasoline tanks out through the side of the vessel?

A. In my opinion it would not be possible.

Q. Mr. Thompson did you find any items in the bills that could be attributable to removing the bulkhead, steel bulkhead, between the engineroom and the tank compartment?

A. I couldn't say; the bills would not—I couldn't answer that from the bills. Removal of the bulkhead would be boilermakers' labor. I don't know; as far as the bills are concerned, I can't say.

Q. If that bulkhead had been removed and replaced after—would it be possible for the plate to have been replaced in place, after the tanks were in place?

A. Yes, sir, with studs, but not with rivets or bolts.

Q. As you have observed the Seminole, in October, how was that bulkhead fastened in place at that time?

A. Riveted, with the exception of one loose plate.

Q. And where was that loose plate?

A. Well I think it was approximately in the center of the bulkhead, on the engineroom side of the tank space. I didn't actually measure the distance, but my recollection is that it was approximately the center.

Q. Did you notice the width of that plate with respect to the width of the tanks?

A. Not on the job; no, sir.

Q. Well can you—have you observed it in any way?

A. I have observed it in the photograph you put up to Mr. Gibbs yesterday.

Q. And that was, I think—

A. It did not occur to me to look at that for any purpose.

Q. I think that was Libelants' Exhibit 9?

A. Yes, sir; I was looking at the time Mr. Gibbs was pointing out,—that is when I observed it.

Q. Is there anything about the loose plate that you speak of there, that indicates its width with respect to the tanks?

A. Assuming this is a valve opening here, marked number three, and this is a valve opening there marked number two, the width of that plate would seem to be approximately the width of from center to center of the tank, whatever that space was.

Q. If that was the width of that plate, would it have been possible to remove or replace the tank in place through that opening, if the plate were removed?

A. Had the plates been in the right position, I think it would have been; but judging from this, I agree with Mr. Gibbs that the edges come in the center of adjoining tanks. I don't think the removal of the plate then would help—would be any good for the removal of the tanks. I thoroughly agree with what he said on that.

Q. Was there anything that you observed in these bills that could be attributed to raising the tanks to a higher level than they had been before the operation began?

A. Well no; as you raise that question, I would like to add to another answer I gave. I was not taking into account the lack of labor, insofar as labor in the engine-room; I see now by this further question, about the removal of the bulkhead, is not indicated in the accounts, because there would have been certain labor by engineers, to remove the pipes attached to the tanks. So I would like

to add that,—or rather, alter my reply in that respect; it didn't occur to me at the time. You never asked me that question outside, and I was totally unprepared for it. I answered it as truthfully as I thought at the time. I think the accounts do show that that bulkhead was not removed, because of the lack of labor items for piping.

(Thereupon the hearing was adjourned to be resumed at 9:15 o'clock A. M. of the following day, to-wit; November 18, 1939.)

Saturday, November 18, 1939, 9:34 o'clock A. M.

(Hearing was resumed pursuant to adjournment of the previous day.)

Mr. Matteson:

In connection with the testimony of Mr. Gibbs, I ask to have the encyclopedia article marked; and we have had a typewritten copy made of the article, to be substituted for the book.

(The typewritten copy of encyclopedia article, so tendered, was admitted in evidence and filed as Libelants' Exhibit No. 147; this being the same exhibit previously numbered 138.)

4089 Thereupon: MR. JOHN A. THOMPSON resumed the stand and further testified as follows upon continued:

Direct Examination.

By Mr. Matteson:

Q. Mr. Thompson, yesterday we were discussing the bills for repairs to the Seminole in 1927. Was there any-

thing in the bills, as you analyzed them, that referred to the possible construction of pans to be placed under the engines of the Seminole?

A. Not in my opinion.

Q. I think I misspoke; I was referring to pans under the gasoline tanks.

A. I understand that was your question.

Q. Was there anything that you found in these bills that could refer to the removal of the main engines, in the engine room of the Seminole?

A. No, sir. You asked for these yesterday, Mr. Matteson; these are the photostatic copies that I used.

Q. That is in making your study, you used a photostatic set of copies of the original exhibits?

A. Yes, sir.

Q. Well just leave them on the table; I don't think they need to be marked.—Assuming that over the tank compartment of the Seminole were located the captain's quarters, and outside of the captain's quarters there was a wooden deck over the compartment, as indicated on this exhibit—Phipps' Exhibit A, plan of the Seminole,—did you find anything in the bills that could refer to removal of any part of the structure over the tank compartment for the purpose of removal of the tanks while the ship was on the ways?

A. Not while she was on the ways; no, sir.

Q. Well was there anything in the bills to indicate that any work on that part of the structure of the ship was done at any time?

A. I couldn't say as to afterwards; there was a lot of carpenter labor charged after it was launched; so I confine my answer to the question you actually put.

Q. The carpenters' labor that you found, that might possibly refer to such work, came after the vessel was launched?

A. It is possible, according to the bills.

Q. Did you find—

A. Mr. Matteson, you distinctly confined that question to carpenters' labor, do you not?

Q. Well I am making it in such form that you may tell us what class of labor would be required for that type of work.

A. Well that would be the mechanics' labor, removing certain things, in connection with the removal of tanks aft.

Q. I am referring now solely to the structure over the tanks?

A. No; it is possible after the launching of the boat.

Q. Now did you find anything in these bills that could refer to removal of the tanks from the Seminole, or work on the tanks, outside of the vessel, consisting of removing the bottoms of the tanks and re-riveting, and restoring them and replacing them in the vessel?

A. The gas tanks, you are referring to?

Q. The gas tanks, yes.

A. Well I will admit that certain classes of labor may possibly have been included in the bills; but I find a total absence of the right size of rivets for that job. There is no rivet charged less than one-half inch in diameter, and in my opinion the flange of the bottom furnaced piece,—that is the lower crown, as you call it, could not take a half inch rivet and make a satisfactory job.

Q. Why not?

A. Because the width of the lap is not sufficient, in my opinion, to take a half inch, in plus a 32nd hole; that is a hole 17/32 in diameter.

Q. What was the width of the flange?

A. The seam?

Q. Of the seam, yes, sir?

A. Approximately an inch and a half maximum.

Q. Does that refer to the distance from the center line of the holes to the bottom of the tank?

A. No, that refers to the outside of the one plate to the inside of the other, to the extent to which they overlap;

that is the width of the lap. It is a simple thing. Take a piece of paper, that is the one plate, and that is another,—or part of the same plate rolled around. The width of the lap, as we call it, is from the outside here to the outside there; that is the width of the lap. It is quite a simple matter.

Q. Well if we can put it in words that will—

A. The extent to which one plate overlaps the other. I think that will cover it.

Q. You mean the extent to which one plate is in contact with the other?

A. Oh, if you like; but it overlaps the other. Because you may have a plate not overlapping, and they are still in contact with the parts; there is no overlap. It is true, the same thing; in a lap joint it is the extent to which they do touch one another.

Q. How far were the centers of the rivet holes from the bottom of the plate?

A. The center line was not even, it varied.

Q. Approximately how far?

A. Approximately three-fourths of an inch. They didn't vary considerably.

Mr. Underwood:

What was the answer, Mr. Bryant?

(The last answer was read by the reporter.)

(By Mr. Matteson):

Q. Well does that measurement have anything to do with your opinion about the size of the rivets?

A. Yes, I am just stating an opinion. In my opinion, that overlap is not sufficient for a 17/32 hole. The general rule as to the width of a lap, is the—

Mr. Underwood:

I object to that as not responsive.

Q. Is there any rule, Mr. Thompson, as to the margin required when riveting is done in a plate?

A. In good shipbuilding practice there is; and I think that the classification rules will actually give it. But the good practice, apart from any rule is, the diameter of the rivet, three times, plus an eighth. That is if you have a half inch rivet, your lap would be three half inches, that is an inch and a half, plus two eighth; in other words the plating on each side of the rivet hole has to be the diameter of the rivet plus an eighth of an inch. That is in my opinion and to my knowledge the customary good practice.

Q. The first question that I asked you was whether there was anything in the bills that could refer to the removal of the tanks and the work on them, in your opinion?

A. In my opinion there is no such reference.

Q. Now if the work which I have described had been done with respect to the tanks,—that is removing them from the vessel, taking out the bottoms, replacing the bottoms, and replacing the tanks in the vessel, while the vessel was on the ways, what charges would you expect to find in the bills, to indicate such work?

A. That is supposing if possible to remove the tanks with such labor as I found in the bills, the additional labor in connection with the removal of the tanks would first consist of mechanics removing the piping from the tanks, and the fittings; second, or the following charge, would be the provision of lifting beams.

Q. What do you mean by lifting beams?

A. Well the provision of a crane large enough to come up along side, would be one; or the erection of shear-legs. The provision of lifting tackle, and skids at the sides of the boat, if you used shear-legs; if you have a crane large enough and of the right type and suitable, you could probably lift those tanks out without skids; you could lift them out, and by moving the jib of the crane around, deposit

the tanks on the ground or on a truck or other vehicle, for the removal of the tanks to any suitable place for the purpose of steaming the tanks out. That is assuming, I believe you mentioned, that the tanks had to be repaired.

Q. Yes.

A. There would be the cost of removing those tanks to that place; there would be the cost of steaming out; there would be the charge for what we call a gas-free certificate, from someone who was in a position to give such a certificate. There would be the cost of the repairs themselves, and bringing back to the ship, and lifting on. There would be quite a number of charges; and replacement of all the piping. It would be quite a considerable charge, all told.

Q. Did you find in the bills, any charges of that type?

A. My opinion, they are not present, sir; at least I couldn't discover them.

Q. Now from your examination of the bills can you tell us whether there is anything there that could refer to welding of the tanks at that time?

A. Yes, sir.

Q. That is—

A. There is a charge for welding rods; charges for welding rods; and there are charges for the supply of oxy-acetylene, which I presume was used. Apparently there was some welding done; the bills are not clear as to where the welding was done. I may say in that connection that in my opinion the charges for oxy-acetylene show definitely that most of those gases were used for the removal of the rivets; in other words, the oxy-acetylene plant was used for burning out rivets.

Q. Why do you say that?

A. I say that because of the difference in the proportions of the gases; difference in the proportions of the gases used; it was two and a half to three times, I think, speaking from memory, amount of oxygen delivered, to

the amount of acetylene delivered. In welding, different welders have different methods, but my experience has been with the average welder, that is a welder using oxy-acetylene plant, and not electric welding,—uses almost equal proportions of the oxygen and acetylene. But in cutting out, that is using a torch,—a cutting out torch, the process, to heat the part you are going to cut out, with acetylene, and then to blow the oxygen, a large quantity of oxygen, through. The oxygen does the cutting. You have the two tubes brought up, and you warm the plate up and then blow a very hot gas through, and you cut the plate right through, or cut the rivets through. In my opinion, that form of cutting is never used in repairs where the part that it has been applied to, is replaced. And I have never known yet of a rivet cut out from a plate, and the plate afterwards used, where that plate was called upon to do any duty in a watertight or a gas tight joint. We only use, in my experience, acetylene for cutting out where we are going to discard the plate cut out.

Q. Why is that Mr. Thompson?

A. Because of the damage to the rivet hole; the material, not the hole itself; I mean the material surrounding the rivet hole. We do not think that you can make a satisfactory job,—that is a tight job, by using a plate, the rivet of which you have cut out by any cutting torch.

Q. Well now is there anything in this bill to indicate—

A. I am only stating through my opinion, and what has been my experience all through my life, both here and in England and in Australia; that practice to my knowledge has been universal,—that is, in my experience.

Q. Now, Mr. Thompson, is there anything in these bills to indicate whether or not any soldering was done on the job at this time?

A. As to labor I couldn't say; but I do not find a charge for any solder.

Q. No charge for solder in the bills?

A. That is all I could say.

Q. You I believe were present with the Court and counsel on board the Seminole when a visit was made there in October, were you not?

A. Yes, sir.

Q. And at that time did you observe the condition of the tank number four, which had been lifted out and placed on the forward part of the Seminole?

A. I observed its condition, exterior.

Q. Tell us what you observed?

A. In connection with that tank?

Q. Yes, at that time?

A. I observed that the seams and the bottom, that is another seam, had not been caulked. I observed the bulging in the bottom.

Mr. Underwood:

The what in the bottom?

A. Bulging in the bottom. That is not a correct term, Mr. Underwood, but it is referred to.

Mr. Underwood:

I just didn't hear you.

A. If I am not speaking loud enough, please tell me.—I observed that the rivets were of equal size throughout. I observed that there were absolutely no marks that would point to any of the rivets having been cut out; that is any previous rivets having been cut out. I observed—that is, I formed the opinion from my observations, that the tank had not been galvanized after manufacture; that in my opinion the tanks had been built of galvanized sheets.

Q. Did you find any evidence of any soldering on the tank?

A. Yes, I was going to say, I observed that the tank had been soldered in the vertical seams for a distance of—I don't know exactly, but I think about eighteen to twenty

inches from the base,—up from the base; and I formed the opinion that the bottom seam had at one time been soldered completely around. I observed that some of that soldering, quite a considerable proportion, at various places, had disappeared in places. I failed to observe any marks of soldering or any appearance of soldering had been present, about the position I stated where the soldering was.

Q. You are referring to the side seam?

A. The side seam. I think, apart from the general observations as to its appearance, I can't recall at the moment any other observations I made. Perhaps I ought to in fairness mention that I did not observe that the tank had been fitted with reducing pieces in the bottom outlets, mentioned by Mr. Munroe, but I wouldn't deny that they were there.

Q. What do you refer to as reducing pieces?

A. Well generally,—on that particular one?

Q. Yes.

A. Reducing pieces generally? That one?

Q. When you speak of reducing pieces—

A. I meant to speak of the reducing pieces given in evidence; am I allowed to? I didn't observe a reducing piece.

Q. You spoke of a reducing piece, I just want to know what you had in mind when you spoke.

A. The reducing piece generally is for the purpose of reducing,—of using a smaller pipe than was originally intended.

Q. You refer to a reducing piece—

A. In connection with the tanks, I mean. Reducing pieces are used in other connections where you don't need so large a flow from a main pipe; you have branches where you don't need so large a quantity, then you use reducing pieces to bring the large pipe down to the pipe you are going to use on that branch.

Q. Now you spoke of the fact that you—you referred to caulking: how are you able to determine that the tank had not been caulked?

A. The entire absence of any caulking tool marks, even of the lightest nature.

Q. And how does that indicate whether or not the tank had been caulked?

A. Caulking as applied to steel plates, will vary according to the distance that the plates are apart; and it is not good practice to caulk plates that are widely separated before the caulking. The plates should be brought together as tightly as possible before caulking. And then when you have got two plates together, overlapping, the edge you are dealing with, the outside edge,—the other edge being inside, the caulker goes along that seam with a tool; he goes along backwards and forwards, he does not go along caulking heavy, he has to go along gently, so that he will not distort the fibres of the plates unduly. Caulking does not add to the strength. It shows a line definitely there where a caulking tool, had the tanks been caulked, you would have seen definitely the line of the tool, and about half the thickness of the plate, that is the outside half of the plate would be higher than the inside. And furthermore there would have been an uneven edge on the inside; because the caulking is not done so evenly that you get a perfectly straight line; you get a line of the tool.

Q. Did you observe any such marks?

A. I did not, sir. I am perfectly satisfied from the experience I have had with caulking during the whole of my career, that those tanks had not been caulked on the outside. There is no question about that whatsoever.

Q. Now Mr. Thompson you spoke of no marks of cutting, with respect to the rivets; what is the significance of that?

A. I think, what I meant there, I believe that in my opinion, from my experience, had rivets been cut out by hand, by chisels, you invariably get marks on the plate

adjoining the hole, all around marks of the chisels. It is impossible to cut out a series of rivets like that without leaving marks of the tools.

Q. Were there any such marks on the tank?

A. I didn't find any.

Q. Now you spoke of the fact that the size of the rivets was uniform throughout the tanks; what is the significance of that?

A. Supposing it were possible to remove the rivets by cutting out, without leaving marks—I say it isn't, but suppose it had and that those rivets have been renewed for some other reason; good practice calls for the reamering of the rivet hole of any tank that has had any service, because the material of the plate around the rivet hole invariably rusts, and requires to be removed before a rivet can be put in,—a new rivet. The new rivet then is of a larger size. In that case, those were three-eighths rivets; I think seven-sixteenth rivets would have been used. In other words, you would have seen the difference between the size of the rivets at the bottom of the tank, and the rivets that had been in the tank originally.

Q. Assuming Mr. Thompson that the rivets around the bottom seam, fastening the bottom to the tank, had not been removed with a cutting tool, but had been burned out, would there be any difference then?

A. Well I think I have already said that I have never used a plate from which the rivets were removed by torch; I wouldn't dream of using it. I think the marks, if one did use such a plate, the marks would be still more evident, you would get evidence of burning; and I couldn't understand anyone having any knowledge of plate work,—not tank work, only plate work, using such a plate for such a job. I do not consider that anyone would remove those rivets by burning.

Q. What is the effect on a metal, of burning out a rivet?

A. Well I think in burning out a rivet, burning out a series of rivets, you must inevitably flow the metal on the

side of the hole; just as readily as you burn out the rivet itself, you will flow the metal You burn out the rivet by flowing the metal, and you would at the same time flow the metal around the hole. That is not an opinion, that is what I have experienced in the whole of my existence.

Q. Let's just assume Mr. Thompson that the rivets of the bottom seam had been removed by burning, and subsequently the plates restored and reriveted: in your opinion would there have been any difference in the size of the rivets, in that case?

A. No, the same opinion would apply there, in the replacement. That is the necessity for reamering out the hole, still, and putting a larger sized rivet.

Q. And why is that?

A. For the same reasons I have stated, if the rivets had been cut out by hand, with cross-cut chisels, that the edge of the hole rusts, and it is not good practice to put back the same size rivet as originally used.

Q. From your experience, Mr. Thompson, referring to the side seam, if the side seam had been soldered above the point where you observed the solder on the side seams, from eighteen to twenty inches from the bottom, and the solder had been caused to run off by hot fire; in your experience what would you have expected to find, if anything, in the appearance of the side of the tank?

A. Well you put the question in rather an inclusive way, Mr. Matteson. In my experience,—I want to be perfectly fair in this case: I think the only thing that I can express there is an opinion; I wouldn't base it on experience so much, I would limit this to an opinion based on general experience. I would expect to find—I don't want to go any stronger than this, I would expect to find discoloration, due to the acid used in the flux; and I would expect to find some traces of solder remaining. I think that is as far as I would care to go Mr. Matteson.

Q. Well assuming that the tank had been through a hot fire.

A. Assuming the tank had been through a fire of the order that apparently, from what I hear, the Seminole went through.

Q. Mr. Thompson there has been some description of a test that is said to have been held on this tank, and one part of this test was said to have consisted of closing off the outlets of the tank, after the tank had been completely filled with water; and that while the tank was in that condition a man of substantial weight stood on the top of the tank, and jumped on it and kicked downward with his heels as he landed on the top of the tank; and it is said that this created the effect of a hydraulic ram through the action of water in the tank, which caused distortion in the bottom of the tank. In your opinion what would be the effect of such a test, if held?

A. The effect of such a test on the top of the tank, that we have been discussing?

Q. Yes.

A. Well I don't think there would be any effect at all on the top, unless the top were very badly rusted, in the first place.

Q. Well when you say effect on the top, what do you mean?

A. I don't think the top would have moved; I don't think there would be any pressure exerted on the water in the tank at all; that is, pressure of the nature that is described in the manner you have.

Q. What would be necessary to produce pressure within the tank?

A. That top would have to go in, of course,—reduce the cubic capacity of the tank, and thereby put additional pressure on the water.

Q. Now assuming that the top of the tank did give as much as an eighth or a sixteenth of an inch, what would be the resulting forces that would be exerted in the tank?

A. Well I am speaking of course now as to just my opinion. In my opinion, if that did happen, the deflation,

as your call it, of the top caused by that means, would I think be an effect over the whole area of the top, and in amount would be negligible; unless the top went in to a considerable extent. Because the water is acting on the top, helping to keep the top up. There would be additional pressure, but I have never made such a test, and I think that is as far as I would care to go on that.

Q. From the theoretical point of view, assuming that the top of the tank were depressed a given amount, is there any way of calculating the pressures that would be set up in the tank?

A. I think you would have to have several factors definitely established, and I think on that point I have gone as far as I would wish to go. Because I want to be quite fair in what I say, I don't want to embark on a journey the end of which I don't know, or what I would arrive at. I can't conceive of such a test being any good at all, unless the top was so badly corroded that—otherwise I think those tops are pressed, they are pressed tops; and the ends of the tank in my opinion are the strongest parts of those tanks.

Q. Well now it has been suggested Mr. Thompson that there is some sort of a hydraulic effect that could be produced by depressing the top of the tank in that fashion, which would be multiplied many times when it acted on the bottom of the tank, at the opposite end of the tank. Can you give us an opinion with respect to whether there is any such effect or not?

A. Well merely stating an opinion, not having given it much consideration, I don't think that would be. Pressure tests, or hydraulic tests, of that nature, that is using water—oh I think Mr. Matteson really I have gone as far on that as I care to go; because I want to be fair in this case; because I am only guessing if I go on.

Q. Mr. Thompson I think you referred to your observation of distortion on the bottom of the tank. Assuming that some test of some kind were applied to the tank, pro-

ducing that kind of distortion in the bottom of the tank, what would that indicate to you if anything with respect to the bottom of the tank?

A. Just answering the question that you have put, it would indicate to me that the bottom of that tank internally was heavily corroded.

Q. Why do you say that?

A. From the condition that you have named, the fact that it is permanently distorted. One must realize, Mr. Matteson, that in the water test of all vehicles, even heavily built Scotch boilers, we make tests under test of deformation of that tank or boiler,—particularly to boilers it applies; the boiler actually changes its shape under an ordinary test of double its working pressure. We measure the distances the various parts creep, and we find that there is a deformation of a boiler under cold water test. And doubtless that tank, in common with all other tanks, would, under sold water test, deform; it altered its shape. But here you are referring to a permanent deformation after the test is over. In the other test, the boiler returns of course to its normal shape and size but here you are speaking of a permanent deformation, and I am applying my opinion to the permanent deformation. That permanent deformation would indicate to me that there was heavy corrosion on the part that was deformed.

Q. Will you explain that,—why the permanent deformation indicates what you say?

A. Well the fact that it failed to return. The top, if it had been pressed down, returned to its normal state. The bottom apparently—I accept Mr. Munroe's evidence, that during this test, some part of this test, the bottom came down and remained down.

Q. Well which part of the tank, in your opinion would be stronger, if in its original condition, assuming they are of the same weight,—the sides or the bottom?

A. The bottom, in my opinion.

Q. Why is that?

A. Because of its shape.

Q. Because of the inverted crown?

A. I accept the term used already, so we won't get too many terms in this case; I accept the explanation given, that that bottom is in the nature of a bridge, it is curved in, every way: it is a pressed steel bottom, pressed in a press, in hot condition, under very great pressure; and the bottom—such bottoms are very very strong. If we don't have that form of bottom,—you have a flat bottom, good practice calls for the use of stiffening brackets along the sides to the bottom.

Q. Now what did you observe with respect to the structure of the Seminole, with respect to her stiffness,—the means of providing stiffness to the hull, and protecting the vessel against vibration or movement.

A. Well I think I have already stated that,—and I didn't do this from observation, I did this from the dimensions given me; I think my evidence was that she was of unusual depth to length proportions. But now I understand this question goes to what I observed. Is that the actual structure of the boat?

Q. That is right.

A. I fail to find any intercostal keelsons in the bottom of the boat.

Q. What is an intercostal keelson?

A. Intercostal keelsons are a form of continuous angles, and by continuous I don't mean they may be in one length, but were they not in one length, at the break where the angle finishes, another commences, you put what you call a bosom piece, to make good the break. But for practical purposes we will assume continuous angles, fore and aft angles, attached to the top of the vertical floors; that is, the vertical plates between the keelsons and the bottom of the ship. Those keelsons run fore and aft. Between those keelsons, and between the floors, a series of steel plates of a depth equal to the depth of the floor and the depth of the keelson. Those plates are attached to the

keel plate by angles, to the floor plates by angles, and are riveted between the double angles,—the continuous angles which I have called the keelson angles.

Q. Well what is the purpose of that keelson?

A. The purpose is to add to the strength of the boat, of course; and they actually form one of the principal girders of the ship, fore and aft.

Q. Do I understand that is a continuous girder through the bottom of the ship?

A. Continuous girder.

Q. Were there any such keelsons on the Seminole, so far as you could observe?

A. Not as far as I could observe, sir.

Q. What longitudinal strength members were there in the Seminole?

A. I understand she had a bar keel; I didn't observe it, because she was afloat. If she had a bar keel she would have the flanging of the keel plates, and on that point I ought to say that there is no—the keel plates, if they were flanged keel plates, to the keel bar, were not renewed; because there is no flanging or fine work included in the accounts. So I was rather surprised to hear in Court that she had a bar keel. I don't know. I assume from reading of the accounts that the keel plates were renewed.

Q. Well now outside of that—

A. You have the flanging of the guard strakes; the keel plates then or the garboard strakes; you get the vertical flange. That does add to the boat. And those are attached to the keel bar, and they then in smaller vessels, —not vessels of that size and type of bottom,—big flat bar; quite apart from, if she did have a bar keel, reasonably good construction would call for intercostal keelsons. And I think that any rule, if she had been classed,—she was not classed, but if she had been classed, would demand the inclusion of such keelsons.

Mr. Underwood:

I move to strike out the requirements for classification, from his answer.

Mr. Matteson:

I am perfectly willing to do that.

Q. I just want you to outline for us, Mr. Thompson, what longitudinal strength members this vessel had, and what your opinion is of her fore and aft stiffness, in view of the construction that you observed.

Mr. Underwood:

You will pardon me just a moment.

(Conference between counsel.)

(The last question was read by the reporter.)

A. Well Mr. Matteson you have put a question to me that would take a long time to answer; because transverse members, strangely enough, lend much less to overcoming longitudinal stresses. But if you want me to confine my answer to what were the longitudinal members, I will reply that way.

Q. Let me put it this way: what did you observe with respect to the strength members of the hull of the Seminole, and in view of what you observed, what was your opinion as to her longitudinal fitness?

A. In my opinion she was poorly provided with longitudinal girders. I think that is a short reply. The other main girder—longitudinal girders of the ship consist on each side of the sheer strake attached to the deck stringer. A girder consists of at least two members. The members—the sheer strake and the deck stringer, attached, form a girder. I think as far as the bottom of the ship is concerned, in my opinion,—I am just expressing an opinion,—she was poorly provided with such girders.

Q. Well now in view of that, what is your opinion as to the stiffness of her hull, as respects whether or not she would be subject to vibration and longitudinal stresses?

A. From my experience, I think she would be subject to undue vibration.

Q. What do you mean by the term, vibration?

A. Well, movement. I take into vibration there,—I mean movement, that she would be—I use that as an antonym of stiff; she would not be rigid.

Q. You used the term, vibration; and I just wanted to know what you included within the term, vibration?

A. I thought you referred then to the ship as a ship, and apart from any inside causes. If you want to include vibration that was set up by the engines, I observed that the engines were mounted on wood seatings. That was something entirely new to me; in the whole of my career I have never come across a steel ship with wood seatings.

Q. What is the difference? What is the effect?

A. Well you don't get anything like as strong a job from a wood seating, as you do from a steel seating. In fact, a good class wood vessel of any size is frequently fitted with steel seatings, for that very purpose. But I have never come across a steel vessel with wood seatings, before. I think the effect would be that there would be considerable vibration from the engines when they were in operation. Briefly I think that boat would have more vibration than the average boat of her type: that is my opinion.

Q. Now getting back to the tanks for a minute—

A. But I haven't answered fully, Mr. Matteson. I noted the absence of strong beams in that ship. The bulkheads were lacking beams,—steel beams: and apparently I formed the opinion, rightly or wrongly, that a strong beam had originally been there, running through the original coal bunker, and that had not been replaced when she was converted to a gasoline ship.

Q. When you refer to a cross member there, what evidence did you observe of there having been such a cross member?

A. I think the evidence I observed consisted of one thing: that is, an opening cut and stiffened by doubling plate, in the side plating of the tank compartment on the starboard side. I think the photograph will show the openings I referred to; the opening rather,—one opening.

Q. Are those openings—

A. Opening, Mr. Matteson.

Q. Yes; can you point out the opening in this Exhibit, Libelants' Exhibit 6, the photograph?

A. Yes, here it is; that is the opening, here, and about one inch from the right-hand side of the photograph; and that is the doubling plate on that opening to which I referred. Furthermore, the angle at the top, you will observe,—that is the attachment angle to the deck above, is cut on the side of the opening, to permit the insertion of a beam. That opening could serve no other purpose, in my opinion, but for a strong beam.

Q. Now here is a photograph—

A. That was the opening, your Honor, I was referring to.

Mr. Underwood:

The opening referred to by the witness has already been marked on photograph, "Opening for beam".

A. Yes.

Mr. Underwood:

You have to get the right light on that to see it, but it is there. Can you see it, Judge?

The Court:

Yes.

Mr. Underwood:

Some other witness has already marked that.

(By Mr. Matteson):

Q. I show you Exhibit 3-X, a photograph of the Seminole taken while the fire was in progress. Will you tell me whether or not such a beam appears in place at that time?

A. I cannot discover one there, sir.

Q. Well do you observe the tank space?

A. Yes, sir.

Q. And the tanks?

A. Yes I observe the top—yes, I think I can see the top of all four tanks there; yes.

Q. And is there any beam such as you believe was originally present, as indicated by this slot, in that photograph?

A. I cannot observe one, sir.

Q. Well what would be the effect on the structure of the vessel, of the removal of such a beam Mr. Thompson?

A. There would be a reduction in strength at a vital place.

Q. Why do you speak of it as a vital place?

A. Well here you have a large opening in the structure of the ship, amidships, the part where you get concentration of stress. I think the effect—to overcome that weakness which we frequently get in vessels, with hatch openings, we have to put strong beams across. I think the absence of a strong beam would tend to make the effect of any movement on a ship, more noticeable there, than if she had one. Furthermore, the bulkheads forward and aft of the tanks, were lacking, when I saw the boat here,—the wreck, that is, were lacking steel beams. In my opinion those beams could not have been,—steel beams could not have been removed by any fire, as they would be riveted by steel or iron rivets, to the plates.

Q. And what would be the effect if the wooden beams were used there, instead of steel?

A. I am expressing an opinion when I say they do not take the place, by any means, of a steel beam.

Q. Why not?

A. In the first place the attachment to the bulkhead is nothing like so secure; and furthermore the strength of a wood beam across there, unless it were of very great size, would be nothing like—be the equal of a steel beam. That is an opinion, again.

Q. What would be the effect of that type of construction on whether or not the vessel would be subject to vibration?

A. I think it would further increase the effect of the normal stresses of that boat; cause internally or externally the further effect of weakening the vessel at that point, and cause her to—what has been described as weave, in the bulkheads: movements on piping. That is my opinion.

Q. Now getting back to the tanks for a minute Mr. Thompson; I want to describe a further test that is said to have been made on the tank that was removed from the vessel. It is said that the tank was removed, placed in an upright position, on wooden stringers, and that the bottom outlet was blanked off, the filling pipe outlet was blanked of, and the riser, seven or eight feet high, was installed on the outlet hole in the center of the top of the tank; the tank filled with water to the top of the riser, and the tank allowed to remain in that position for approximately twenty minutes. What, in your opinion, would such a test show, with respect to the tightness of the tank for gasoline?

A. What it would show? I don't know what it would show, Mr. Matteson.

Q. Would it show anything?

A. Do you mean, do I consider that hydrostatic test?

Q. Yes.

A. I certainly do not.

Q. Why not?

A. Well you haven't given me as one of the factors, the first essential in a hydrostatic test.

Q. What is that?

A. The complete cleaning and scaling,—or rather, scaling and cleaning of all about it; you only clean after you scale,—of the tank inside, before you attempt to make a hydrostatic test.

Q. Why do you say that is a requirement?

A. It is the requirement of good practice. I doubt very much whether you will see it in the rules, because in my opinion that is considered good practice universally.

Q. What is the reason for it?

A. That is only a twenty minute test.

Q. You have spoken of the requirement of cleaning of a tank before test begins; I want to know what the reason for that is.

A. Well you may, in putting light pressures like that on a tank, force pieces—substances, such as flakes of rust, or dirt, or other things,—I don't want to enumerate them; but anything that may be in a tank, you may force that into crevices in your seams, which may give you a false idea as to the tightness of the tank. The preparation of a tank, is as I say, the thorough scaling and cleaning it; wire brushing and cleaning it, particularly the seams,—the part of the seam you can get at inside; to see there are no loose pieces of rust that can be wedged into the seam, and by so doing, prevent what we consider a satisfactory test of that seam. So I say again, it is the first essential, prior to the hydrostatic testing of a tank, to see that the tank is thoroughly cleaned out of all substances that may interfere with the satisfactory performance of such a test. Then, you mentioned a time limit of twenty minutes; I haven't answered anything about that Mr. Matteson.

Q. I was just about to ask you about that; what does that have to do with it?

A. Personally, in my experience, the matter of twenty minutes—the time of twenty minutes would not be considered a satisfactory hydrostatic test.

Q. Why not?

A. Because the practice in shipyards is to leave them at least eight hours under that test.

Q. When the test is conducted by means of a riser, how can it be determined whether the test is satisfactory or not?

A. Well going back to an earlier answer, perhaps I ought to make that clear. There are certain tricks in hydrostatic testing, that we shipbuilders and repairers have to look out for. We find workmen who have been responsible for building or repairing a tank, knowing that this test will follow, to cover up poor workmanship; they sometimes—they do one of three things. We have found that they sometimes put in very fine oatmeal into a tank.

Q. What is the effect of that?

A. To flow into, as the water is going into the tank,—to flow into the seams, and by swelling, make the seams temporarily tight from inside. They sometimes use very fine sawdust. The commonest trick used, which we have to watch against, is to see that they don't use urine on the joints, a day or two before.

Mr. Botts:

Use what?

A. Urine.

(By Mr. Matteson):

Q. What is the effect of that?

A. They go up the seams in the rivets, they wash it over, in order to accentuate the rusting, so the seams shall become rusted and therefore temporarily make a tight joint. Those are tricks we have to watch. So therefore I say that in conformation with necessity, to see that a

tank is thoroughly free of any foreign substance, or any tricks of that type.

Q. Well now when the riser test is used, how do you determine whether the test is satisfactory?

A. Supposing all the other conditions are correct, a riser test of itself is very simple; it is just merely the ability of the water to remain at the same height all the time. If during a test we find that the water is lower in the riser pipe, we know of course then there is seepage or leakage at some point. The tank is then—the test is then stopped, the test is not considered a test any longer. We then have to find where that seepage or leakage occurs. We have to make good those seepages or leakages, and then start the test all over again.

Q. Now assuming that in the progress of this particular test, there were actually two small leaks observed, that caused the water to drop in the riser; would the observation of the water level in the riser, under those circumstances, be of any value in indicating the tightness of the tank?

A. Obviously no; no value.

Q. Now I want to describe another test said to have been made. Two of the three openings in the tank were banked off, and a hose connection fitted to another connection, and the tank filled with water, city water pressure applied to the tank under those conditions; again without any preparation of the tank by cleaning or otherwise; before the test was applied. Would that in your opinion be a satisfactory test for tightness for gasoline?

A. For how long was that pressure applied there? You are statan entirely different condition now.

Q. I don't think it appears just how long, but it was, say twenty minutes—the same period as the other.

A. You mean, without the tanks being cleaned out first?

Q. Yes.

A. No I wouldn't consider that satisfactory. You didn't state the amount of the pressure.

Q. Well it is said to be the pressure in the mains is forty to forty-five pounds.

A. Granting that pressure?

Q. Yes.

A. No, sir, I do not think, unless with the cleaning of the tank, I would not consider that a satisfactory test. It may be a satisfactory test, and more than satisfactory in a way, as to the strength of the tank. My observation of the tank has been as to the tightness of the tank, not as to the strength of the tank. At no time have I challenged the strength of the tanks of the Seminole in the original condition at least. My remarks have been applied to tightness.

Q. Now the suggestion has been made here that because of the thickness of the plates used on these tanks, gasoline tanks, on the Seminole, and their general construction, that such tanks would be good for a hundred years, or at least for a period far beyond the life of the vessel. What is your opinion with respect to that?

A. Well I just say I don't think so.

Q. Why not?

A. Of course you haven't stated what those tanks are made of; they may be made of ordinary tank steel, or ordinary mild steel.

Q. I am talking about these tanks on the Seminole, as you observed their construction.

A. From what I observed of the plating, in my opinion they were made of what I call Siemans-Martin open-hearth steel; I think that will be a near enough description. It is commonly used in shipbuilding, and to the best of my knowledge, in tank making; or, steels anywhere near that order,—any modern steel I know of. In my opinion, the lifetime of the tank of course depends entirely upon the care the tanks had in the first place. You can't lay down a law and say that tank is going to last

so long because of certain thickness; the primary condition comes in, What care has been given to the tank,—to the parts, to stop corrosion. Now you want me to give a reply as to the tanks on the Seminole, or to other typical tanks?

Q. Yes, on the Seminole; and I will supply the additional factor that these tanks were installed in the compartment, as you observed them, where they could not be worked on during the period they were on the vessel.

A. In my opinion the tanks of the Seminole are not fitted with means of access; that it is impossible to get inside the tanks and see them or to do anything to them. I don't think they had,—after a fairly careful observation of the tanks, any manholes. Therefore it was impossible to get into the tanks to do any cleaning, or to put anything on after cleaning. By cleaning I mean scaling and thorough wire brushing, which is normally considered the cleaning of a tank. I don't think—it would be impossible to apply protective coating to the plates; therefore I consider that those tanks, are of an order that would be subject to heavy corrosion,—continuous corrosion. And I certainly am of the opinion that they would not last anything like a hundred years; in fact I don't think you would find anything but rust after about thirty or forty years,—nothing but rust, in tanks of that order. I am quite certain that with tanks of that descripion, a lifetime of a hundred years is totally opposed to the whole of my experience; that is all I can say Mr. Matteson.

Q. Well taking these tanks as you observed their construction and installation, in your opinion how long do you think they could be depended upon in that situation, for tightness with respect to carrying gasoline?

A. Oh that is entirely a different question. I was referring to tanks as tanks, and leaving out entirely the matter of tightness. Now if you come to the matter of tightness, tanks of that type, with the impossibility of getting inside to examine the heads of the rivets, to see if there

are any cracked rivets,—because you cannot test a rivet from the outside, I want to make that quite clear; to be able to test a rivet, you have got to be able to get to the head. You couldn't examine the heads of those rivets to see if there were cracked rivets. Cracked rivets are not at all unusual. In my opinion, tanks of that type, you couldn't get inside to thoroughly scale and clean and protect, would not remain tight, to my satisfaction; I wouldn't pass them for being tight, test or no test, for a period longer—I will give you the absolute maximum, because I want to be absolutely fair; well to me they would be of no use after ten years; I wouldn't have them in a gasoline ship.

Mr. Anderson:

How long?

A. I give you ten years; but I realize I have given an earlier period in my previous testimony. I wish to be absolutely fair; I think there is plenty of scope here, I don't want to strain my evidence; I want to give as long a period as possible. I don't think those tanks under any conceivable condition could be what I call satisfactorily gas-tight for more than ten years.

(A brief informal recess was had.)

Q. Another point with respect to your observation of the tank in October, Mr. Thompson; what did you observe with respect to any soldering around the rivets of the bottom of the tanks, or on the sides?

A. Well frankly I didn't observe any. There might have been pieces of solder, I couldn't say; I didn't observe any, myself.

Q. You spoke of your opinion that the tanks had been made of galvanized plates and not soldered after being put together. Will you tell us how you came to that conclusion?—Not galvanized?

A. Well I am expressing an opinion based on experience, with galvanizing of plates on vessels; in the whole of my experience, hot-dip galvanizing; the metal or the vehicle that is to be galvanized is first pickled in an acid bath, to remove what is known as mill-bloom; that is the hard surface that is caused during the rolling of the plate. It is essential that that should be removed. And the pickling removes all dirt, and to give you a clean plate. It is thereafter cleaned from acid and dipped in a molten bath of zinc. I have never been present at a galvanizing job; I am speaking now not of the galvanizing process, so much as what you asked me. After it has been dipped in the zinc, it is pulled out, allowed to drain so that the surplus zinc can flow back into the bath. That zinc on the outside of the tank cools of, and as it drains it leaves on the rivets or the edges of plates, an extra thick coat, you would call it, or a bulb, described by sketch, showing where the drainage has occurred. So if that tank had been galvanized after it was made, I would have expected to find down the edges of the seams of the plates, and also on the rivets, such accumulation of zinc. And I noticed the rivets were round at their base, and also there was no accumulation or ridge on the edge of the tanks—that is the edge of the plates on the tanks. From those causes, or lack of evidence of such accumulation, I considered that the tanks had been built of galvanized sheets, and not dipped after manufacturing. Furthermore, had they been galvanized after manufacturing, I would certainly expect to see an accumulation of galvanizing, particularly on the —as you show in the photograph, the top seam of the tank; this photograph will do. I think it was apparent at the inspection, to anyone who looked at the tanks, that there was no accumulation of galvanizing on that ridge, which was quite a distinct ridge. From the causes stated I am satisfied in my own mind that those tanks were not galvanized after manufacture.

Q. And what would be the effect on the tightness of the tank, with respect to gasoline, as to whether it was soldered before—whether it was galvanized before being put together, or galvanized after the tank had been manufactured?

A. Provided the galvanizing—that is the zinc on the tank after it had been dipped, ran into the seams and completely filled up the crevices, and completely adhered to both surfaces, and remained so, the effect of course would be to make the tank more tight. I admit that.

Q. Now in the testimony that you originally gave with respect to these tanks, on the Libelants' Direct case, I think that you proceeded on the assumption that the tanks had been caulked. Does the fact that you now say that in your opinion the tanks were not caulked, have any effect on your previous testimony?

A. Oh, yes.

Q. Will you explain that to us?

A. Well I haven't had a long examination of those tanks at the time I gave my testimony first, and I credited the tanks with being caulked; frankly, because I didn't conceive that it was possible for anyone to use tanks of that type without caulking them. That is I think the reason why I stated I thought they were caulked.

Q. It has been suggested here that caulking a tank of this type is used only to correct leakage when it has been observed. What can you tell us with respect to that?

A. If the tank—is that the condition you put up to me now, do I understand that after it had been observed a tank leaks during use or test, it has been observed that the tank leaks, through a rivet or through a seam, or both, that is the time then you should caulk the rivets in the seams? Do you mean the whole of the seams, the whole of the rivets, or just where the leak is observed?

Q. Mr. Thompson, I think my question is put to you clearly; will you read it again, please?

(The preceding question was read by the reporter.)

A. Oh, I am sorry; I realize now I didn't answer your question as you put it to me, Mr. Matteson.—That is contrary to my experience.

Q. Well what is your experience with respect to what caulking is used for, to tighten a tank of this type?

A. It is used in the manufacture—at the time the tank is manufactured, of course. I wouldn't consider caulking a seam after the tank had shown a weakness in its tightness,—to caulk it just merely where the weakness is shown on the outside; I wouldn't consider that a satisfactory repair, in the first place, because it does not follow, because you have got a leak localized on one part of the seam, outside, that that is—that the leak comes immediately at the horizontal or vertical line opposite that leak. We frequently find that a leak starts on the inside, at a higher spot, and works down the seam and comes out at perhaps another spot. So I would not consider just local caulking in the vicinity of the observed leak, as a satisfactory repair, in any case. Even supposing the tank was of such an order that she did not need at the outset, a caulked seam.

Q. Mr. Thompson it has been suggested that the closeness with which the rivets were spaced on this tank, obviated the necessity of caulking the tank. What is your opinion with respect to that?

A. If the tanks were used for water, I thoroughly agree. But for the use of storage of gasoline, I thoroughly disagree.

Q. Why?

A. Because I think that the caulking, or caulking and welding, are essential on gasoline tanks of the type we are discussing.

Q. It has been suggested that tanks used for this purpose, storing gasoline, are not ordinarily caulked or welded in their manufacture. Can you tell us as to that?

A. Speaking from my own experience, the custom is directly opposite to that. I have never known steel tanks for the carriage of gasoline,—of tanks of this order and type,—that is tanks of at least three-sixteenths thick, that were not caulked, or caulked and welded; or the seams welded, and the rivets. In fact if you wish me, I have an authority here that I consider a good authority.

Q. What do you refer to?

A. Well I am not referring to a textbook; I am referring to a well-known tank maker's catalog,—handbook.

Mr. Underwood:

I object to any reference to such a pamphlet, and move to strike it out.

Mr. Matteson:

I think the witness is entitled to refer to authorities to support his opinion, if your Honor please.

Mr. Underwood:

I can't cross examine the man who wrote the book. Of course he can't refer to authorities; that is just as well settled as any proposition of law that I know.

The Court:

I think he can just refer to the authority on which he bases his opinion; but to offer that directly as his authority, I think is not correct.

Mr. Matteson:

I was not even offering the book, if your Honor please. He stated his opinion based on his own experience and his own knowledge, and said that that was supported by authority. Now he has mentioned in his answer the authority that he relies on, that supports his view. I think it is perfectly proper for him to refer to it in that way.

The Court:

Well he produces it here and in such a manner that it seems like he is offering that directly. He can refer to that; it isn't a textbook, as he says, but it is a catalog of some manufacturer,—that he has taken that into consideration. I think that that is as far as he can go.

Mr. Underwood:

Well I object to that; I don't think he is entitled to do that on direct examination.

A. Am I permitted to speak now, sir?

The Court:

No, I am still considering the matter. Why is it you refer to that?

A. Only merely as confirmation of a practice here, sir. I didn't base any opinion on that book at all, sir. I understood the question and answer I gave, of course as to my own experience.

The Court:

Why did you refer to the book?

A. I understood that in the course of my answer I mentioned that I had authorities to support it, my experience. In no other way do I wish to use the book; I don't wish to say that I base my opinion on it in any way. My opinion was definite many many years before I saw that book. That book has only come to me within the last two to three weeks, sir. It was in the course of searching for confirmation of opinions, which I thought I might be called upon to express, I spent about four days going through technical libraries, not only to find support, but to see if there were anything against it; as I disclosed to Mr. Matteson, it was only on that account. I didn't base my answer on that book in any way. I in-

tended my answer, in other words, your Honor, to refer to my experience only; I merely mentioned that as confirmation; in no other respect, sir.

The Court:

Well the way it presents itself is this; he has now said definitely that that is his opinion. Now on direct examination if he is asked, is your opinion supported by any authority, then if he answers that question and gives the authority, that is subject to the objection that the authority is not subject to cross examination. Now where it is brought in on cross examination, I think a different rule applies.

Mr. Matteson:

If your Honor please, I am quite satisfied to leave it that he has stated that his opinion is supported by authority; and if Mr. Underwood wants to examine him as to the authorities he can, or not, just as he choses.

The Court:

No, I am inclined to believe that Mr. Underwood is right about that, Mr. Matteson. If he goes beyond saying that is his opinion and he bases his experience, and he has read, and so forth; but here he says, I have entertained and have this definite opinion, that is supported by authority: on direct examination I don't think he is entitled to do that. I sustain the motion to strike, with reference to the authority.

Mr. Matteson:

I would like it have it appear, if your Honor please, that Mr. Thompson handed his book to Mr. Underwood for examination.

The Court:

All right, sir.

Mr. Underwood:

Shall we describe the book? Handbook, Lancaster Tanks, apparently published by the Lancaster Iron Works, Incorporated, of Lancaster, Pennsylvania, copyrighted in 1930?

Mr. Botts:

Are you through with it? Do you want it?

(By the Witness):

A. No.

Mr. Underwood:

I would like to have it back on Monday.

(By Mr. Matteson):

Q. Mr. Thompson, it has been suggested here that condensation in tanks used for storage of gasoline, such as those in the Seminole, installed in upright position, with the convex bottom,—concave bottom, rather,—that condensation running to the bottom of the tank and filling the V-shaped formation at the bottom, would form a protecting seal which would protect the tank against corrosion. Have you an opinion with respect to that?

A. Well I speak from experience, and not as a chemist; I haven't attempted to qualify as a chemist, because I am not a chemist. From my experience, I don't think so.

Q. Going back to that answer; can you give us reasons for your opinion?

A. Well to be quite frank, Mr. Matteson, I haven't considered it much, apart from my experience, and I would like to answer from that point of view. I do know that there is present in steel plate a percentage of sulphur; and I judge from a long experience with rusted plates that the sulphur is not equally mixed throughout the steel; because steel plates do not corrode evenly all over. It would be a very much simpler job for the upkeep of a ship, if they did,—or the upkeep of a tank. But we find

plates much more badly corroded in certain parts than they are in others; and that is quite apart from any kind of electrolysis. I believe that that is due to the fact that there is more sulphur in one part of the plate than in another; that the heavier corrosion takes place at those places. I am not, again, speaking as a chemist, because I am not; I am just speaking from my experience.

Q. From your practical experience, is it your experience that a layer of water in the bottom of a gasoline or oil tank will protect the tank from corrosion?

A. I don't think so Mr. Matteson. In my own mind I am quite certain it wouldn't.

Q. Have you seen occasions when in fact it did or did not have that result?

A. Oh, yes, many occasions.

Q. And what result have you observed?

A. Well the results have been, in fuel tanks, on tanker vessels, where I have found the heaviest corrosion on the boundary bars,—those boundary bars are the bars at the bottoms of the tanks.

Q. It has been suggested here Mr. Thompson that a covering of rust on a steel plate is a protection to a plate against further rust. What is your experience with respect to that?

A. Entirely opposite.

Q. It has been suggested that these tanks apparently, from their construction, were originally constructed for some service more severe than that of storage of gasoline: for instance, tanks in which air pressure might be involved. In your opinion, would these tanks be suitable for any such purpose?

A. Air pressure—you didn't state the pressure, Mr. Matteson.

Q. I didn't state the pressure?

A. No. There may be more severe purposes for which a tank of that type could be installed, but I am unaware

of them, myself. I am speaking now from the matter of tightness, not the matter of stress on the plates or rivets: tightness of joints. Personally I haven't had any experience of a more strenuous duty than gasoline, but I don't deny there may be some that I have never heard of.

Q. Did you make a calculation as to the capacity of the bottoms of these tanks, up to the bottom of the outlet of the three-eighths pipe that was attached to the tank?

A. I think I made some simple calculations; I used a coefficient. I can give you the calculations I have got, if I can find them. Could you put that question to me on Monday morning, to save a little time? I will look it up then.

Q. Yes.

A. I know I have the calculations somewhere; oh, yes, I have it here, if you wish the answer now. It is merely a rough calculation.

Q. Just describe the steps by which you reached that calculation.

A. Well I think it was agreed with Mr. Munroe that the distance from—on the boat, I mean; I am referring to, on the boat.

Q. Don't refer to any agreement, just tell us your calculation.

A. I found on the boat that the center, from the bottom of the tank to the center of the hole, was four and three-quarter inches. I have assumed an eighth of an inch from the bottom of the outside of the tank, to the bottom of the seam of the crown, the lower crown; an eighth of an inch space. I have assumed—

Mr. Underwood:

I am not quite clear; will you read that please, Mr. Bryant? I have assumed what?

(The answer was read by the reporter.)

A. I have allowed a lap of one and a half inches, and I have allowed the thickness of the bottom, of three-sixteenths. And I have allowed a curvature in the tank bottom of two and a quarter inches; I did not measure that, I took that from Mr. Munroe's evidence. Those figures, later figures, commencing from the eighths of an inch, to the last figure of two and a quarter, I have given, total four and eight-sixteenths. From the four and three quarters, that is the distance from the bottom of the tank to the center of the outlet, I have deducted three-sixteenths, as the internal bore of the pipe—half the internal bore of the pipe.

Mr. Underwood:

That was how much, three-sixteenths?

A. Three-sixteenths, Mr. Underwood. That simple calculation gives me a distance from the top of the inverted bottom of the tank, to the lower point of the outlet orifice, of half an inch. I first briefly calculated the capacity up to the top of the crown inside the tank; that gives me, at a coefficient of .4, 5.4 gallons.

Mr. Underwood:

I am not sure that I understood that coefficient. Will you please read that?

A. That is a block coefficient; if you will block,—it may be a little high.

Mr. Underwood:

What is the figure?

A. Well one, if you take it as a complete space, it would be one; that is .4 of the space.

Mr. Underwood:

All I would like to have, your Honor, is to repeat the figure that he gave before; I didn't get it.

A. I am sorry; what figure are you wanting, Mr. Underwood?

Mr. Underwood:

The coefficient you need.

A. .4. I will concede that that may be high or it may be low; that is the coefficient I have taken, upon which this calculation is based. That would give me there the capacity to the top of the crown, inside, of 5.4 gallons. The capacity from that point to the bottom of the outlet orifice is taken as three gallons; a tank of this capacity is approximately six gallons per inch of depth; and there being a half inch depth, there would be three gallons. The total I estimate, capacity below the bottom of the outlet orifice, I make to be 8.4 gallons per tank, or a total for the four tanks of 33.6 gallons. Is that what you were asking, Mr. Matteson?

Q. Yes. Now assuming that there was a gauge connection attached to the outlet line:

(Temporary interruption.)

Q. Assuming that there was a gauge attached to the outlet line in such manner that the bottom of the gauge was three inches above the outlet, what would be the capacity of one of these tanks up to the point at which gasoline would be visible in the gauge?

A. Is that the dimension you have given me, three inches to the top of the outlet orifice, or to the bottom?

Q. Well, calculated both ways.

A. Well at six gallons per inch of depth in a tank, if that calculation is taken to the top of the orifice, you have a space of three and three-eighths; that is approximately three and three-eighths, six gallons per inch, reducing to a decimal place, I will say roughly about twenty gallons. If that three inches is given me as from the bot-

tom of the outlet orifice, the capacity from that orifice to the position where the glass is showing, would be eighteen gallons per tank.

Mr. Underwood:

What was the first figure, Mr. Bryant?—How many gallons?

The Reporter:

Twenty gallons.

(By Mr. Matteson):

Q. Does the figure that you have just given us include the 5.4 gallons that you figured?

A. Oh, no; I understood, the additional quantity. I am sorry.

Q. I just wanted to be sure about it.

A. Yes, we would have to add 8.4 per tank; 8.4 gallons per tank. I am sorry Mr. Matteson, I thought you meant the additional quantity.

Q. That is all right, as long as we have it clear. Just so we will be sure we have it clear: if you measure the distance that I have spoken of, from the bottom of the orifice outlet, what is the figure that you add?

A. Approximately twenty, I figured.

Q. Approximately twenty?

A. That is six gallons per inch, approximately twenty; additional, that is.

Q. And if you measure from the top of the orifice how much would it be?

A. Additional, eighteen per tank.

Q. Then adding the eighteen to the 8.4, below that point, it would be 26.4 gallons per tank, would it not?

A. Per tank, yes.

Q. And for four tanks—

A. 25.6—105.6.

Q. One hundred five and six tenths gallons?

A. One hundred five and six tenths gallons.

Q. And if the measurement is from the bottom of the orifice, it would be approximately eight gallons more than that, is that right?

A. Yes, two gallons per tank; about eight gallons more.

Q. Assuming the draft of the Seminole amidships was four feet, can you tell us whether or not the bottom of the trays installed under the tanks was or was not below the water level outside the hull?

A. It would be below.

Q. How much below, can you tell me?

A. I have a rough sketch; the bottom of the trays—

Q. Yes.

A. That is ignoring the thickness of the tanks; just the tray itself.

Q. Yes.

A. I make it nine and a quarter,—that is the top of the tray would be nine and a quarter inches below the four feet water line you have stated.

Q. The top of the interior bottom of the tray?

A. Yes, ignoring its thickness.

Q. From your observation of the Seminole was or was not the bottom of the inside of the trays below sea level when the vessel was afloat?

(The question was read to the witness.)

A. When she was afloat; well, I think that is a very different question there.

Q. Can you answer it?

A. You have given me an assumption first of four feet draft. I personally don't know what the draft of the vessel was.

Q. Well, I will withdraw the question. Mr. Thompson you have expressed the view I think in your previous

testimony that it was improper to have draw-off valves for gasoline in the engineroom of a vessel such as the Seminole. I want to ask you, assuming that it were necessary to have a supply of gasoline available in the engineroom for the purpose of priming the motors, whether that would in any way affect your view?

A. In no way whatsoever.

Q. If it were necessary to have gasoline available for the priming of motors in the engineroom of the Seminole, in what way, in your opinion, could it be provided, without an undue hazard?

A. Well by the fitting of a storage tank in an approved spot on the deck of the boat.

Q. If it were the custom to supply other vessels, that is fishing vessels accompanying the Seminole, with gasoline for fuel, from the tanks—or from the Seminole, would that in any way alter your view with respect to the propriety of having a draw-off valve in the engineroom?

A. No, sir.

Q. If it were desired to supply gasoline from the Seminole for such a purpose, what in your opinion would be a proper method for arranging for that supply?

A. By deck storage, such as I described before.

Q. Did you observe the main engines of the Seminole, as to their type, and are you familiar with that type?

A. Oh, yes, I have seen similiar engines frequently,—what the engine appeared to me, to be similar. I have seen engines of that day, built by Winton, which I think were of similar type. They may not have been of the identical model, I can't say; but they appeared to me to be similar to many other Winton engines I have come across in the course of my service here.

Q. From your experience, are you able to form an opinion as to whether it would be necessary to prime engines of that type when they were hot?

A. I don't think it would be necessary, and I have never heard of it before.

Q. Can you give us an opinion as to the amount of gasoline that could be used for priming the engines of that type, on the Seminole, in case priming were necessary?

(Discussion was had as to recess.)

A. May I defer my answer to that, because it may involve a long calculation?

(Thereupon the hearing was recessed until 9:15 o'clock A. M. Monday, November 20, 1939.)

Monday, November 20, 1939, 9:35 o'clock A. M.

Hearing was resumed pursuant to adjournment of November 18, 1939.

Mr. Matteson:

If your Honor please, I would like to interrupt just for a moment at this time. We served a Subpoena duces tecum on Mr. Balfe, the General Manager of Merrill-Stevens Shipyard at Miami, asking him to produce all records of any kind relating to the work that was done at their yard, on the Seminole, in 1927. He is here this morning, but I think Mr. Underwood and I can agree that we have both made requests of Merrill-Stevens to the same effect, and that we are satisfied that Merrill-Stevens have searched their records and that there are no records there in existence with respect to the work which was done on the Seminole in 1927.

The Court:

Let that go in the record, and under those circumstances, Mr. Balfe may be excused?

Mr. Matteson:
Yes, sir.

4141 JOHN A. THOMPSON resumed the witness stand and further testified as follows upon continued:

Direct Examination.

By Mr. Matteson:

Q. Mr. Thompson when we closed on Saturday you were about to make a calculation as to the amount of gasoline required for priming the engines of the Seminole. Can you give us that now?

A. Yes, I have already calculated that, Mr. Matteson, and I have done it on simple lines. I base it with relation to the prior evidence given in this case as to the consumption of both engines, which I believe was in the neighborhood of twenty-one gallons per hour. This consumption incidentally is confirmed by the usual coefficient of .7 of a pint per brake horsepower per hour. These two engines together have twelve cylinders. The engines were four cycle type; that means they have an explosion every second revolution in each cylinder, which means that there are six cylinder explosions per revolution, taking the two engines together. At 450 revolutions per minute, at six explosions per revolution, we get a total of 2700 explosions per minute, or 162000 explosions per hour. Now supposing that the engineer primed all twelve cylinders, each cylinder will then require one hundred sixty-two thousandths parts of twenty-one gallons. Converting the gallons to pints, to make it simple, that is 168 pints. Therefore each cylinder requires approximately 1/100 part of a pint for priming; or the whole twelve cylinders require a total of 12/100 part of a pint. That

is the normal running of the engine. I estimate that in priming, as in the choking of an engine, which has been referred to in this Court as equal to the priming it would be advisable to give a slightly richer mixture, so I have doubled the quantity. We therefore get a final figure, instead of 12/100 part of a pint total, we get 24/100 part of a pint, or approximately a quarter of a pint per priming. Therefore there would be sufficient for eight starts in a quart squirt can, if every cylinder is primed.

Q. Well can you tell us from your experience what would be the effect of using more gasoline than was required to prime them?

A. Well, two effects Mr. Matteson. I think the mixture would be too rich, on the compression stroke, for the spark to fire it; that is one effect. The second effect would be detrimental to the life of the engines, in that a certain proportion of the gas—liquid gas, would flow down the cylinder walls and clean off the lubricating oil upon the cylinder walls, and therefore result in due time to the scoring of the cylinder walls. Those are the two effects.

Q. Mr. Thompson there has been some testimony here with respect to the relationship between the size of a vent pipe and a filler pipe, for gasoline tanks such as those of the Seminole. I think in your original testimony you said that they should be approximately equal. Will you please tell us the reason for the relationship between the vent pipes and the filler pipes?

A. Did I say that in my original testimony?

Q. Perhaps I haven't quoted you correctly.

A. I don't think I said that exactly; because in my experience the air pipe is generally smaller than the filler pipe; it bears a relationship somewhere between half the area to a greater proportion of the inlet pipe. There is a reason why you should have a proportion of not less than half in the area, I should say; that is from experi-

ence; I am not going by rule at all; I am merely stating from experience.

Q. What is the reason for that?

A. The reason is that, to endeavor by those means to prevent building up of presusre from gasoline vapor, in the tank, during the filling process. That pressure should be avoided if at all possible, because it will act on the joints of the air pipe, and may cause gasoline vapors to escape into the chamber where the tanks are laid.

Q. Did you observe when we were on the Seminole in October, the remnants of the wood bracing of the tanks in the tank compartment?

A. I saw certain remains, Mr. Matteson.

Q. What did you observe?

A. Well I think that is what I did observe. I don't know that I can go into any greater detail than that. I saw certain remains of partly burned timbers. I don't think I could enlarge upon that.

Q. Then let me give you this assumption; assuming that the tanks of the Seminole had bracing between them, or were fixed in place in this manner; that they were set on 4 x 4's placed in the trays beneath them, which were grooved out to a depth of about an inch and a half, to receive the lower circumference of the tank; that between Number One and Number Two tanks, Two and Three tanks, and Three and Four Tanks, there were fitted pieces,—separators, fitted to the circumference of the tank on each side, and held in place by 4 x 4 uprights at the forward and after ends of the compartment, but that there was no such bracing at the ends of the installation, that is between Number Four tank and the starboard bulkhead, and Number One tank and the port bulkhead; what is your opinion as to the security—the adequacy of the securing of the tanks, under those circumstances?

A. I consider it would be inadequate.

Q. Why?

A. Why it would be inadequate? Well you gave me—the conditions you set up, you stated that on the port side of the Number One tank, and the starboard side of Number Four tank, no means were provided at all for securing. Therefore if that assumption is correct, I see nothing to prevent Number One tank going to port or Number Four tank going to starboard. I have assumed in my answer too, that there is no criticism of the wording in that particular instance; that is merely as to whether they are adequately secured; is that correct?

A. That is correct. Now what is your opinion with respect to the adequacy of the wooden bracing for tanks installed as these in the Seminole were?

A. Well that answer may be somewhat involved. In the first place I assume that the tanks were placed in from the top, for the reason that I don't think they could have been placed in through the plate on the bulkhead, for reasons I have already stated. First of all you have to prepare your bases before your tanks are in; you can do nothing in the shape of fitting of them after the tanks are in. And I do not consider that you can make a good fitting between, the longitudinal brace you mentioned, for the shape of the tank, with the tanks in position. And I don't think you could efficiently prepare them beforehand. In other words I doubt whether it would be possible to make those braces a good fit, even when the timber was new. Then you have all the disadvantages in connection with timber; I am speaking quite apart from absorption of liquid gas on them. The timber shrinks; and even if they were a dead fit at the time of the fitting, I doubt, myself, from the experience I have had,—not with wood braces in tanks, because I have never used timber of any description in any oil compartment; but from the use of wood in other things, I don't think that you could guarantee that they would remain as close

a fit, in the course of years, as they were at the time,—provided they were efficiently fitted at the time of the installation. When you speak about movement of tanks, I don't mean that those tanks are like four drunken sailors. To me the movement of a tank, where you get stress taken up on pipe lines—for instance the four pipes on the top of those tanks, a movement of an eighth or a quarter of an inch would be serious, in my view. I don't know whether I have answered your question fully there.

Q. I would like to ask you to assume further that the tanks were so installed originally so that there was no means of access to the top of the tanks, and that the tanks were installed as I have described; and taking into consideration also the structure of the vessel with respect to its stability for vibration,—to vibration, as you have already testified; and ask you if you can give us an opinion as to the permanency and security of the piping, including both the gasoline lines, the filler lines, and the air vent lines, under those circumstances; and taking further into account the fact that these tanks had been installed some twelve years before the time that I am speaking of in 1935.

A. Well I don't want to be critical of your question, Mr. Matteson; it is very complimentary to me; I think there are a lot of questions there. May I paraphrase that?

Q. Yes.

A. Take them in stages as far as I can recall from what you said. I am to assume, am I, that the tanks are placed in, and shortly after, or immediately after, the opening at the top was closed in. Take that condition first; from my observations of the wreck only, I do not think it would be possible for anyone to get at the joints of the air pipe. And then dealing with that point only, I don't think, in view of the vibration, the slightest vibration, of a ship over the period you have mentioned, that

those joints would remain good joints. Then I think you referred to the effect of vibration on the other piping, Mr. Matteson?

Q. What?

A. You referred to vibration on to the filling line and the discharge line?

Q. Yes.

A. Well of course the conditions there are different. Supposing those joints did become loose, the engineer could tighten those joints up, because they come inside of the engineroom. Provided he noticed that they were lacking in tightness, I think that he could make them good again, in spite of them coming loose at any time or times, as a result of vibration, or any other cause. Is that what you wanted?

Q. I think that covers it all right. It has been suggested, Mr. Thompson, that if the piping system put in the gasoline pipes, were properly installed, that there would be no occasion for the development of leaks of any kind during the life of the vessel, or at least for long periods. What in your opinion would be the situation in that respect as far as the installation on the Seminole was concerned?

A. I don't think so; of course I have never come across any installation, however good, that didn't require constant attention. That's my experience, Mr. Matteson. You see you have a peculiar condition in this boat; we have—I think probably I am partly to blame as much as anyone else,—we have used a term called manifold pipes. Well of course this boat didn't have a manifold pipe at all; perhaps I ought to have stated that in my earlier testimony, but I adopted the term which someone else had used. In my opinion this boat didn't have a manifold pipe. I am referring now to the discharge pipe that is connected up to the tanks; and I think you have a sample of it here.

Q. Is that what you refer to?

A. This has been stated as part of the manifold pipe.

Q. Referring to Exhibit 2.

Mr. Underwood:

What is the number?

Q. Number 2.

A. If the whole of the pipe line, assuming the whole of the pipe line,—this is typical of the whole of the pipe line running along the front of the tanks and connected to the tanks. I don't know how many joints there are here,—there would be in the whole thing; but to me, I don't like to be hard, but I still stick to the opinion I stated before, that it is just merely a contraption, a series of pipes, with all those possible means of leakages. I do not consider that that vessel had a manifold line at all.

Q. Well, what would be properly described as a manifold?

A. Well, a manifold pipe is one piece of pipe having on it brazed or cast on junction pieces; one set brazed on, or junction pieces, being for connection to the inlet; on the other side a series of junctions,—pieces, connecting the discharge from that line. Then at the end of the manifold pipe, the only manifold pipe I have ever fitted, we have blank flanges which we can clear out the full length of that manifold pipe. The manifold pipe is the same thing as you have in pumping systems; we have manifolds of various types that are used in the same way I just described.

Q. What would be the difference in effect between a manifold pipe such as you have described, and the piping made up as Exhibit 2 is?

A. It would be considerably stronger and more rigid, and very much fewer joints. Do you wish any more on that?

Q. I think that is all right.

A. I am not criticizing anyone for the use of the word, manifold pipe, because I have used it myself in this case.

Q. I call your attention to this other instrument, Number 11. It has been suggested here that a satisfactory gas tight joint between the union and the Crane valve Number 150 would be formed by bringing the face of the union in contact with the surface—connecting surface of Crane valve 150. What is your opinion with respect to that?

A. This opinion is just merely on the tightness?

Q. Yes.

A. Whatever I may say, I admit that these valves have been through a fire—in my opinion a serious fire, even at that spot. May I just look at these?

Q. Yes.

A. Because I may say right away, fire or no fire, I consider that prior to the fire the thread in this joint,—these threads here, did not act as a joint at all. It is my opinion that the joint merely consisted of this surface here.

Q. Meaning the end of the union?

A. The end of the union; with the nut,—the cast on nut face of the valve, formed such joint as there was at that time. May I just look to see if there is any evidence that could not have been destroyed in the fire? Am I allowed to clean this up or not?

Q. What do you want to do with it?

A. I don't want to touch an exhibit unless it is agreed, your Honor. Well, I can't very well see the surface of this nut face without scraping it, you understand.

Q. Which surface are you speaking about?

A. I can then tell you what type of machining was done on that nut, if I can scrape this thread off. Before I do it, I would want permission.

(Exhibit examined by Mr. Gibbs.)

Q. What do you wish to do, just clean a small section?
A. I just want to clean a small section.

Mr. Matteson:
Is there any objection to that?
A. I wish to give my evidence right.

Mr. Underwood:
I suggest that if there is going to be anything done to this, it be done to the other side. Both sides were made at the same time, and presumably the same way.
A. I couldn't give an opinion of one side from the appearance of the other, your Honor.

Mr. Underwood:
Does the witness think they made one end one way, and the other end the other way?
A. I have no thought about it. If you wish me to give evidence on the appearance of that face, I have to examine that face, and no other. I wouldn't give evidence on any other basis. It isn't serious at all, your Honor, it is a simple matter, your Honor; it does not destroy any evidence at all.

Mr. Underwood
If your Honor please, I think if this valve is to be mutilated at all, it ought to be at the end not forming a part of the connection in question. It seems quite obvious to me that that valve was made the same at both ends. If we mutilate the face of this it is going to distort the picture as to how the one came in contact with the other. I have no objection to doing it at the other end.

(By Mr. Matteson):
Q. Mr. Thompson assuming that it is agreeable to counsel on the other side of this case, to assume that ma-

chining if any, on one face of the valve, is the same as on the other, was the suggestion made, that you scrape the other face of the valve, satisfactory to you?

A. No, sir; if I have to give evidence on any particular thing, I give evidence on that, and not on anything that may be like it. I have no proof that the same care is taken at one end as at the other. I would be perfectly agreeable for Mr. Gibbs to do the cleaning; I don't want to do it. He may take the fitting and use my knife.

Q. And as I understand it, what you would like to do would be to clean just—

A. The dirt off.

Q. A small section of the valve?

A. Just a matter of an eighth of an inch or a quarter of an inch long, at any part they would like to clean.

Q. And what is the purpose for which you want to do that?

A. I want to examine the surface of the metal.

Q. For what purpose?

A. To see how it was machined. In my opinion, those surfaces form the joint. To examine the joint; I am going to give testimony on that and I want to give it properly.

Q. I think possibly what counsel may have in mind is that it might interfere with any subsequent test by blowing through the valve. Did you have in mind making any such test?

A. No.

Q. Does that cover your point?

A. If it is not agreeable, I am prepared to do the best I can with the joint as it is; but it is subject to that reservation, your Honor, that I would prefer to have it partly cleaned, so I could be more accurate in my observations.

Mr. Botts:

If I might suggest, it is the same sort of a test as they put a chock on a valve the other day to make a test of it; and certainly it seems to me that for the purpose of giving accurate testimony, a test—cleaning off a little part of that couldn't possibly destroy any evidentiary value that it might have.

A. To shorten matters, Your Honor, I would be agreeable to give certain evidence with that qualification,—on that face. You must remember I am to be cross examined, and I wish to put my evidence—

The Court:

Here is a thought about giving the witness permission to change something, that some contention might be made that is not apparent to the Court now, with the present situation. I just hesitate about changing something when some objection is made.

Mr. Matteson:

Well that's quite all right, if your Honor please; I will ask Mr. Thompson to go ahead and give the best testimony he can without actually cleaning the surface.

The Court:

I see a difference between adding a chock and taking something away.

A. Has anyone a magnifying glass?—May I go to the window, your Honor, for better light.

The Court:

Yes, sir.

A. I am satisfied, your Honor, to give evidence on the joint as it is.

Q. Now will you tell us—

Mr. Botts:

Does it appear in the record that the witness examined it under a magnifying glass?

The Court:

Will you let that appear, Mr. Bryant?

A. I am now referring to the one face of the joint, the face on the valve itself. In my opinion this face has been machined but not ground; and therefore does not constitute a satisfactory face for a gasoline joint. I observe tool marks on this face, machine tool marks, which indicate to me quite clearly,—that isn't something that has been altered by the fire—it indicates quite clearly to me the original facing of this valve. And I can see quite clearly tool marks on that. I think you can even see them with the naked eye, but I wanted to be pretty precise. The other face I haven't looked at. I won't alter that, I will do the best I can with them. That seems to be dirty; may I go to the window?

The Court:

Yes, sir.

A. I can't get quite so close to this face with this magnifying glass, but I think even with the naked eye the same condition can be observed on the other face of this joint; that is the face of the nipple—the union, rather. In my opinion those two surfaces coming together would not form a gasoline joint: that is with the very loose condition of the threads, which in my opinion were just as loose before the fire. I am just expressing an opinion, your Honor.

Q. You spoke of looseness of the threads. What is the significance of that?

A. It means the threads are not taking up any part of the work in making a gas tight joint; and you can see

when you get right up, you get movement on the threads; I don't know whether you can observe that. Those threads are quite loose. So in my opinion the joint there is on the face of that valve only. Is that all you wish me to say in connection with this?—I am further of the opinion that due to the design, this part, this valve which is marked Crane 150, I think it has an exhibit number, but it is marked 150,—is the valve, I take it, that was attached to the draw-off pipe. The Crane valve 125 I take it was the valve used for filling cans, of any description, or for any other purpose. It is only secured by the joint itself, and the least touch of that, with that leverage, may,—or at least any force applied to that leverage:

Q. What leverage?

A. Leverage as from the center of the valve to the valve wheel.

Q. Which valve are you speaking of now?

A. Speaking of Crane 125; may tighten it; on the other hand it may slack it. The valve stuck like that, by that leverage, only supported by that joint.

Q. Well what in your opinion would be the result of the fact that the threads are not tight, and the faces are not in your opinion a satisfactory connection for retaining gasoline?

A. My opinion is, this valve failed to hold back the gasoline.

Q. You are referring now to 150?

A. To 150; either through some fault in that valve, or through failure to close, I don't think you get a gas tight joint on the outlet side of the valve 150,—not a satisfactory, gas tight joint.

Q. Now Mr. Thompson you were present in Court the other day when a test was made on these valves, and on another exhibit, by blowing or sucking through the connection. What is your opinion as to whether or not that is a satisfactory test for gasoline tightness?

A. I wouldn't consider that a satisfactory test at all.

Q. What would such a test show?

A. It would show it was air tight up to the pressure that was applied to it; it would show that.

Q. In your opinion, would that indicate whether or not that was tight for gasoline?

A. Not in my opinion.

Q. Now it has been suggested here Mr. Thompson that the angles, or L's, the L connections in a set-up of brass pipe would have the effect of coils in protecting against vibration. What is your opinion with respect to that?

A. May I see the article which is referred to?

Q. Well for example I refer again to Exhibit 2, the angle connections in that.

A. Just these elbow pieces? You mean these elbows?

Q. The elbows, yes.

A. And the point of the question is, Mr. Matteson, please?

Q. As to whether or not such connections would act as coils in absorbing ventilation, or protecting the installation against the results of vibration.

A. I will answer that question simply, no. On the contrary these elbows would be subject to concentration of stress; and in my opinion would form a dangerous method of fitting up a gas line. By concentration of stress you have the stress concentrated at the elbow itself; and I consider that most unsatisfactory.

Q. Why?

A. Because it would be apt to cause a leak at the elbow; apt to cause leaks at the elbows.

Q. Now it has been suggested here that coils for absorbing vibration, are not used with brass pipe. What can you tell us about that?

A. Not used by whom, Mr. Matteson?

Q. Not used by shipbuilders, as good practice, in installations of brass pipe.

A. Well, that is contrary to my experience.

Q. It has been suggested that such devices are only used where an engine is mounted on rubber. It has been suggested that that results in increased vibration on pipe lines. What can you tell us about that?

A. At where, Mr. Matteson? Pipe lines where? Immediately adjacent to the engine?

Q. Yes, we will assume that.

A. I admit that; I admit that there is, on rubber mounted installations, increased vibration on the joints immediately adjacent to the engine. But the rubber mounted engines do not cause any greater vibration than engines that are not rubber mounted. The difference is,—the object of the rubber mounting is to absorb the vibration in rubber and not transmit it to the hull; that is the cardinal difference.

Q. In the case of engines mounted in rubber, what would be the effect, with respect to vibration on connections further removed from the engine?

A. Well, that's an indefinite thing too, Mr. Matteson; you have to state then the distance. In my opinion, just generally speaking, the vibration on the pipe would reduce as the length increased. Is that what you wanted?

Q. Yes. Now it has been suggested that copper tubing is objectionable for use in gasoline piping, because it is liable to injury. What is your experience with respect to that?

A. What type of injury are you suggesting, Mr. Matteson?

Q. Well, dropping a wrench on it, or stepping on it, or some physical damage.

A. Oh, physical damage? Well the risks vary so considerably, I can only give you a general reply. I don't know what physical damage may be caused to anything, anywhere, at any time. But assuming equal conditions, the effect of physical force applied to a copper pipe,—

that is annealed copper pipe, would be to close partly or wholly—I doubt wholly,—the copper pipe; flatten it out, in other words. Unless the blow was very severe, I think that would be the whole effect of the application of such force. To substitute brass pipe for copper pipe on the grounds that the brass pipe would not close up, but copper pipe will; I don't think that that is a risk that a designer of installation of a gasoline engine in a ship, should take into account. The much more immediate thing, is the hazard, the known hazard; an unknown hazard you are referring to now. The known hazards are provided for, and the unknown ones as far as they may think they go. But you protect a pipe from the possibility of physical damage, by running it under protection, to whatever extent you think necessary but the advantages of copper pipe, against the known hazards, are so great that in my opinion,—I am merely expressing my opinion based on experience,—that copper pipe has so many advantages over brass pipe that I have invariably fitted copper pipe, annealed copper pipe, myself.

"Q. It has been suggested that copper pipe is only used for cheapness. What is your opinion with respect to that?

A. Well if you had—I confess quite frankly, just for the moment, I don't know the difference between the cost of new copper and brass pipe; it has been some time since I bought any; I believe the market fluctuates so, I couldn't say. While you consider in the building of anything, or the installation of anything, the matter of cheapness, I don't think is applied to minor articles. The difference in cost, supposing brass pipe were cheaper, and it costs more labor to install it, the difference ultimately in any installation would be so trifling that I don't the matter of cost would be taken into consideration: at least that is my opinion.

Q. It has been suggested that copper tubing, or copper pipe, is objectionable because it is subject to vibration. What is your opinion with respect to that?

A. May I have that question read?

(The question was read by the reporter.)

A Everything is subject to vibration, in a ship. Brass pipe is subject to vibration; copper is subject to vibration. But in my opinion, copper pipe will absorb vibration, take it up, without damage, much more readily and much more certainly than brass pipe. In fact I think I can say that that is probably one of the principal reasons why we use copper pipe almost exclusively, if not exclusively.

Q. Mr. Thompson, referring to your observation of the Seminole in October of this year, it has been suggested that the side of the bulkhead in the passageway, separating the passageway from the engineroom, had at some time been covered with wooden sheathing or paneling, set out from the bulkhead. From your observation, can you tell us whether or not that was the fact?

A. In my opinion, the starboard side of that steel bulkhead had never been fitted with any wood lining.

Q. Why do you say that?

A. Well, I say that in a negative way. I didn't find, myself, any signs of means of attachment of any such wood lining on the steel bulkheads.

Q. And what signs of attachment would you expect to find, if such sheathing had existed?

A. Well a considerable number of holes in the steel plates, for the attachment of wood backing pieces, wood framework, behind the paneling or lining; tongue and groove lining, or whatever may be suggested.

Q. Did you find any such condition on that bulkhead?

A. No, sir.

Q. Mr. Thompson, it has been suggested here that on the Seminole before the fire there were four two-inch pipes leading from the deck above the engineroom, down through the passageway, close to the bulkhead between the passageway and the engineroom, in approximately the positions marked by the four white dots as shown on this exhibit, which is Phipps' Exhibit A. Did you observe any physical condition on the Seminole which would indicate whether or not such two-inch pipe had led down alongside that bulkhead prior to the fire?

A. I couldn't say, sir, because you have limited your question to, led down alongside the bulkhead. If you mean, and carried through to the bilge?

Q. Carried through to the bilges, yes.

A. Of course that is different. I am quite certain that there were no such pipes.

Q. Why?

A. Because that longitudinal bulkhead foundation plate was free of holes. It was in a badly corroded state, but I looked for the possibility of holes, and I am quite positive that no pipes at any time were led through that foundation plate.

Q. Now what is the foundation plate? Describe that to us.

A. Well, I didn't prepare this little rough sketch for that purpose; but I think, to avoid drawing another, we might as well use it; if I can find it. Yes, the sketch is here.

The Court:

Are you going to put that in evidence, now?

Mr. Matteson:

Well what is this sketch that you have produced, Mr. Thompson?

A. Well it is a diagram sketch representing I will say the starboard side; that is a cross-section of the boat,

through the tank chamber. I think that would be,—it does not extend right to the deck; it is the lower part of that part of the boat. Here we show on the left-hand side of the sketch, the upper corner, Number Three tank, or the adjoining Number Four; and in the upper right-hand corner of the sketch we get a cross-section of the passageway. Down here, running vertically—do you wish me to mark it any letter?

Q. Yes, you might mark that with the letter—

Mr. Underwood:

It is already marked.

A. That ought to be sufficient.

Q. Suppose you indicate the bottom of that line with the letters AB, with A at the top and B at the bottom.

A. May I just put one letter on there?

Q. All right, the letter A.

A. A, in a circle. That is the window; that is a section through, looking forward and aft,—a vertical section. At the bottom of that plate there is a foundation bar, that is an angle bar. Shall I indicate that by another letter?

Q. Yes, make that B.

A. That is the angle B. The vertical flange of that angle is riveted to the plate marked A; the horizontal flange is riveted to the foundation plate I have referred to. Shall I mark that C?

Q. Yes.

A. That is C,—that plate. That is the foundation plate that I referred to previously. Now my answer was based on the fact that I failed to discover any holes through that plate, through which those vertical pipes to which you refer must inevitably pass, to get down into the space below.

Q. When you say, holes through that plate, you refer to the foundation plate which you have marked on this diagram, C?

A. C; that is right, sir.

Q. What was the width approximately of that plate, can you tell me?

A. I would have to give that from memory; I think that was approximately eight inches.

Q. And then if such a pipe had passed down through the passageway, I take it it would have had to be further from the plate?

A. Yes, it would have to be a distance out far enough to clear the edge of—more than that, really; because it would be connected by a flange, a pipe flange to that plate; so actually the plate would be a minimum of eight inches and possibly ten inches; that is the inboard side of the pipe would be a minimum of about ten inches away from that bulkhead. So therefore the space occupied,—the space between such linings you have described, would have to be in my opinion ten to twelve inches away from that plate, to cover such pipe as you have referred to, if those pipes did not come through that foundation plate.

Q. Now what other matters have you covered in this diagram that you have prepared?

A. I don't quite follow that.

Q. I notice that other things are indicated on this diagram.

A. Well I did that just for my own purposes, to find the relative position really of the so-called drain pans, in relation to the water line. Do you wish any more? You have the general—it shows the web plate in the passageway; it shows the wood guard on the side; it shows merely in approximation, because I don't know the width of those floors, and at the time I drew this I thought she had a flat plate keel; but it does not show the bar keel. But that is really what I drew it for, Mr. Matteson, just to illustrate; —put down for my own satisfaction the relative distances from the keel, of the so-called drain pans, to the load water line which was given in evidence as four feet.

Q. But have you located the tanks with respect to the bottom of the ship, in this diagram?

A. Oh, I located that from a dimension that we took on the boat, which gave a distance of forty-five and a half inches from the bottom of the boat to the center of the discharge orifice on the tanks. Then I took four and three quarters from that center down, as representing the bottom of the tanks. And I took a distance of two inches as the depth of the bottom—as the tray below the tank. I have not put in these—these wood pieces are not supposed to represent in any way the actual scantling size of the wood pieces in the bottom of the trays; I was not trying to illustrate those. That is the one thing I wanted to show, for my own satisfaction, the depth of the tray from the water line.

Q. And what did you assume the draft of the vessel to be?

A. Well I took that from the evidence given by Captain Baker; he gave the draft at four feet forward and four feet aft; therefore of course four feet amidships; and I think that is where I got the four feet from.

Q. What did you find the relative position of the bottom of the pans, and the water line, to be, with that draft?

A. I have already stated that; you don't wish me to answer that again, do you? I think that is already given.

Mr. Matteson:

I would like to offer this diagram in evidence.

A. It is a rough thing; I am sorry I brought it. I wish to say your Honor, that I didn't make that for the Court; there may be things on it I could be criticized for; little things, inaccuracies. But I did not intend to put that up, otherwise I would probably have taken greater care in certain details.

Mr. Botts:

It is a cross-section of the boat, so you are looking forward. Is that clear, that that is what it is?

Mr. Matteson:

Yes.

The Court:

I think that the diagram may have some usefulness in helping to visualize and explain the witness' testimony; not that it speaks as an independent document, substantiating different matters as set forth on there; but it may be helpful. I certainly think it would be helpful to me in studying his testimony in regard to that; so for that reason I will admit it.

Mr. Underwood:

I have assumed that is what it is offered for.

(The said sketch was admitted in evidence and filed as Libelants' Exhibit 148.)

(By Mr. Matteson):

Q. Assuming these two-inch pipes did lead down through the passageway, and did not go through the foundation plate, and that the wooden sheathing and paneling was outside of the two-inch pipe, further into the passageway; what would be the minimum distance from the bulkhead which the passageway side of that sheathing or paneling would necessarily be?

A. Assuming they didn't go down to the bilges?

Q. Assuming they went to the bilges, outside of the foundation plate?

A. Assuming they went through the plate?

Q. No, assuming that they did not go through the plate, but did go through the passageway outside of the bulkhead?

A. I think I have already—haven't I stated that?

Q. No, you haven't stated that.

A. I am sorry; do you mean, to the center of the pipe, or to the inboard or outboard side of the pipe?

Q. No, I am not talking about the pipe now; I am talking about the sheathing or paneling that was outside of the pipe; how far would that have had to be from the bulkhead if the pipe ran through the passageway but was outside of the passageway?

A. I will answer that again; a minimum of ten to twelve inches. I think you will find in the record I have answered that question.

Q. These two-inch pipes are said to have extended through the upper deck, and to have been finished with goosenecks, so that the end of the pipe was reversed and faced downward toward the deck. What would be the effect of that arrangement, so far as ventilation is concerned?

A. Well they would merely act as exhaust pipes, not inlet pipes.

Q. There has been some reference to Lloyd's rules which have been marked as Exhibit 101 and 101-A; and the suggestion has been made that they refer solely to vessels of seagoing type. Will you tell us whether or not that is a fact?

Mr. Underwood:

We object to that; the rules are the best evidence.

The Court:

What about that, Mr. Matteson? Don't the rules show that?

Mr. Matteson:

If your Honor please the rules show it clearly; there is no qualification in the rules. The witness on the other side has testified that they do not refer to inland vessels.

In view of that I think I am entitled to have this witness say they do; but the point is perfectly obvious, in any event.

The Court:

There has been testimony that those rules did refer to non-seagoing—

Mr. Matteson:

The witness on the other side said that they did not refer to non-seagoing vessels.

Mr. Underwood:

I don't think that is quite a correct statement of what the evidence shows. I think what my witness said was, that they are not used for anything but seagoing vessels in this country. At all events, the rules themselves are the best evidence as to what they cover.

Mr. Matteson:

Well I will reframe the question then, in view of Mr. Underwood's statement of what his witnesses have said.

The Court:

All right.

(By Mr. Matteson):

Q. It has been suggested here Mr. Thompson that these rules are not used in this country with respect to non-seagoing vessels. What do you know, from your experience, with respect to that?

A. Well, you would limit it now to vessels in this country? Would you say the Great Lakes, for instance,—include that as seagoing? I am in a difficulty right away. Your Great Lakes here, you have conditions equal to the sea; but I don't know if you call that sea-going or not.

But eliminating the Great Lakes, to my knowledge, without being able to give you the names of the vessels, to my knowledge vessels are built and have been built in this country, to Lloyd's class, for inland waters and protected waters.

Q. Mr. Thompson it has been suggested that there is a difference in the standard of safety applicable with respect to vessels in Florida waters and in the North. What is your experience with respect to that?

A. May I have that question read?

(The question was read by the reporter.)

Mr. Matteson:

Strike out, "of safety".

A. Standard—I don't quite follow. A difference that I personally would—

Q. Well, limit it to the subject of ventilation in gasoline vessels.

A. I know of no difference, myself; I have never heard of any difference.

Q. From your experience can you tell us whether there is any difference in the conditions under which vessels of the two areas operate, that would bring about such a difference?

A. Well I survey vessels up north in the summer, and vessels down here in the winter, and I think the conditions are so equal that I can't distinguish between them, frankly. I make no difference whatsoever.

Q. Now there has been some evidence here with respect to zinc plates. I am not sure whether you have stated in your testimony before, the purpose for which zinc plates are used?

A. I don't think so; I think I referred to the item in the bill.

Q. What is the purpose for which zinc plates are used?

A. To absorb electrolysis.

Q. And what is the cause of electrolysis? What is electrolysis?

A. Electrolysis——the result of electrolysis is the pitting and eating away of ferrous or non-ferrous metals, inside and outside of the ship.

Q. What conditions produce electrolysis?

A. Well I haven't qualified as an electrician, because I am not an electrician. I speak from my experience as a shipbuilder and a ship surveyor. I believe,—I say in my opinion, electrolysis is caused by stray currents acting on one or more metals, especially in the presence of water, or it may be even damp air at times; but as far as my experience, in the presence of water, especially with salt water.

Q. What do you mean by, stray currents?

A. Well that is a term we use for—in shipbuilding you might almost say leakages, if you like, from the electrical system inside the ship.

Q. Now assuming that 175 pounds of zinc plates were used on a vessel of the size of the Seminole, averaging about five pounds apiece, indicating about 35 zinc plates; from your experience would that indicate anything to you with respect to the condition of the Seminole?

Mr. Underwood:

I object to that. How can he tell? That goes to the attitude of mind of the man who decided to install that many zinc plates.

The Court:

I think he is entitled to express his opinion. Overrule the objection.

A. May I have the question read?

(The question was read by the reporter.)

A. Well in view of the fact that on the average would be three to four times the number of plates used in a vessel of the size and type of the Seminole, it would indicate to me that undue corrosion, in the form of electrolysis, had been noted on the hull of a vessel, and in order to counteract it, this unusual number of plates had been fitted; and would briefly indicate that the electrical system in the ship was unusually faulty.

Mr. Underwood:

If your Honor please, I move to strike that out on the ground that it is pure speculation. This witness is drawing an inference from the fact, as he assumes, that there were 35 zinc plates put on this boat, that the electrical system was unduly faulty. Now it is the height of speculation, because this was done at a time when the steel plates of the ship were being almost completely renewed; and it is equally possible that it was done as a pure matter of precaution, and for no other reason, without any fault of the electrical system at all. In other words what he is doing is, assuming certain facts, and purporting to testify to the reasons why it was done. I don't think that advances us along the line of our inquiry in this case one step.

Mr. Matteson:

If your Honor please, in any case, this must be naturally built up on inference. No particular thing can ever be termed conclusive evidence of any definite conclusion. I think we are certainly entitled to have the facts and the conditions fully developed, so that whatever proper inferences can be drawn, can be drawn by the Court. It isn't a case before a jury, where the jury can be misled. The Court can draw proper conclusions and give proper weight

to the testimony. It seems to me it is perfectly proper for the answer to remain in the record.

The Court:

I think the answer should be regarded in this light; as we have no jury; that in his opinion the presence of that number of plates would indicate that there was something wrong, in his opinion, which called for the presence of that many plates. As to what was wrong, I think that is a matter for the Court to determine.

Mr. Matteson:

Absolutely.

The Court:

And not for him to determine and express an opinion. I don't regard his testimony as to something unusually faulty; I don't think that is properly in the record. I think it should be regarded as I have thus indicated. I will allow it to stand as it is, with those observations, and permit cross examination to proceed on that basis.

(By Mr. Matteson):

Q. You used the phrase, unduly faulty. Let's eliminate that, and tell us what conditions you think, in your opinion, these indicate?

Mr. Underwood:

I object to that as speculative, your Honor. This witness is being asked to express an opinion as to the condition of the electrical system on this boat, from the fact that some bills made a charge for 35 zinc plates. I have never heard a question put in any lawsuit that called for more speculation than that.

Mr. Matteson:

I am simply trying to meet the possible objection to his previous answer; eliminating the question of, unduly

faulty, and state specifically the conditions that he referred to; let someone else say whether they were faulty or not.

The Court:

Well I think you are entitled to ask him, Mr. Matteson, as an expert, in his opinion, with what knowledge he has, and what he has seen, together with his experience and so forth; true he is not attempting and hasn't qualified as an expert electrician; but from his experience he can state, within the realm of speculation, what unusual conditions would fit in with that. But as to a conclusion from him, I think that is wrong.

Mr. Matteson:

I think that is a very good suggestion.

Q. Put it this way, Mr. Thompson; what conditions, on a vessel, in your opinion, would fit in or coincide with the use of this number of zinc plates on a vessel the type of the Seminole?

Mr. Underwood:

If your Honor please I would like my objection noted to this entire line, once and for all, so I needn't interrupt any more, please.

The Court:

All right.

A. May I have the question?

(The question was read by the reporter.)

A. I don't wish to transgress; I wish to take great care in answering that.

(The question was re-read by the reporter.)

A. In my opinion the presence of an unusual amount of corrosion in the shell plating of the vessel. In shell plating, I include all parts under water.

Q. Now, Mr. Thompson, it has been suggested it would be a simple matter to make a hydrostatic test of the tanks of the Seminole, with the installation as I have described it to you. What would you say? What is your opinion as to that? What would be involved?

A. The question is, what would be involved in making a hydrostatic test on the Seminole? Well, a hydrostatic test in the first place involves the testing each tank separately. In the installation as it appeared to be on the Seminole, that is, the inaccessibility of the air pipes in the top of the tank, I don't think that the test could be made without removing whatever was above the tanks, so as the air pipe would be removed and the riser pipe fitted in its place. I think it would be a most expensive matter, tremendously expensive matter; a most difficult matter, to test the tanks as I believe they were installed on the Seminole.

Q. Now, Mr. Thompson, it has been suggested with respect to ventilation in the engine compartment of the Seminole that with the ventilation that the engineroom had, consisting of the large funnel ventilators, the roof of the engine compartment, the skylight, the hatch, the windows at the upper part of her sides; that this, assisted by what has been termed as the force of convection, meaning the tendency of gases to rise, due to differences in temperature,—would be adequate to adequately ventilate the bilge of the Seminole and the lower part of the engineroom, with respect to gasoline vapors which might accumulate there. What is your opinion with respect to that?

A. I couldn't agree with that. I don't think so.

Q. Why not?

A. Why not?

Q. Will you explain?

A. In that assumption you have got the hatches on the top deck open, have you,—or closed?

Q. Yes, I will grant they are open.

A. Well, I agree of course that there was convection; I think the force of convection there was negligible; that such force as it is would add to the danger rather than detract from it. I think it would, without removing the gases, have the tendency to disturb the gases and to bring them into contact in the lower part of the bilges and mix them with air within the explosive range. Of course I am not a chemist, I can only speak from my experience as a surveyor, and from the knowledge I have gained from cases similar to this, and in hearing the expert evidence of others, and being in consultation with them. And I have learned, correctly or incorrectly, that gasoline vapors have not the same specific gravity all through; that broadly speaking, part of the gas is more volatile than the other part. I have noticed the effect of that myself; and one effect is that, after an exhaustive inquiry in behalf of one client, the United Carbide Company, I failed to discover in this country any case of a gasoline explosion that was not followed by fire, even in spaces where there was no observable combustible before the fire. And I have had other cases which satisfied me that the action of gravity on gasoline vapors causes the gas to quite quickly fall into the lower parts of the vessel the gas is in. And part of that gasoline vapor, in vessels I have experienced, in a matter of thirty or more gasoline explosions, condensed in the lower part of the ship. That is applied equally to steel vessels and wood vessels, and probably accentuated by the presence of bilge water. We have had several explosions from cooking gas, one in particular, the one I referred to, the United Carbide Company explosion in Detroit, that I looked into for them; that was an explosion that was not followed by fire. But I think that the forces you are referring to,—convection, may and

probably do disturb the more or highly volatile section of the gasoline vapor, and bring it up into the space above, where the heavier gasoline vapor remains. So I am of the opinion that convection is not in any way at all—to any marked degree I mean, useful for the removal of heavy gases from the lower part of a vessel; that is the heavier proportion of gases. But I think convection does disturb the lighter gases, with the result that you can frequently smell gasoline in a chamber where possibly you have no other force present, but the force you refer to,—convection. But I do not consider that the force of convection need be taken into account whatsoever when one considers the matter of ventilating the lower part of a ship.—Is that what you wish?

Q. Yes. Why do you say it need not be taken into consideration in ventilating the lower portion of a ship?

A. I think that force is so negligible in that respect,—I admit you have a rise and a fall, I think you have it in most houses and buildings, as far as I know, those that I have seen, depend upon the heating of a room or building through the very force you mention; you have certain radiation from a radiator, you get the convection conduction perhaps. But I think the greatest effect you get from so-called radiators, is convected heat.

Q. Well in your opinion would such forces be adequate to remove gasoline vapors completely from the bilge or lower part of the engineroom, if such vapors had accumulated there?

A. Definitely no; and unfortunately no. It would be a very much simpler problem in shipbuilding if we could in any way count upon the service of convection to help us to ventilate the lower portion of a ship.

Q. And if those forces are active, but not adequate to remove the gasoline vapors, what is the result?

A. May I have that?

(The question was read by the reporter.)

Q. I refer to the forces of convection.

A. I think I have already answered that; do you wish me to repeat?

Q. I don't want you to repeat anything, no.

A. I thought I answered, I intended: I thought it would have a disturbing effect on the more highly volatile part of the gasoline vapor, and would mix that vapor with the air, and possibly bring it into the explosive range which may result, if you apply a spark or some other form of ignition, to that particular spot, may or would actually if it were in the explosive range, result in an explosion.

Q. I want to contrast two conditions here. Supposing you had an accumulation of gasoline vapors in the bottom of a compartment, such as the bilge or engineroom of the Seminole, which would be the most dangerous situation; when you had convection present, or convection not present?

A. Oh, I thought my answer would imply that immediately. I think actually it would be more dangerous with convection, because without convection I think your gases would lie dormant, or more or less in a static state, and due to specific gravity would continue so to lie. And in the condition you have no movement at all, I don't think those gases—I think those gases then would be in the non-explosive range.

(A brief informal recess was had.)

Q. Mr. Thompson it has been suggested that there would be some difficulty in designing a vessel such as the Seminole, for the purpose of removing gasoline fumes which might accumulate in the bilge or the lower part of the engineroom, because you would not know how much of such gasoline fumes you might have to remove. What is your opinion as to that?

A. Well, the problem of ventilation is not affected by the amount of fumes you have got. The only problem is

the cubic capacity of the space you are ventilating. That is the only problem of the naval architect. Larger spaces have to have larger means of ventilation. It is in direct ratio to the cubic capacity of the space, and you don't take into consideration anything else. It is only a question of the removal of the air in a known space, known cubic capacity. I have never heard that you have to take into consideration the quantity of gas vapor that may or may not come into that space.

Q. It has been suggested that there is no evidence, in the present condition of the Seminole, of there having been an explosion in the vessel, at the time of the fire. What is your observation with respect to that?

A. That is, of the wreck as I have observed her?

Q. Yes.

A. In my opinion there is quite good evidence of an explosion, in the wreck as I have seen it.

Q. Will you explain?

A. Well I am just merely stating an opinion; that my observation of the wreck of the Seminole is that there was quite a violent explosion, and that it was principally in the tank chamber. I am not basing that on the position of the tanks whatsoever; I don't know if they were in that position immediately after the explosion, or not. I was not at the fire, and I don't know. I am just basing it on other observations.

Q. Please tell us what your observations are.

A. Well as far as observations are known, I base it upon the condition of the bulkheads forming the tank compartment.

Q. Describe the condition you refer to.

A. The condition I refer to in the tank compartment, is that the bulkheads are splayed away from one another, opening out. One looking aft, that is the after bulkhead of the tank space, and the forward bulkhead splayed towards the bow of the vessel. In other words you have

a much wider space at the top of the tank compartment space, than you have at the bottom.

Q. Can you point it out to us in the photographs which are in evidence; in this photograph, Libelants' Exhibit 6—this is the original 6?

A. Point out what, Mr. Matteson?

Q. What you just described.

A. Well this photograph confirms what I observed, that the forward bulkhead of the tank compartment had been forced in a forward direction; that the after bulkhead had been forced in an after direction,—direction towards aft. That the space at the top of the tank compartment, of the bulkheads, was very much greater than the space at the bottom of the compartment. From that observation I concluded, rightly or wrongly, that at least in this compartment there had been a violent explosion.

Q. You refer to the compartment in which the tanks were?

A. Yes, in the tank compartment.

Q. Is there anything else that you wish to call our attention to?

A. Not from observation, I don't think, Mr. Matteson; not as to explosion.

Q. Was there anything else that you can refer to in the evidence in this case, with respect to the subject of explosion?

A. Well I have a fair knowledge of the evidence that has been given here, having listened to the most of it.

Q. Be sure to state what you are basing your opinion on.

A. I will. There is one particular piece of evidence given, was given, in relation to this photograph—I don't know what number this is.

Q. Which one is that?—That is 3-W.

A. Well, I am not speaking now as to the evidence given on the photograph. I am speaking as to the photo-

graph itself; observations made from the photograph. It appears to me that at that period, the period the photograph was taken, I am meaning—I don't know when it was taken,—that the tanks are definitely misplaced. In my opinion, from the evidence given as to the ingress of water in the early stages following the fire, it is my opinion that those tanks did not float, or were not displaced out of position by a flotation; that that displacement of the tank there, in my opinion, was due to an explosion on board the Seminole.

Q. Why do you say it was not due to flotation?

A. Well, I understood from the evidence that water got into those tanks, and the bottom opening is so low, that I think the ingress of water into the tank would be sufficiently rapid to prevent their flotation. That is based on evidence given in the Court as to the availability of water to get into the tank.

Q. Supposing water did not get into the tanks?

A. Well then I would have to work out the displacement of the tanks, and have to be given certain factors to give you an answer. One factor would be the weigh of the tank, which I haven't definitely worked out yet; and the height of the water that came up in the hull. Speaking from my own experience, I am confident myself, without first checking it by means of a calculation, that the water could not rise sufficiently in that hull, even if it came up to the deck,—the lower deck, to float those tanks, if they are anything like the weight I imagine they are,—or were. I think the space that they displaced in water would be less in weight than the weight of the tanks, so they could not float, if that condition is true. A vessel displaces exactly its own weight in water; that is the meaning of the word, displacement.

Q. Now it has been suggested here that there was no evidence of a severe fire in the engineroom; and reference is made to the fact that the supporting beams of

the engines, and some of the floor beams, were not destroyed, but were simply charred. What is your opinion in respect to that?

A. My opinion as to whether they were badly charred or not, you mean, first?

Q. Tell us your observation as to that.

A. Well I believe that the evidence of fire is to a less extent in the bottom part of the engineroom of the Seminole than the upper part. That may be due to the fact that the fire was of greater intensity in the upper part of the boat, or due to the fact that water came into that boat fairly early after the explosion and put out the fire, so that fire did not last as long as the combustibles did higher up in the engineroom. I think it would be explained that way readily. I understood from the evidence, Mr. Matteson, in another part, that there was a severe fire in the lower part, that affected fittings and joinings. I presume if it was sufficient to affect metal fittings and joinings, that it would be just as severe in effect on the bottom in the same vicinity.

Q. Mr. Thompson there has been some suggestion that it would be impracticable to solder joints in gas feed lines, because it was suggested it would have been necessary to use a blow torch in order to disconnect the lines. What is your opinion with respect to that?

A. Well, it is not an opinion I am expressing now; it is my experience, that that has been frequently done. We have disconnected pipe lines that were soldered, by means of cutting the solder away. Solder is put on at a much lower temperature than brazing; I will admit if it were brazed joints, that you can only break the connections by destroying it. I think a brazed joint is a permanent joint, and you have to sacrifice the pipe line if you attempt to disconnect parts that have been brazed. But that has not been my experience with soldered joints.

Q. How could the solder be cut away?

A. Well, I have seen it removed frequently with pocket knives, with pliers, little sharp tools which just quietly cut away the solder without any visible damage on the fittings or pipes.

Q. It is suggested—

A. May I just explain, Mr. Matteson, that I am just speaking from my own experience. I have never known of a case where it has been attempted to make a gas tight joint with solder. Solder, as I have seen it done on pipe fittings, has been used to prevent the backing of the nut; in other words, a locking device, more than anything else.

Q. Now Mr. Thompson it has been suggested that there would be an objection to welding rivets on a tank, because this destroy a feathered edge. What is your opinion with respect to that?

A. I disagree.

Q. In your opinion would it be practical to weld rivets without any objectionable effect in that respect?

A. Most decidedly; it is done regularly.

Q. There has also been a suggestion that welding of rivets is only done for the purpose of repairing damaged rivets?

A. That is the one time when rivets are not welded; and I can explain the reason, if you would like.

Q. Will you, please.

A. The head of a rivet is showing signs of damage from corrosion; I know from my own experience, if the head of the rivet is showing corrosion, so badly as they need repair by welding, the body of the rivet is also heavily rusted or corroded; and it would be absolutely futile to repair the head of a rivet which shows signs of such corrosion; it would have the body in the same corroded state; and good practice demands that in any rivet head showing signs of corrosion, the rivet should be renewed. It would be quite easy to find corroboration for that. That is the one time that welding is not used.

Q. Now it has been suggested here that some of the electric wiring of the Seminole had been put in a conduit pipe. What in your opinion is the effect of conduit pipe with respect to protection of electric wiring?

A. The effect of conduit pipe? It protects the wire from physical damage; that is the purpose of the pipe.

Q. Is there any other effect of conduit pipe?

A. Do you mean, hazards?

Q. Yes.

A. Well I haven't installed any in a new boat, conduit pipe system, for over thirty years. About thirty years ago we discarded conduit pipe and adopted lead covered wires. We did that because the experience we had had with pipes, running through conduit pipe, was subject to great hazard; that is the hazard of condensation,—water, inside the pipe, collecting at certain places, wherever you had a dip in the pipe; thereafter attacking the insulation of the wire, and finally causing short-circuiting.

Q. Mr. Thompson—

A. We have had many fires that have been occasioned through the installation of conduit pipes, for the reasons I have stated; and it was for that reason that we in England have discarded the use of conduit pipe for some thirty years. As is usual—I would just like to make this comment in that respect, because rules or regulations or standards, that have frequently been mentioned in this Court,—I just want to give you my opinion of those generally. It has been my experience that rules and regulations do not precede and cause good practice, but the reverse is true; that they follow good practice. That frequently a thing is done as a matter of good practice, very many years before that has been the subject of a rule, or any law. And we discarded conduit pipes very many years before they were prohibited in certain—at least in certain parts of a ship; one such spot being the engine-room, or a pump chamber, or any compartment where

highly volatile, or even fuel oil, which is not highly volatile, is carried or used.

Q. Mr. Thompson I think you called my attention to an error in the testimony that you gave when you were first on the stand, that you wanted to correct; what was that?

A. Well, the end of the March session I went through to try to find out actually what Mr. Underwood wanted of me, and I noted in glancing through the evidence that, through possibly even a mistake of my own,—I am not blaming the reporter, but there was an error in one respect, that I would like to remove.

Q. What is that?

A. Apparently I stated, or it was taken down that I stated, that I had a financial interest in C. & H. Crichton; that is one member of what I call the Crichton group. I think I had an interest in most other companies of the group, but I had no interest in C. & H. Crichton, other than that I was the consulting naval architect, and all questions that came up in connection with ship repairs. They were entirely ship repairers, they were not ship builders, that particular section of the Crichton interests.

Mr. Matteson:

That is all.

Cross Examination.

By Mr. Botts:

Q. Mr. Thompson, referring to your experience and knowledge in respect to matters concerning which you have testified, as fitting yourself for your work, this embraced the study of recognized authorities as well as your own individual experience; in other words, have you studied text books and other authorities as well as using your own experience?

A. Oh, decidedly; that has gone on continuously, because shipbuilding is a very changing profession, there is no static condition in shipbuilding, the thing changes every year, you have to keep yourself right up to date, otherwise in a few years you will probably be a back number—for many things, that is. You have to keep yourself right up to date.

Q. Then your testimony has embodied the knowledge from your own experience, and also the knowledge gained by studying authorities which embodied the experience of others; is that correct?

A. Yes, I have regularly had delivered to me the proceedings of the various institutes to which I belong.

Q. Now then have you applied this knowledge, observations, study and experience, to the construction of tanks in vessels such as the Seminole?

A. Well, I would like to make that quite clear; shipbuilders as a rule do not build tanks. We generally get those from specialists, because we find that a tank maker will make a tank much cheaper than we can in the shipyards. And generally, unless certain requirements are asked of us, and then the tank maker will probably have copies of those requirements,—we leave the design of the tanks to the tank maker, just specifying the requirements we have. So I have to modify it in that respect.

Q. All right; well has your study been applied to the, I will put it, the construction, the life, the preservation, and safety of tanks in vessels?

A. If you will just eliminate the first part of your question, I should say definitely yes. We have constructed tanks of course in shipyards, but normally the procedure is to order the tanks outside. And I think your first question was as to the construction: but as to the lifetime, the durability, of a tank, and its repair,—definitely yes.

Q. Now then I will ask you this; after a tank has been constructed, if it is riveted, that is when the caulking operation occurs, is it not?

A. Oh, decidedly.

Q. And does the caulking of a tank in any way affect the strength of the tank? I mean, its structural strength, —not its ability to hold a liquid, but its structural strength?

A. On the whole, no. It may have. Your question is put to me so I must answer it fully. Imperfect caulking may weaken a tank.

Q. Then the purpose of caulking is to add to its tightness, and not to its structural strength; is that correct?

A. Absolutely.

Q. Now let me ask you this; where two metals, such as the walls or bottom of a tank, where it is seamed, if a rust coat should occur at that point of jointure, might that rust coat create a temporary condition of tightness?

A. I am sorry, I haven't got your question quite right; may I just paraphrase it?

Q. Yes.

A. Do you wish to know whether the presence of rust between two metals—is that right?—In a seam?

Q. Yes.

A. Would have the effect of causing a temporary tightness?

Q. Umh hmh.

A. I say, yes; but I think I have already answered that question; because I have told you of a trick that they use in new tanks, to get at that very—

Q. But I want to elaborate on that very thing just a little. Does that very fact have any bearing upon the necessity of thoroughly cleaning a tank of rust before a test of its tightness should properly be made?

A. Yes; but then of course we can't clean out the rust that is in between the seams, you understand; but

for the rest of the rust, yes. Once a seam is put together, we have no means of getting at that condition, we have to leave that, that is gone. That is why it is so absolutely essential that we shall provide some means of securing that joint by means of welding or caulking. Because steel, as I have said, does not rust evenly, all over; and if you get that unevenness, opposite, in plates, you might get a cavity occurring there, which we can't get at, and then we have to depend on keeping that tank tight by seeing that the rivets are kept tight by caulking or welding, if they show—that is in a tank that hasn't been already caulked in its rivets; because we don't normally caulk or weld rivets for water tightness.

Q. Now then this caulking operation, it fills up the seam from the outside, and not from the inside, is that correct, normally?

A. Well if it is outside caulking; but the reverse is true if it is inside caulking.

Q. Well if a tank was completely built like the tanks of the Seminole, with no manhole in them, it would be impossible to caulk the inside seams, wouldn't it?

A. Oh, that is quite true; but your question was general, and I had to reply to it.

Q. Suppose in a tank built in the same general manner as those of the Seminole, the rivets themselves did not draw the metal together to an absolute condition of tightness so that a certain amount of liquid would seep in between the metal, at the lap, and the liquid was prevented from leaking out of the tank, either by caulking or soldering; would the presence of that little opening, allowing a degree of seepage between the plates, have any tendency to cause a rusting at that point?

A. Probably. Of course I haven't looked inside of a seam in the Seminole tank.

Q. I am not talking about the particular Seminole, but a tank that was constructed that way, where there was

enough aperture between two sides of the plates, to allow liquids to run in there, it would start a rust, wouldn't it?

A. Yes. Perhaps I could clarify that position for you in an answer. From my own experience in repair of tanks and steel structures, we have observed that the surface of the two plates at the lap, have been corroded—unduly corroded in places, due to the fact a leak had occurred there. We frequently get that, for instance, in steam boilers. We get the—sometimes if the leak is not discovered and dealt with, we find that, particularly in the days before welding came into general operation, we frequently had to discard the end plate of a boiler, for that very fact; that we could no longer even by picking it out and doing what we would with it, or by local repair, we could no longer guarantee that to be a tight joint. And that plate then, perhaps costing hundreds and hundreds of dollars, in some big boilers, would, due to the amount of work on it, stay bolts, and drilled holes for rivets,—would actually have to be discarded. And that little local damage has resulted sometimes in almost the destruction of a boiler, if it attacks the circumferential seam of the boiler and the seam of the end plate. So we get a major damage from a minor fault, in other words.—Is that what you want?

Q. I think so. That was caused by the seepage of the liquid in between the plates, and rusting followed?

A. Caused by depreciation of the thickness of the metal at the point of the leak.

Q. Now suppose there should be a rusting condition initiated at a point of the leakage, that way, will the rusting ever stop of its own force? I mean, if it starts to rust will it, when there has been a coating of rust, will that stop the continued rusting, or will it continue its inroad into the metal?

A. If it did what you say it would do, the very best thing we could do to the ship boilers would be never to

scale them, just leave the rust there. But in my experience, all surveyors I have ever come across, and for my own requirements, we demand the removal by scaling and wire brushing, of all the scale whatsoever, or by sand-blasting, before we apply the new paint.

Q. You heard it suggested by one witness, in evidence, that a coat of rust was a protective measure to steel metal,—or words to that effect, as I understood it:

A. Well in that case it would be better to leave all your iron windows in Miami, unpainted, leave the rust on, and just let them go with the rust, they are better protected; or, just paint on top of the rust. Ask any builder here, or repairer here, if it is good practice to paint on top of rusted window frames before removing the rust.

Q. But did you hear the suggestion here?

A. I heard it suggested, but I thoroughly disagree.

Q. Now then is the fact, such as you stated; that rust is a continuing process and once initiated continues its inroads until a dangerous condition has been established, —is that the reason why periodic inspections, cleaning and testing of fuel tanks, is necessary?

A. Yes, and the protection of the surfaces after those influences have been removed. My experience in connection with rust,—perhaps to save the record, is this: that mild steel plates, when they rust, are in a very dangerous condition; if you leave that rust on, the rate of corrosion does not go on at the initial rate, it increases,— and I think I have authorities for that. But that is my experience, without authorities; I am not speaking from authorities, just speaking from my own experience. It is vital in the life of a steel ship, or a tank, to look after the conditions of that plate, all through its history. Carelessness in the early stages will bring very rapid depreciation in the value and in the life of that ship.

Q. Well now take the case of the Fortuna, whose tanks are rotted or rusted clear through in a space of approxi-

mately fifteen years. Do you know of any condition with respect to the Fortuna, from the evidence you have heard of it, that would have prevented similar forces or corrosion applying to the tanks of the Seminole?

A. I don't know that I got that question right. Do you wish to say, that the conditions that have been given in evidence as to the Fortuna's tanks—?

Q. Yes, sir?

A. Those conditions of course would apply to the same conditions.

Q. Would the fact that the Fortuna's tanks were fitted with inspection manholes, if those manholes were used, would that have been an added element of safety in the Fortuna, that did not exist in the Seminole?

A. Provided that in addition, not only the manholes were used, but that people cleaned the tanks; you didn't put that condition.

Q. All right.

A. With that addition, yes, definitely.

Q. Then you know of no reason why, if a water film is a protection to metal, it would not have protected the tanks of the Fortuna? I say, you know of no such?

A. No, I don't know of any.

Mr. Botts:

I haven't a copy of the testimony, if the Court please, and I would like to ask as a matter of information whether or not, in Mr. Munroe's testimony with reference to applying his jumping test on this tank, he stated his weight, and the height that he jumped; if he didn't, I would like—

(By the Witness):

A. No, he didn't; I can remember that.

Mr. Botts:

I would like to ask him those questions, if there is no objection to interrupting at this time to do that.

Mr. Underwood:
What do you say?

Mr. Munroe:
One hundred seventy pounds.

Mr. Botts:
How high did you jump?

Mr. Munroe:
That I really can't say.

Mr. Botts:
Well, approximately; a foot?

Mr. Munroe:
Oh, a foot to eighteen inches, but it was a kick, not a jump.

Mr. Botts:
You just kicked, with one foot?

Mr. Munroe:
I kicked with both feet; I jumped and kicked when I came down; I kicked; so you got more force than just my weight of one hundred and seventy pounds.

Mr. Botts:
Well, we will see about that.

(By Mr. Botts):

Q. Now then Mr. Thompson, I wonder if you could compute the surface area approximately of one of these tanks of the Seminole?

A. Mr. Munroe's handbook will give that.

Q. Inside area.

A. Instead of computing it, the number of square inches, the area of a circle in square inches of approximately 42 inches, is that right?

Q. Well you have got a cylinder, you have got the walls and the end.

Mr. Underwood:
Go ahead.

Mr. Botts:
I am just waiting to get that.

Mr. Underwood:
Mr. Munroe is not on the stand, Mr. Thompson is on the stand.

The Witness:
If you will let me have the book, it will be more accurate from the book.

Mr. Underwood:
I have no objection to your using the book, but Mr. Munroe is not on the stand now.

Mr. Botts:
I thought he was looking it up for Mr. Thompson.

Mr. Underwood:
He may look it up for me, probably.

(By Mr. Botts):

Q. Use a cylinder 42 inches in diameter and seven feet high.

A. You can get it accurately from this book. Here is your circle, page 1725, here it is. 42 inches, isn't it?

Q. 42 inches, yes.

A. 42, area would be,—it gives it here as 1385 and some decimals; that will be good enough, 1385 square inches.

Q. 42 inches in diameter?

A. It gives you an area of 1385 square inches.

Q. 13855 isn't it?

A. No, not according to this book, no. 42, gives you an area of 1385 that is what it says here; the decimal place is beyond.

Mr. Underwood:

One thousand three hundred eighty-five.

Q. Is that the area of that circle?

A. Yes.

Q. All right, but that is just the area of one end; now I wanted two ends and the side, to get the entire area of the surface of the inside of that cylinder.

A. Well multiply that area—then I have to get the circumference now.

Q. All right.

Mr. Matteson:

That is on the same plate?

A. You want to add all these together?

Q. Yes.

A. I had better put this down, otherwise I can't carry these numbers in my mind. Each end would have an area of 1385, approximately, square inches, so I have 1385 twice. Now the circumference also given here; you don't want the decimal place, do you? It is 131.9, which I count 132.

Q. All right.

A. 132; and the length of the tank?

Q. Seven feet was the figure.

A. 84 inches. You want it all in square inches?

Q. Yes.

A. I add 2770 to 11088.

Q. And it gives you what, as the total?

A. Gives me a total of 13858 square inches.

Q. Well I am three inches off somewhere.

A. I didn't take decimal points. I think that is correct, though.

Q. All right; well I had 13855, so I guess you are pretty close. Now if a man weighing one hundred seventy pounds came down from a foot height on top of that tank, how many foot pounds of energy would thereby be applied to the top of that tank?

A. Multiply the weight by the distance traveled.

Q. And how much would that be? One hundred seventy foot pounds?

A. No; eighteen inches, I think he said.

Q. All right, make it eighteen inches; he said, a foot to eighteen inches. I said, if he jumped down a foot.

A. 175 foot pounds.

Q. And he weighed one hundred seventy, which would be one hundred and seventy foot pounds. Can you give us approximately how much added pressure—assuming these one hundred seventy foot pounds were distributed evenly over the inside of the tank, would be applied to each square inch of the surface of that tank?

A. I don't know what you wanted the area of the sides for, in that calculation.

Q. Because there is a pressure equally on the sides, top and bottom.

A. It is a little over, but that doesn't have anything to do with it, this calculation is not wanted. All you have to take into account is the area of the surface the pressure is applied to.

Q. Well that is the entire inside surface of the tank, isn't it?

A. The effect of that pressure is applied to it, but I assume that you just apply the same as you apply the

hydraulic ram, you put a thousand pounds on one side, you deliver a thousand pounds on the other.

Q. All right, if you distribute one hundred seventy foot pounds over 13858 square inches?

A. No, sir; I think you are going to land me out on the end of a limb, Mr. Botts.

Q. Then I just ask you to make the computation for me.

A. I just want to give the thing simply. In my opinion, you have 1385 square inches on the top; you apply a pressure of 175 pounds, that is distributed over the whole of the top area; and I don't know what that means.

Q. Well you are not getting at what I want. I can make the computation myself.

A. Yes, I think you are going to land me on the end of a limb, I don't want to be landed there Mr. Botts.

Q. You have the figures in there, and the computation is a simple matter; I have made it, and can make it in my argument. Now then with this concave bottom of the tank coming up in that manner, there would be something in the nature of a trussing effect in there, wouldn't there, that would make that much stronger and much more resistant to being pressed out of shape, than it would if it had been a perfectly flat surface, would it not?

A. Oh, yes.

Q. Now then assuming that a pressure of approximately 40 or 50 pounds per square inch were applied to the inside of a tank such as the tank of the Seminole, and it caused a permanent bulging downward of that plate, what deduction if any could you draw with reference to the condition of that plate?

A. Well why did you put the order of the pressure? Did you say any pressure that bulged it down?

Q. Yes.

A. The same thing applies irrespective of pressure. I think in that question we would really be clearer by

leaving the pressure out, and saying, any pressure that caused a deformation; otherwise you would be getting me to have to calculate what that bottom should have stood up to, in normal good condition; and I am not giving evidence on that at all. I have never attacked the strength of these ta s in their original condition; I consider that they were amply strong enough I have said that all through. Replying briefly to your question you now put, as to what is my opinion as to the condition of the bottom of that tank with the permanent deformation,—and may I add that the top one was not permanently deformed where extra pressure was applied?

Q. Yes.

A. That makes a very simple question, you see. My opinion definitely is that the bottom of that tank was very heavily corroded, and it lost a considerable proportion of its original strength, by reduction of the sectional area of the metal, in the way at least of the deformed area. Is that what you wanted Mr. Botts?

Q. Yes, I think so.

A. I think I had already given that answer before, Mr. Botts.

Q. Now will you explain for the record, what is the purpose of putting a union in a pipe? What is the purpose of putting a union in a pipe line where there are other threaded joints?

A. I thought the name was self-explanatory; joining up two pipes together I assume.

Q. But isn't it to join the two pipes together without having to disturb the threads on either side? In other words, if you have a straight nipple joint, and you tighten one thread, you would loosen the next one, wouldn't you?

A. I don't follow your question.

Q. Referring to Exhibit 2; if the union was tight, if you turned this nipple it would loosen the threads on one

side and tighten it on the other, wouldn't it? And if you have a continuous pipe line and want to bring it together without disturbing these threads, it can only be done by a union, isn't that true?

A. No, sir, you can put flanges.

Q. All right, union or flanges, then, is that true?

A. Well on the whole, yes; but—

Q. Now then this valve, Exhibit 11, do I understand that in your opinion, where the threads are loose, enough so as to allow a motion in the threads, that they would not be gas tight,—gasoline tight?

A. That is my opinion. I think I have expressed that.

Mr. Underwood:

May I have the question and answer read?

(The last question and answer were read by the reporter.)

Q. And it is further your opinion, as I understand it, that there would not be a gas tight joint between the end of the nipple and the end of valve 150?

Mr. Underwood:

Just a minute, I object to that, on the ground that it is leading.

A. I think I have already answered that question, in any case, Mr. Botts, I don't think I can add to what I have already said.

Mr. Botts:

The rule with reference to leading questions does not usually apply to experts, as I understand it.

The Court:

I have forgotten the rule adopted as to your examination, anyway; aren't you on both sides of this case?

Mr. Underwood:

No, he is on the other side of this case.

Mr. Botts:

I am on the other side from Mr. Underwood; I am adverse to Mr. Underwood. In some respects I am theoretically adverse to Mr. Matteson, also. But I think, in the examination of an expert, my understanding is that that is one place in which the rule as to leading questions is relaxed; normally you ask leading questions.

Mr. Underwood:

Mr. Matteson didn't lead him.

Mr. Botts:

Not ordinarily.

The Court:

Well, we have settled that now; you are examining him as your witness?

Mr. Botts:

Well, I am examining him, not as an unfriendly witness; I am adopting,—as far as my case is concerned, I will adopt his testimony as mine.

The Court:

I think this is purely unnecessary here; he has really stated that he has answered that question before; so we will just go on, I won't make a ruling on that.

The Witness:

I think that is the case, your Honor; I think I did answer that fully before.

The Court:

I think, in addition to that he said he had answered it before, and answered that question too.

Mr. Botts:

I didn't understand him to answer it this time.

(The last answer of the witness, with the question, was read by the reporter.)

The Court:

Strictly speaking, that is leading; I will sustain the objection.

Q. Considering the loose threads and the end of the valve and the end of the union, would in your opinion there be a gas tight joint there?

A. No, sir.

Q. And assuming that the valve 125 was closed, that being the one at the end; and valve 150 was open, with a head of gasoline coming down through there, and the two valves were in line, that is, so that the wheels were, —what is this in here?

A. That is part of the valve, stuffing box; it contains the stuffing box.

Q. The wheel and the stuffing boxes were in line, so that the wheels were in line; would in your judgment there be a gasoline leak at the point where the valve 150 comes against the end of the union?

A. In their present state, in my opinion there would be.

Q. Now this question of electrolysis in the hull of a steel vessel, has been mentioned. Will you please tell us from your experience, what is the cause of such electrolysis operating on the metal parts of a steel vessel?

A. Well it may be at least one of two causes; from stray currents acting on similar materials; it is more prevalent where you have a ferrous metal and a non-ferrous metal together, with stray currents. But I have seen of course electrolysis, or what I considered to be the effect of electrolysis, where apparently there should be no stray

currents. In my opinion it will act, with the salt water, and a ferrous and a non-ferrous metal, but not to the same extent. Electrolysis has grown with the growth of the use of electricity on ships; that we know as a definitely established fact. But in the early days when there was a lot less electrical current on a boat, electrolysis was nothing like so prevalent. I don't say it was not present, but the effect of it—we didn't observe it to anything like the extent we do in modern days.

Q. Now these plates that are used to eliminate or retard electrolysis, those are zinc plates?

A. Well I don't like the phrase, eliminating electrolysis by the use of zinc plates.

Q. Well neutralize it, then.

A. No, not even that. We in shipbuilding consider they absorb the effect of electrolysis; I think that is the—I am not a chemist and I am not an electrician; I am just stating what I believe the fact, that they absorb electrolysis, rather than eliminate it. We have what we call eliminators, but I think it is a misnomer.

Q. At any rate, the installation of these zinc plates will obviate the ill-effect on the essential parts of the vessel, of this electrolysis; is that true?

A. I prefer to use the word, minimize.

Q. Where there is not adequate protection to minimize, as far as possible, then, electrolysis. To what extent may or have you known this electrolysis to affect metal parts of a ship or its fittings?

A. To what extent; when you attach a zinc plate to a ship, it immediately becomes a metallic part of the ship.

Q. Just read the question.

(The last question was read by the reporter.)

A. You see now, you must eliminate first the—if you eliminate the zinc plates—you want me to eliminate the zinc plates?

Q. Where there has not been proper protection whatever it may be, give us illustrations of the ill-effect of the electrolysis which you have observed.

A. Oh, that without the provision of zinc plates, first? Oh, I have seen very severe pitting and corrosion on steel and other metals. I have seen the complete destruction of a heavy yellow metal seacock within three weeks of its installation, and with the effect that the seacock fractured and caused the sinking of a boat. In that particular case it was a yacht that comes down here every winter; she belongs to the consulting engineer of the City of New York; I can't just recall her name, but perhaps I can later. In that particular case where the seacock, from a W. C. discharge, was completely eaten through and fractured, I took every pains to find out, through an electrician,—called an electrician, because the tracing of stray currents is not part of my duty; I called an electrician, and we found immediately adjacent to that fitting, not an ordinary stray current, we found a heavy loss, electrical loss. We made good the wiring at that particular spot, and we have had no trouble with that particular fitting, since. I have surveyed her as recently as last winter; and this earlier occasion referred to, took place about three years ago.

Q. Have you ever observed any particular instance of the bad effect of electrolysis on, for instance, castiron portions of an engine or boiler or anything of that kind?

A. Yes, on castiron, inside and out; on castiron propellers, for instance; and I have noticed particularly the effect of electrolysis on the liners of the water boxes of Diesel engines, constantly noticing that; and at the present moment I have instructions from Underwriters as a whole, to survey all available—

Mr. Underwood:

I object to that.

Mr. Botts:

Tell us what you have observed?

A. I have observed not the complete wastage, but the turning of castiron liners from a solid iron mass into a spongy mass, with the result being that I could cut the final mass with a pocket knife.

Q. In other words, it had been originally castiron, and it became deteriorated so that you could cut it with a pocket knife?

A. Yes, and I had previously noticed that in some engineering in connection with electrolysis in boilers.

Q. Now then—

A. That is castiron, but the boilers would be wrought iron or steel, not castiron.

Q. Would it have the same effect on wrought iron or steel?

A. I don't know about that, the same effect; it would have a similar effect—somewhat similar, that is.

Q. Assuming Mr. Thompson that the electric system of a vessel such as the Seminole is in good shape and well insulated to prevent current leakage, what number of five-pound zinc plates would ordinarily good practice require, in order to minimize electrolysis as far as possible?

Mr. Underwood:

I object to that on the same grounds that I objected to similar testimony before.

Mr. Botts:

But this is an entirely different question, if the Court please. I am asking him, not how many were put there, I am asking how many would good practice require on a vessel of this kind.

The Court:

In order to answer that, Captain Thompson, wouldn't you have to know the amount of electrolysis that was present, that you were seeking to counteract?

Mr. Botts:

I am asking him to assume that the electric system was in good shape, and leakage minimized as far as possible.

The Witness:

I think, your Honor, that Mr. Botts has not put up the question in the form that I could give a reasonable answer, or an intelligent answer. That is no reflection on Mr. Botts, because he is not a shipbuilder. I don't wish to suggest the form of question, but if his question meant in effect, what would a boat of the size of the Seminole, steel construction, with the normal amount of electrical current on that boat, in normal good condition,—a hypothetical case, not the Seminole at all; what would be the number of plates normally used,—I think I could answer that question.

(By Mr. Botts):

Q. That was exactly the question I asked you Mr. Thompson; I didn't say, the Seminole, I said, a boat such as the Seminole. The question you propounded was exactly the question I asked.

A. I am sorry, I misinterpreted your question.

The Court:

Now read the question again.

(The question objected to was read by the reporter.)

Mr. Botts:

My interpretation is, it calls for exactly the same answer that was propounded in the question suggested by you, and that is what I want.

The Court:

I don't think the objection that is made there, Mr. Underwood, is applicable to this,—the objection heretofore

made. I understand your general objection, and the Court ruled that the witness could—assuming that there was something wrong, that he could give the theoretical situation that might arise, and let the Court draw a deduction as to what was wrong, if there was something wrong. The question assumed that there was something wrong, and then goes into the theory. This question, as I understand, is dissimilar to the one to which that former objection was made. I think this question calls for an answer, that the witness should respond. I shall overrule the objection.

(By Mr. Botts):

Q. All right, Mr. Thompson, can you answer?

A. I would like to make certain reservations in replying, your Honor. I can answer that, sir, but with certain reservations.

The Court:

You can explain, and make the reservations.

A. It should be noted I have not seen the underwater body of the Seminole.

Q. I am not speaking of the Seminole, I am speaking of a vessel of that size and condition.

A. Well she would have one on the rudder; two—one or two on each boss of the—I don't know what the construction is like; at least two adjacent—one or two adjacent to each propeller. One adjacent to each outboard end of the shaft. That from my experience has been a normal number—at least that size. Some people, where they have noted any action on the plate, would put them in the way of non-ferrous discharge valves, or inlet valves; and I have occasionally seen them—not frequently; I say on the whole, anywhere in number—the number I would expect on a boat of that size would be

approximately in the neighborhood of a dozen. That I think is as good a reply as I think I can make.

(At 12:37 o'clock P. M., hearing was recessed until two o'clock P. M. of the same day.)

Afternoon Session.

2:04 o'clock P. M., Monday, November 20, 1939.

Hearing was reconvened pursuant to the Noon recess; the witness JOHN A. THOMPSON thereupon resumed the witness stand and further testified as follows upon continued

Cross Examination.

By Mr. Botts:

Q. In order to pick up the contest, would you just read the last question and answer?

(The last question and answer were read by the reporter.)

Q. If the electric system of a vessel, steel hull vessel, is defective, so there are leaks of electric current, will you tell us whether or not that increases the electrolysis?

A. In my opinion, it does.

Q. In such a case, to minimize the electrolysis, more plates would be required,—more zinc plates?

A. More plates would be required, in my opinion, to absorb the effect of electrolysis.

Q. Now then taking—do you know whether it is possible, in a steel vessel equipped with electricity, whether it is possible to entirely eliminate the forces or effect of electrolysis?

A. I couldn't say. Entirely, would be rather a big statement for me to agree to.

Q. Now then in a vessel—

A. Because there is electrolysis, in my opinion, apart from loose electric currents; the action between different metals, you see. As I said before, I have observed electrolysis where there has been practically no electrical equipment. I have known of yachts that the owners have eliminated electric lighting and have been content with even candle lamps, and have told me that was for that purpose. I still think you get electrolysis on a steamer if she has no electric current.

Q. Now then in a vessel such as the Seminole, with her tanks located in a manner similar to what you observed on the Seminole, in your opinion would the forces of electrolysis operate upon the tanks to cause a deterioration in the metal of the tanks,—or gasoline tanks?

A. It may do it. It depends upon whether there are any stray currents in the vicinity.

Q. Now then you have referred in your testimony to thirty or more cases of explosions on vessels, in which you have been concerned, or which you know about.

A. Well I think that the number would vary. I said thirty; it would vary between thirty and fifty, during the last six years Mr. Botts. It wouldn't be more than fifty and I don't think it would be less than thirty; the exact number I couldn't state.

Q. Now then with reference to these vessels, did you make examinations for the purpose of attempting to determine the origin of the explosion,—the cause of it?

A. In some cases that was the sole purpose, because other surveyors had been on the job in regard to the repair, before I went on the job. In other cases I would probably be on for the repairs, and endeavoring to find the cause.

Q. You made the statement in effect that in your judgment the force of convection would be negligible in free-

ing the hold of a vessel from heavy gases, or from the heavier portions of gasoline fumes. Now will you explain that in a little more detail please?

A. Would you mind reading the question, Mr. Bryant?

(The question was read by the reporter.)

A. Well that was a general statement: I don't think any factors were put up, and I don't know that I can add very much to that, Mr. Botts. I can't think, for the moment, of anything I could add that would help you. Perhaps you could—

Q. To call your attention to what I am referring to, you stated, as near as I can recall, that the forces of convection might operate to cause the lighter fractions of the gasoline fumes to rise and become mixed with the air and become an explosive mixture. Now will you explain why, under normal circumstances, the forces of convection would not affect the heavier gases? Can you do that?

A. I don't think they are strong enough to remove heavier gases, like gasoline vapors, that are so much heavier than air.

Q. Would the normal ranges of temperatures expand the heavier gases sufficiently to cause them to rise and free themselves from the hold of a vessel?

A. No, because you have that expansion in the air at the same time.

Q. Now you have made the statement also that gases, referring to gasoline fumes, without the forces of convection, would remain in a non-explosive range. Will you please explain just exactly what you mean by that statement?

A. Well perhaps I might put it this way. This may answer your question, for the record. But in my opinion, the absence of ventilation, from exterior forces, would

make the vessel safer than where you had indifferent or inefficient ventilation. By indifferent or inefficient, I mean, not sufficient to remove the gases out of the space, but sufficient to disturb them and mix with the air, at different elevations.

Q. Well now then let me see if I understand you. If the heavy gasoline fumes are not disturbed by convection or some other source, they would remain heavy, unexplosive mixture in the bottom of the container, is that true?

A. Yes, that is my opinion, definitely.

Q. And that if they were just slightly mixed they might then become explosive and more dangerous than if there was no ventilation at all; is that the point you make?

A. They have that tendency, definitely. Perhaps I might put it this way, Mr. Botts; it may help to the point you are getting at. That a person passing along through that compartment would by interaction from his body, and the gases, definitely displace that non-explosive range and probably bring sufficient gas up into the air where you got that gas mixed with a sufficient quantity of air and you have an explosive range.

Mr. Botts:

That is all.

By Mr. Underwood:

Q. Mr. Thompson, you have read over your testimony given in March?

A. Yes and no, Mr. Underwood. I glanced through it to find out what,—I hurriedly glanced through it just to find out what you were asking me for; because you remember at the March adjournment—

Q. My question calls for a yes or no answer, Mr. Thompson.

A. I say, I glanced through it; I haven't read it through carefully.

Q. Have you got any more corrections to make, than the one you have already made?

A. None that I am aware of. There may be some there; if I had read it through carefully I probably would have observed it.

Q. Do you remember my asking you at that time, which are the greater; the stresses that are vertical with the axis of a cylindrical tank, standing on its bottom, or the stresses parallel with that axis, on the one hand, or the stresses at right angles to those?

A. Yes, I think I answered you, no, and I haven't considered the point since. I have been laid up all this year and I have put no time into this case, any more than I could help. I wasn't well at the time I was here, and I have done no work this year, except as I gave to this case. I have not prepared for this case in any shape or form.

Mr. Underwood:

I move to strike out eighty percent of that as not responsive, your Honor. I think this witness might be instructed just to answer my questions and not make speeches or voluntary statements. I didn't ask him about his health; whether he had prepared his evidence.

The Court:

Well that is rather indefinite, eighty percent. I think it is true it is not responsive; I don't know that it harms anything though. I will let it remain in the record. I think we do want to get through this afternoon.

A. Yes, sir; I will do all I can, to answer yes or not.

The Court:

—Just as much as possible, on cross examination.

Q. Do you recall that at that time you told me in your opinion, perpendicular stresses were greater than the stresses at right angles to those stresses?

A. I think so, at that time; I understood that question to be whether the stresses on the bottom of a tank would be greater than the side; and the only stress I took into account then was purely gravity I thought that was the point you wanted; I didn't know you were putting me through an intellectual test; I thought it was a practical test applied to these tanks.

Q. You didn't understand the question, is that right?

A. I did not at the time, sir, no; I thought I so stated.

Q. Well let me ask you the question now, then; which, in your opinion, is the greater, in a cylindrical tank, standing on its end; the stresses that are parallel with the axis, or the stresses at right angles to those stresses?

A. The stresses that that tank is subject to, I will say, the stresses that are parallel to, the vertical stresses; in other words, the stresses on that tank, talking about dead load.

Q. You want to qualify that answer in any way?

A. No, sir.

Q. Or, eliminate any particular kind of stress?

A. No.

Q. You say that the shearing stresses are greater in the perpendicular plane, than they are in those stresses at right angles; is that correct?

A. No, sir, I don't want to modify that, because in no case have I attacked the strength of this tank.

Q. Well let's have it understood, Mr. Thompson, I am not talking so much for the moment, about the Seminole's tanks, as I am trying to find out whether you know what you are talking about, when you talk about stresses and strength. This is a theoretical proposition, and I am trying to test your qualifications.

A. I understand.

Q. And not the Seminole tanks. So I will ask you the question again, which, in your opinion, is the greater, in cylindrical tanks, standing on end; the shearing stresses parallel with the axis, or those at right angles to those stresses?

Mr. Matteson:

If your Honor please, this is entirely theoretical, and I hope counsel and witness understand their own questions, because I am sure it doesn't mean a thing to me. It seems to me it takes in a very indefinite basis; I don't think it is anything that could possibly be helpful in this case.

Mr. Botts:

I haven't objected to the question, but I would like for counsel to explain what he means, so that maybe I could understand what the question refers to; and I am sure that I don't, now. I haven't the least conception of what he is driving at. If he could elucidate, so that I could understand it, I would appreciate it.

The Court:

I think as a theoretical proposition, the witness, Captain Thompson, seems to understand. When we have it definitely determined that he is speaking from theory, and not from anything connected with the Seminole tanks,—just purely theory; now then I think he is entitled to ask the question, if it is intelligible to the witness,—if the question is intelligible to the witness.

A. It is a question of mechanics, your Honor, that I am afraid that—I don't know if I might answer. I am afraid that I have lost a lot of what I learned as a boy, particularly those things that I haven't had occasion to use. I used to be good at cube-root, at school, and I could no more do a cube-root today than fly. There are simple fundamental things that we never use; in shipbuilding I

have had no occasion to use it, I don't retain it in my memory; but I have had a lot to retain, as a shipbuilder and engineer, and I don't retain those things, and I am not prepared,—I am prepared to admit, to save the record, I would rather say, I don't know, than to give evidence on things that I have but perhaps little knowledge, because I haven't had occasion to use them.

The Court:

Is the question intelligible to you?

A. Yes, sir I think the question is intelligible, and I prefer to say, I don't know, in the circumstances, sir; because my head is full of all sorts of questions put to me in this case, and I am not in a frame of mind now that I can go back to a question such as that. I have tried if possible, sir, to qualify as a practical shipbuilder and engineer; I have not been a specialist, I have been a general practitioner in my business. Specialists get nowhere in shipbuilding.

The Court:

I was under the impression—I don't know the answer to it, but I hold that the question, from a theoretical standpoint, is a competent one, provided it is intelligible to a person who is an expert.

A. I never use that in my business at all, sir.

(By Mr. Underwood):

Q. You mean you have never had occasion to consider which is the greater stress?

A. No, sir.

Q. In a cylindrical tank?

A. No, sir, never had occasion to use it.

Q. As I understand it you don't say merely that you do not know the formula; you say you don't know which is greater?

A. I just say that, whichever is greater, I have forgotten; I just prefer to say, I don't know; and I think that is a complete answer.

Q. Mr. Thompson I am not asking you for your preference, I am asking you now whether today, as you sit in that chair, you know the answer to the question. Will you please tell me either yes or no?

A. I think I will say, no, sir; I prefer, to say, no, in the circumstances.

Q. Would you accept as correct the formula for determining that question, as it appears in this Lancaster Iron Works catalog that you produced the other day?

A. Yes, sir, I would be perfectly prepared to accept it.

Q. Well then take your pad, and let's do a little calculating here. I will put this before you so you can see it, and I will ask you again, so it can go in the record; assume that S equals the tensile stress in pounds per square inch; P equals the working pressure in pounds per square inch; that D equals the diameter of the tank in inches, and that T equals the thickness of the tank shell in inches.

A. Yes.

Q. And with those letters meaning those things, assume that the stress at the girth seams equals PD/4T; and assume that P, the working pressure, is four pounds, that D equals 42 inches; and that T equals three-sixteenths of an inch; will you tell me what the stress is?

A. The stress seems to be double what it is on the girth seam, according to that formula.

Q. Then we don't need to make the calculation. The stress on the longitudinal seam—that is the vertical seam, would be twice the stress—

A. Double; that formula is one I haven't had occasion to use, sir; but I see immediately, and I estimate, according to that formula, the stress on the longitudinal seams is twice what it is on the girder. I have never had occasion to use it.

Q. I call your attention to a photograph on page 26 of this catalog, and I ask you to note that the longitudinal seam is quadruple riveted, whereas the horizantal—the girth seam is only double riveted. Do you notice that?

A. May I have that question read, please?

(The last question was read by the reporter.)

Mr. Botts:

Just a minute; I object to the question, unless the book is in evidence.

Mr. Underwood:

All right, I will withdraw the question.

A. I would like to answer that, your Honor, if I may.

Mr. Matteson:

Just a minute.

Mr. Underwood:

Question is withdrawn.

A. That is not the fact.

Q. Mr. Thompson do you know the explosive properties of kerosene?

A. I don't think I do. I am not concerned with that, as a ship builder.

Q. Ships carry kerosene don't they?

A. Oh undoubtedly; not in large quantities, generally. Kerosene, to the best of my knowledge, is delivered in five-gallon drums; it is not, as far as my knowledge goes, carried in bulk.

Q. Yachts carry sometimes considerable kerosene for cooking purposes don't they?

A. Not very frequently. The larger yachts generally have a fuel, a similar fuel to what they use in their main tanks, so they won't have two lots of fuel to carry.

Q. Isn't it a fact Mr. Thompson that many yachts carry kerosene for cooking?

A. No; a small percentage, whether that is many or not I don't know, I don't know the number of yachts afloat but from my experience, a very small percentage of the boats I have surveyed, carry kerosene for fuel—that is for cooking.

Q. And you don't know the explosive qualities of kerosene?

A. Well, the flash point?

Q. No, the explosive range.

A. No, sir, I don't.

Q. Have you seen any pans under the tanks of the Seminole since you have last testified Mr. Thompson?

A. I have seen no drain pans, sir. I have seen what is purported to be a pan, and I admit it is a form of steel structure, flat on the bottom, with sides coming up at right angles to the bottom, on all four sides. I do not consider them drain pans.

Q. Well you have seen some pans haven't you?

A. I have seen some pans, as I have said.

Q. Which you have not seen before; is that right?

A. I gave you the credit of not having them there before, Mr. Underwood.

Q. Will you please answer my question Mr. Thompson? Had you seen them when you testified in March?

A. No, sir, because you restricted my survey, as I said then.

Q. Well you went over that in March, perhaps we had better go over it again.

A. I gave you the credit of thinking those were foundation plates. I think if you will turn to my testimony, I saw certain plates, and at the quick glance I had, I thought they were foundation plates; because I didn't think it was conceivable that anyone would close up the last available chance of looking at tanks; that was the bottom. You

could observe them from underneath, so I thought that in fairness to you—

Q. It was in fairness to me that you said you saw no pans of any kind, is that correct?

A. In fairness to you, I considered them to be foundation plates. I think that was my evidence.

Q. You did see them, did you?

A. I saw what I considered to be foundation plates.

Q. And you saw them there before you testified in March, did you?

A. I saw those plates there, yes, sir, in that limited survey.

Q. And they were longer than the total length of space occupied by the four tanks, were they not?

A. I don't recall that now, sir; that is, from the observation made in March, I mean—no, observation made in December, I think. I think I was there during—not March, December of last year.

Q. Well did you look up from underneath and see the bottoms of the tanks?

A. No, sir.

Q. Did you look up from underneath and see the heads of the rivets on the inside of the bottom seam?

A. No, sir, I felt them. When I looked down I got a little glance, and I put my hand there; the feel of what type of bottoms those thanks had; that's all I wanted to know. I don't think, in my observation of that, I spent more than probably a quarter to half a minute.

Q. You now admit that you could not see the heads of the rivets on the inside of the bottom seams of the tanks, could you?

A. Oh I am not prepared to admit that; no, I wouldn't say that.

Q. Do you say that you could see them?

A. My recollection of last December, I don't think I could say definitely one way or the other now, at this time. I know that I felt them, and I felt the bottom of the tank.

Q. What is your recollection now; did you see those heads of those rivets, or not?

A. I couldn't say Mr. Underwood; I don't know.

Q. You don't remember that?

A. I don't remember that, today.

Q. Mr. Thompson I want to read you two questions and answers that were put to you before; well, strike that out. Is it your testimony, Mr. Thompson, that if one were to spill a quart of gasoline in the Seminole, liquid gasoline, that that would turn into a vapor and become an explosive mixture?

A. I don't quite follow that; you mean, necessarily, without any force to turn it into,—and at what stage?

Q. Is it your testimony that if you spill a quart of gasoline, liquid gasoline, in the Seminole, that it could turn into an explosive vapor?

A. Oh yes, yes.

Q. And that results in part, from the process of evaporation of the liquid gasoline, does it?

A. That results as a part?

Q. In part.

A. Oh yes, yes.

Q. And what are the explosive limits of gasoline vapor?

A. I think it varies according to the class of gasoline. I think, taking the average gasoline, the bottom range would be one and a half percent; and I have heard in Court that the top range was six percent. But what I have been informed before I came in this case, it was slightly higher than six percent, but I will admit it isn't my knowledge, I have never actually tested it; I have accepted that at ranges somewhere between one and a half and six percent.

Q. In your opinion, would a quart of gasoline in time evaporate completely?

A. Where? In what circumstances?

Q. In the Seminole.

A. In what circumstances?

Q. Any circumstances.

A. That question is susceptible to more than one answer. Will you please give me the circumstances; I will tell you what is my opinion.

Q. Well, assume that the Seminole is in storage at a place where she is under a shed, and a quart of gasoline is spilled on her floor.

A. What floor?

Q. Engineroom floor. Wooden floorboards.

A. Yes.

Q. Assume that some of it dribbles down through to the bilge in liquid form; that assuming that her two cowl ventilators are open, and that nothing else is. In your opinion, would that liquid gasoline evaporate so that, in liquid form, it would be gone?

A. No, sir. From my experience, it would not all evaporate; that some of it would condense on the bottom of the ship, and that a large proportion of the remainder would be in the form of gasoline vapor lying approximately in the lower portions of the engineroom.

Q. And what would prevent the entire quantity of liquid gasoline from evaporating?

A. Condensation in the bottom of the ship, sir.

Q. Do you know at what temperature gasoline gives off an explosive vapor?

A. Well I believe that the flash point is approximately 32, carried out in a closed cup test. But I am not a chemist I am not prepared to give evidence as a chemist in any way whatsoever.

Q. Well if the flash point is 32, and the temperature in the engineroom and in the bilge never gets down to 32, what is going to prevent the balance of that liquid gasoline from evaporating?

A. I don't know sir; I can only speak of what I have found in vessels, from practical experience, and not from the point of view of a chemist.

Q. You mean you have found liquid gasoline in the bilge of a vessel?

A. Unquestionably, on innumerable occasions.

Q. On how many occasions?

A. Innumerable; I couldn't give you the number.

Q. You mean a very large number?

A. Yes, sir.

Q. You have said some liquid gasoline—

A. The large number, I would like to make clear, I mean at least a dozen cases; which I consider quite a large number.

Q. Innumerable equals a dozen, now on your cross examination is that it?

A. No, sir it depends upon the circumstances.

Q. Now you have said that gasoline vapor will eventually reach a point where it becomes an explosive mixture; is that correct?

A. It depends upon the condition, again. I didn't say that, I said it remains as a heavy, non-explosive mixture; at least I understood that that was my reply, I believe.

Q. You said that there are circumstances under which gasoline vapor will become an explosive mixture, is that right?

A. Undoubtedly.

Q. And what are those circumstances?

A. The circumstances are these,—which has been answered more than once; that when that gasoline vapor mixes with air, in the proportions of one and a half percent, to six.

Q. What brings that about?

A. Where?

Q. In any boat.

A. I think partly the forces referred to by Mr. Gibbs, and partly ventilation of some order; that is, exterior forces in the ship of moving air coming in.

Q. Is it fair to say, Mr. Thompson, that when gasoline first begins to evaporte, the first vapor that is formed is one hundred percent mixture of gasoline vapor?

A. I couldn't say Mr. Underwood; that is getting very near the evidence that a chemist could give you; but I want to be quite fair to you, I don't think I could answer that.

Q. Well let's put it this way; does the first vapor that comes off of a liquid gasoline, constitute a richer mixture than an explosive vapor, and gradually dilute to an explosive vapor?

A. Possibly; I couldn't say.

Q. You don't know that?

A. No, sir; I have never made any test, so it is no use to speak on what I don't know.

Q. At any rate you say that this vapor does come to the point eventually, under some circumstances, where it does constitute an explosive mixture?

A. Yes, sir.

Q. Which is ninety-four percent air and six percent gasoline, to ninety-eight and a half percent air and one and a half percent gasoline, approximately; is that right?

A. No, those are the wrong proportions entirely.

Q. Well?

A. You have given gasoline; I am talking about gasoline vapor. You mentioned gasoline, I mentioned gasoline vapor.

Q. Take my question then as intending gasoline vapor.

A. That is what I answered your questions—

Q. Is that correct?

A. Yes, sir, with gasoline vapor.

Q. What is it that stops that process of dilution at the point within the explosive range?

A. What is it stops? I am afraid I don't follow that question at all Mr. Underwood. Maybe I am dense on it.

Q. Well do you say that once gasoline vapor has reached the explosive range, it will stay there?

A. Most decidedly not.

Q. Will it continue to dissipate perhaps under some circumstances?

A. Some circumstances, it will get more diluted, in other circumstances it will just drop down again by specific gravity.

Q. And that depends on a great many things does it Mr. Thompson?

A. Yes, sir; and where we don't know all the factors, I don't think one can give an opinion.

Q. Well temperature is one, I take it?

A. Yes temperature is one.

Q. And the amount of outside ventilation is another?

A. The efficacy of the out side ventilation is undoubtedly another.

Q. Well now let's assume that a quart of gasoline is spilled in the Seminole:

A. A quart?

Q. Yes a quart; and that as a result of the ventilation there it turns into a vapor and becomes an explosive mixture; that is, it reaches a point where it is within the explosive range?

A. Yes.

Q. And that none of the conditions under which that came about are changed; that is, that the temperature remains as it was during that change, and that the ventilation remains as it was during that change. Is there anything to stop the continuance of this process of dilution within the explosive range, or will the vapor continue to dilute until it is gone?

A. Lots of conditions there; I don't know. Is this a hypothetical question Mr. Underwood?

Q. You may have it read, if you like.

A. Will you please; I can't follow it.

(The complete question was read by the reporter.)

A. The question isn't clear, Mr. Underwood. May I shorten it by paraphrase,—what I think I am asked to answer?

Q. You make your answer in your own way.

A. You are asking me whether through various things, that I don't know what the particulars are, but through certain forces gasoline rises until it becomes—keeps rising until it becomes an explosive range.

Q. No I haven't asked you whether it rose or fell. I am just asking you to assume that a quart of gasoline, spilled in the engineroom of the Seminole, due to conditions of temperature and ventilation, is reduced to the point where the vapor from it is an explosive vapor; then I asked you, what is there to stop the process of dilution of vapor at that point.

A. Is that what I have referred to as the lighter gas, one lighter and the other heavier?—Or the whole thing? I think a continuation of that process, you may dissipate certain of the lighter gasoline mixture, provided that the means used were suitable and efficient. I don't think I can go any farther than that.

Q. Of course it won't explode until it reaches the proportions that you have given, approximately, will it?

A. Well I would rather put it,—until it reaches the explosive range. The things I have given may not be quite correct.

Q. And that explosive range is approximately correct is it?

A. I understand so sir.

Q. So assuming now that we will say six and a half percent is the maximum vapor in an explosive condition,—and I rely on the book for that—no, I am wrong about that, I think it is six percent; the upper limit of the explosive range. It won't explode until there is a mixture of ninety-four percent air and six percent gasoline; is that right?

A. I think that is the upper range. It will explode on the lower range; surely that is not right.

Q. We start with the point where the gasoline vapor as it comes off the gasoline is more than an explosive mixture; it is too rich to explode?

A. No, that is more than—something more than six percent of gasoline vapor, yes.

Q. And by a process which I have chosen to use the word, dilution, to represent that, gasoline vapor reaches the point where it is six percent and the balance is air, ninety-four percent; it has to reach at least that point before it explodes, is that correct?

A. Has to reach that point? You get at least ninety-four percent of air with the mixture, I believe that is the accepted thing.

Q. Then the explosive range goes on while the air increases in volume to ninety-eight and a half percent, and the gasoline vapor diminishes to the point where it is one and a half percent, and you are still within the explosive range, is that right?

A. I believe those are the facts, yes.

Q. And beyond that, if the air is more than ninety-eight and a half percent, and the gasoline vapor is less than one and a half percent, it won't explode; is that right?

A. I believe that is correct; yes, sir.

Q. When you start the process of dilution, you get down to the explosive range; we will assume that no spark occurs to set it off; what is there to stop that process of dissipation at any point within the explosive range?

A. I am afraid that you would have to have a chemist to answer that. I don't think I could answer that satisfactorily, because I am not speaking as a chemist.

Q. Well as a man who claims to have had considerable experience with boats, do you know the answer to that?

A. The answer is this; that I know that you do not,—you cannot get rid of gasoline vapor in the lower part of the bilge unless you assist it by ventilation. That is as far I think as I could go with gasoline vapor.

Q. Well assuming that the forces that have brought this vapor to an explosive mixture, whatever those forces may be, continue to operate; is it not a fact that the gasoline will continue to dilute beyond the explosive range,—that

is, to a point where there is less than one and a half percent vapor, and ultimately vanish?

A. It is possible yes; that is the lighter gasoline fumes.

Q. Well now Mr. Thompson you say that if you spill a quart of gasoline you get two kinds of fumes?

A. That is what I understand, from people who are experts in that.

Q. You don't know that of your own knowledge?

A. Oh I am not a chemist at all; no.

Q. That is to say, you don't know whether you get more than one kind of gasoline vapor or not, from a particular quart of gasoline?

A. No, I have accepted that particular evidence from experts—the expert, principally, of the United Carbide Corporation, in connection with inquiry made on their behalf.

Mr. Underwood:

I move to strike out what he has accepted it from. I didn't ask him where he got it or what he accepted it from.

The Court:

That would be independent testimony. I grant that.

Q. Now Mr. Thompson there is of course such a thing as a gasoline vapor in its pure state, which is nothing but gasoline vapor, isn't there?

A. Probably; I am not a chemist, I don't know.

Q. Not mixed with air at all?

A. I should imagine so,—certain conditions.

Q. And that won't explode?

A. Pure gasoline vapor I understand will not explode.

Q. Well now let's call that a one hundred percent mixture gasoline vapor. Mixture is not a proper word, but loosely let's call it one hundred percent mixture or concentration of gasoline vapor. Now you have a given volume of that:

A. Yes.

Q. Now I want you to assume that through natural ventilation, that diminishes to the point where there is ninety-five percent vapor and five percent air.

Mr. Botts:

I object until he describes what he means by natural ventilation.

Q. I don't mind doing that; anything to force any natural wind, any wind that moves as God makes it move, not induced by blowers or forced draft. You understand what I mean by natural ventilation Mr. Thompson?

A. Oh unquestionably; I suppose you mean, by the movement of the ordinary air pressures.

Q. Now will you read the question to Mr. Thompson, please?

(The question was read by the reporter.)

Q. That won't explode?

A. I understand it will not explode until it comes to six percent gasoline vapor and ninety-four percent air.

Q. Do you know how to use the slide rule Mr. Thompson?

A. I never use one.

Q. Well I am going to ask you to use this with me, but not as a slide rule.

A. All right. I have a two-foot rule if you like.

Q. Here is a slide rule, the one at the left-hand end;

A. Yes.

Q. And also with one at the right-hand end:

A. Yes.

Q. There is a hairline on this little gadget that goes up and down. Now I put it up at the right-hand end, and I will ask you to assume that that represents one hundred percent mixture of gasoline vapor. Now there are forces which can in vessels bring that down to a six percent mix-

ture of gasoline vapor; and we will let that point now represent six percent; is that right?—So that it will explode?

A. This is all hypothetical, is it?

Q. Yes. Now that can still explode if you bring it on down to the point where it is one and a half percent?

A. Yes, so I understand.

Q. Now having run the range of dissolution from one hundred percent vapor down to one and a half percent vapor, isn't it a fact that if the forces that did that, continue to operate, it will dissipate that vapor entirely, so that you will have this little gadget down in zero?

A. And you can do away with all gas in the tanks. We only have to open up a thing to natural ventilation and be free. If you want to put a hypothetical case, I want it to have a proper basis.

Q. Is your answer to my question, yes or no?

A. I say, in the case of gasoline you cannot get rid of the whole of gasoline by any form of force,—just by air; you have gasoline there, you can't get rid of it; otherwise our tanks would only have to go in and we would get free of tanks with air pressure; we have to use something to get rid of gasoline vapor.

Q. I assume from your many words in reply to my question, they are intended to include no, somewhere in the answer, is that right?

A. I don't think you put the case up fairly Mr. Underwood. I am prepared to give you as far as possible, and as far as I am able to, a fair answer to every question you put to me.

Q. You are fair, and I am not?

A. No, sir; if I have made that allegation at any time—

Q. I am going to count in this record the number of times you have admitted being fair. Was your answer to my question, a negative answer? Do you say that the forces which would dilute that gasoline from one hundred

percent vapor down to the explosive range, would stop at that point?

A. I understand—

Q. Do you or don't you, please?

A. I don't think that is the truth.

Q. All right, what is it that stops it at that point?

A. I am not a chemist and I couldn't tell you.

Q. Is that the best answer you can give?

A. It is a true answer. I can't say any more.

Mr. Underwood:

May I have your 1936 Kent?

Q. Mr. Thompson I call your attention to a statement in the 1936 edition of Kent, which was referred to two or three days ago, on page 4-61, where it says, "Air required for combustion of one pound of gasoline, 15.3 pounds". Is that your understanding?

A. I don't know, sir; I have never studied it.

Q. Would you accept that as correct?

A. I wouldn't say it was incorrect, for I don't know.

Q. Well I call your attention to a statement on the following page: "Mixtures of air and gasoline vapor containing from 1.5 to 2.5 percent of gasoline are explosive". Would you accept that as correct?

A. Yes, but I think the range continues beyond that. This does not state that is the full range; you might quite a number of figures afterwards and still be right.

Q. I read all the words in that paragraph except a reference to a technical paper, 115 U. S. Bureau of Mines, didn't I?

A. That is right, sir, but it does not say that is the range. It just says that from 1.5 to 2.5 gasoline is explosive, but it does not say that percentages beyond that are not explosive. That is all the comment I have on that.

Q. Well do you draw any distinction between the amount of air necessary for combustion, and the percentages of an explosive mixture?

A. No I don't draw any distinction; I just am pointing out that that does not give the range.

Q. Now you said something during the course of your testimony on direct examination, Mr. Thompson, about when you subjected a boiler to a hydrostatic test, it changes its shape minutely. Do I understand that correctly?

A. Yes, sir that is correct, because we make tests, we actually make tests of T-frames, and we measure the length of the boiler, the length of the furnace from the back-tube plate to the front. Those are made on all boilers of any size, regularly.

Q. Boilers of any shape?

A. Scotch boilers.

Q. Do you refer to boilers of cylindrical shape?

A. Yes, that is a Scotch boiler.

Q. The record may not show that.

A. Oh, I am sorry; cylindrical boilers of Scotch type. They are ordinary common boilers used in most steamers afloat.

Q. I don't think this involves the realm of chemistry, but of physics. What shape does any object of that sort tend to assume under internal pressure? Is it the spherical shape?

A. Oh, perhaps you have got me wrong, Mr. Underwood. What we measure is what I have already stated; the lengthening of the boiler under a hydrostatic test; and that boiler, in length, does creep, and we note the length of creep, and the length of furnace, and the length from the combustion chamber back plate to the front of the boiler. Those are the things we note; the increase in length due to pressure; no other conditions. We don't worry about the diameter or anything else.

Q. Does your knowledge of physics enable you to answer this question: what shape does any object tend to assume under pressure from within? Is it spherical?

A. Well you see, that Scotch boiler has stiffening members in.

Q. Let's do away with the stiffening members now; just take any object, take a shoebox and fill it with water; what shape does it tend to assume, do you know?

A. A shoebox?

Q. Any object.

A. It depends upon the strength. I don't know, I haven't tested it; I am only speaking from my experience, from no other point of view.

Q. Then do I understand that you don't know what shape an object tends to assume,—a closed object, under internal pressure?

A. Well I do; lead pipe is apt to go oval in shape, or spread out; an irregular thing. It depends entirely upon the article, and I have never made such tests, because I haven't had cause to make the test; I haven't studied it.

Mr. Botts:

I don't want to make the statement I do, if it is going to interfere, but are you trying to establish a fact, or are you testing this witness? Now I am willing, so far as I am concerned, to concede certain facts in that connection. If you are trying to establish facts, I don't want to interrupt you.

Mr. Underwood:

What are you willing to concede?

Mr. Botts:

I am willing to concede that any object of that kind, from internal pressure, tends to become a sphere. I know absolutely that that is the fact, that the tendency is that way, but various points of stress may prevent that from being accomplished, in many instances.

Mr. Underwood:

Well what I was trying to do,—now I will answer your question; we will both establish the fact and test the witness; but we will pass that by.

Q. As to the strength of the Seminoles' gasoline tanks, I think you have said that the heads are the strongest part; is that correct?

A. The head?

Q. I so understood your testimony; am I mistaken, or correct?

A. From my experience, I should think the top head is the strongest part, not the bottom one.

Q. Why is that?

A. Well I don't know that I can give you a reason, but I think you will find that the bottom head would only be passed for the same thickness, for about 60 percent or so of the top. I haven't much knowledge on that point, but I believe the top head is the stronger, there.

Q. Well isn't it a fact Mr. Thompson that the top head is the stronger so far as internal pressures are concerned, because it has already assumed a concave, spherical shape, viewing the tank from the inside?

A. It has assumed a strength, as far as my knowledge goes,—I have never given it any thought; just the fact it has been pressed into that shape under high pressure; I think that is right.

Q. In other words you can't change the shape of the top of that tank by internal pressure, it will crack first, won't it?

A. Quite possibly; I don't know. I couldn't say as to that. Probably would crack.

Q. Well now looking at both ends of this tank, and assuming a pressure from the inside, the bottom can change its shape without cracking, but the top is already a segement of a sphere can't; isn't that so?

A. That is possible, yes. I understood it had changed its shape.

Q. Now of course when you increase the pressure on a cylindrical object filled with a liquid, fully filled with a liquid—

A. Yes.

Q. And you increase that pressure at one point, it increases the pressure throughout, does it not?

Mr. Botts:

May I have that question read? I just can't understand it.

(The question was read by the reporter.)

A. Oh yes; yes.

Q. And I take it you will agree with me that the pressure is the same throughout, won't you?

A. I should say, for all practical purposes, yes.

Q. Well isn't that the theory of your hydraulic ram, for example?

A. Oh yes; you transmit through the water, the pressure per square inch is identical throughout, I should say. I have never carried out that test of course, but I believe I would accept that as a correct statement.

Q. If the tank is going to give away at all then, it will give away at the weakest point, won't it?

A. I think that is right, yes; just like a chain, which breaks at the weakest link.

Q. Now Mr. Munroe, you said something on direct examination—I am sorry, Mr. Thompson; you said something on direct examination about these tanks would show evidence of corrosion after ten years. I am not quite clear from my notes just what you did say.

A. Will you please read what I did say?

Q. It hasn't been written up yet.

A. Oh, in this Court; I am sorry, I thought you were referring back to last March. I am sorry.

Q. What do you think the effect of corrosion on the bottoms of the Seminoles' tanks would cause them to look like after ten years?

A. May I have that question?

(The question was read by the reporter.)

A. That is the exterior?

Q. Interior.

A. I really couldn't say. It may vary in some parts; the corrosion may be heavier than others.

Q. Well you have been asked to assume that these tanks were installed in 1922, I believe.

A. Yes, that is my understanding.

Q. Well assume for the present purposes that nothing was done to them from that time on until 1935 when this fire occurred.

A. Yes.

Q. Do I understand from your testimony correctly that you would expect in that interval of 13 years, to find such serious evidence of rust and corrosion as would account for the buckling of the bottom when Mr. Munroe jumped on the top of it?

A. No I haven't said that.

Q. Didn't you testify that—

A. I would expect to find quite a lot of corrosion there, and I imagine that the plate is weakened considerably since the tanks were built, undoubtedly.

Q. Well assuming that the material of which those tanks were made was originally galvanized, so that the tank was galvanized on the inside; would you expect to find the galvanizing all gone?

A. No, I don't know that I would; no, not necessarily.

Q. Would you expect to find the galvanizing gone at all?

A. Oh yes I would expect to find some of the galvanizing gone; and perforated,—holes, spotty. Not an impervious coating, by any means.

Q. You would expect to find some of the galvanizing eaten away?

A. Possibly, I don't know. I haven't been inside of those tanks.

Q. What would you expect to find in the V-shaped angle around the bottoms of the tank?

A. I don't know. You mean, just in the space, or in the seam?

Q. In the V-shaped space in the bottom; what effect of the passage of the years, would you expect to see?

A. I would expect to see evidence of corrosion, undoubtedly. It may not be continuous, it may as I have already stated, that some parts of the steel corroded more rapidly than others. I think I have said that.

Q. Would you expect to find it pitted?

A. Quite possibly, in places, yes; definitely pitted in places. I don't say it is pitted in every particular spot, but there may be places where it is pitted, undoubtedly; other places where it may not be.

Q. Would you expect to find that the three-sixteenths inch material had been reduced in size considerably?

A. I don't know as it was three-sixteenths originally; I don't know what the original thickness was, definitely. I assumed it was three-sixteenths, but I didn't measure it.

Q. Well let's assume it was three-sixteenths; would you expect to find it reduced by rusting and corrosion or similiar actions, to anything substantially less than that?

A. Possibly not.

Q. I think you said—

A. Pardon me; is that the plating at the seam, or just in the—

Q. Any place inside the tank, particularly with reference to this V. I want you to tell me what you would expect to find.

A. The dangerous corrosion I would look for would be the corrosion in the seams between the plates.

Q. Would you expect—

A. And particularly, my own impression, particularly higher up than the bottom, naturally. I would expect to get more evidence of unevenness of the surfaces in the vertical seam,—if you want me to say what I think, of the tanks. I have never stated that I thought these tanks had a big leak. What I feared all through the tanks of that description, is seepage. I think I stated that in March.

Q. Now you said on direct examination within the last two or three days that these tanks would be subject to heavy, continuous corrosion; is that your opinion?

A. Pardon?

Q. Will you read the question please?

(The question was read by the reporter.)

A. Yes, that is what the outside of the tanks appeared to me to be in—the parts I can see; my opinion, from the upkeep of a good tank, I would consider, my own personal opinion, the exterior of those tanks to be what I said, seriously affected by corrosion. I think they are pitted, from my observation, the outside.

Q. I think you said you would expect to find nothing left but rust, after thirty or forty years; is that correct?

A. Well it depends upon the amount of care the tanks had, Mr. Underwood. You mean, tanks corroded like that?

Q. Assuming the Seminoles' tanks were installed in 1922, nothing was done to them up to the time the fire, and you know under what conditions they have been since the fire.

A. But that is not thirty-five or forty years. I thought you gave me a period of thirty-five or forty years.

Q. That is right. Now under those circumstances, after thirty to forty years, which is my note of your testimony

on direct examination, you said you would expect to find nothing left but rust. Is that correct?

A. What I would call rust, as far as a steel plate is concerned. A plate that is not suitable for any purpose; if you cut it off the scrap,—it would be no earthly use but for scrap.

Q. Something you could put your fingers through?

A. Not necessarily. It hasn't got to go to that extent, in the opinion of a shipbuilder, to become a useless plate. There are plates in boat yards now, taken off boats, that they use them for runways; they put them on the ground, plates taken off, badly corroded, no longer fit for the purpose for which they are intended; but they are good enough for other purposes still; that is, for forming runways for carriages.

Q. Then when you said, after thirty or forty years you would expect to find nothing but rust, is that something of an exaggeration?

A. That is a shipbuilders point of view. We would call that nothing but rust; it has no earthly use, so pitted and corroded we couldn't possibly use it. I didn't mean it would go to pieces in any way.

Q. Do you think it would be rusted through under those conditions, in thirty-five or forty years?

A. Absolutely, from my experience I know that. I am not speaking about theories now, or opinions; I am speaking of what I have seen.

Q. So that between 1922 and 1939 it ought to be somewhere near halfway in that process?

A. No, sir, that is contrary to my testimony, absolutely. I said that the rusting increased not in an equal rate; that is what I intended to say, and I believe is in the testimony, I believe the rusting over the second half of that period would be must more rapid than in the first period. I believe that is in accordance with what I said.

Q. Assuming the Seminoles' tanks were installed in 1922, and never removed from this tank compartment un-

til 1935; since the time of the fire they have been in the condition which you have observed; would you expect to find the galvanizing intact, or partially destroyed, or wholly gone in the inside?

A. Well I don't know that I would expect it to be fully gone. I would expect to find what I would call, in a very porous condition, particularly in the way of the seams. And I am not questioning that the tanks were not strong enough just prior to the fire, structurally; I haven't suggested that at any time. My criticism was as to the tightness of the tank, not the durability. I believe that they would not be gas tight.

Q. Well Mr. Thompson I am not quite clear about one other aspect of your testimony. Have you expressed the opinion that Mr. Munroe's jumping or kicking on the top of the Number Four tank, did not cause the bulge in the bottom?

A. Did not?

Q. Umh hmh.

A. I didn't say anything about whether it caused it or not. I didn't think he would be able to press the top in; that is my real opinion. I couldn't conceive that jumping on top of a tank of that character would push the top in, at all; that is what I meant to imply, and I thought I had. I couldn't conceive a man jumping on top of a tank like that and compressing a pressed steel plate of that character, in. A matter of opinion; I personally don't believe the plate would move at all.

Q. Well then is it your conclusion from that that Mr. Munroe's jumping on the top did not cause the bulge in the bottom?

A. I don't know what caused the bulge, I was not there; I was not asked to come to see it.

Q. Is it your opinion that Mr. Munroe's jumping on the top did not cause it?

A. I don't know.

Q. You don't know whether it did or not?

A. My reply is, I don't know.

Q. Have you an opinion on that subject?

A. No I haven't an opinion; if I had, I would express it quite freely to you.

Q. You saw the bulge didn't you?

A. I saw the bulge yes.

Q. And did you testify in response to Mr. Botts today that that bulge could only have been caused because the inside of the bottom was very considerably eaten away by rust and corrosion?

A. Is that—would you mind reading my answer, because I don't think it was quite like that.

The Court:

Do you want your last answer read?

A. He is referring to an answer I made this morning, Judge, and I can't just recall the terms of it. If I said in substance what you said now, I think I may have to correct it.

Q. Well assuming that that is what you said, if you want to correct it, go ahead and tell me what your thought is on that point.

A. What is the question you put?

(The question referred to was read by the reporter: "And did you testify in response to Mr. Botts today that that bulge could only have been caused because the inside of the bottom was very considerably eaten away by rust and corrosion?")

A. No I am quite sure I didn't say that.

Q. Well how do you account for this bulge in the bottom?

A. I haven't attempted to; I don't know. If I had been present at the test I would have been able to say, but I don't know; I don't know anything about those tests, only

what I have heard. I was present here when they were carried out, apparently.

Q. I am not asking so much about the test, as about the bottom.

A. It may have been there before the test took place, as far as I know. I don't know when it occurred, I couldn't say; I have had no opportunity of observing that. I only saw that bulge after the tank was taken out.

Q. According to my notes, Mr. Botts asked you to assume, first, forty to fifty pounds per square inch was applied inside the tank, and caused the permanent downward bulge; and then you suggested that you would rather not assume forty to fifty pounds, but assume some indeterminate pressure, and that that caused the downward bulge. According to my notes, you accounted for that possibility by saying that the bottom must have been very heavily corroded, to such an extent that it had lost very much of its original strength. Is that your testimony?

A. That may be; that may be some of what I said, I don't know the exact words. But I don't think that I stated that that bulge was caused by Mr. Munroe's test, because I don't know it was three—not there, before. Actually I have no knowledge it wasn't there before, so I certainly wish to correct if I said it was caused by Mr. Munroe. I don't say so.

Mr. Underwood:

Now will you read my question to the witness, please; I am sure you will find nothing whatever in that question about Mr. Munroe's tests.

(The preceding question was read by the reporter.)

A. Well even that question isn't quite clear to me, Mr. Underwood. I remember Mr. Botts asking the question, and I asked him to alter it; I remember that part. I don't

know that I went on record that I said that that was as a definite proof that there was heavy corrosion there. If I said that, I didn't mean it at the time. I don't know what corrosion was there; so many indeterminable things. These hypothetical questions are put up to me, they have all sorts of factors; and I am supposed to give definite answers on all sorts of indefinite things. I can't give answers of that description. I don't know if that bulge was there after the test or before.

Q. You understand that I have been asking you whether the bulge was there before the test?

A. No you haven't asked me whether it was there before the test. I don't know; I have previously answered I don't know when the bulge came.

Q. Then you don't need to answer that question any more, Mr. Thompson, because I haven't asked it, and I am not going to ask it. Now I will ask you that same question, as nearly as I can: assume that pressure enough,—some pressure, from the inside of this tank, was applied and had the effect of bulging the bottom:

A. Yes.

Q. Is it your opinion that in order to account for that bulge, it is necessary to assume that the tank was badly corroded?

A. No, not necessarily, by any means.

Q. Including in that assumption, of course, the fact that the balance of the tank has not been materially distorted.

A. Not necessarily; true, no. Not necessarily. I just gave you a reply to what I thought was merely a hypothetical question.

Q. Well what else can you conceive of that might have caused that bulge in the bottom?

A. What else, other than what?

Q. Other than Mr. Munroe's test.

A. I don't know. I couldn't say. I couldn't say what caused it at all.

Q. Can you think of anything else?

A. No, I can't think of anything else. I don't know what caused it, and I can think of nothing else. It may have been there originally, for all I know; it may have been there all the time. I couldn't tell you that.

Q. Have you any opinion as to whether Mr. Munroe's test could have caused it?

A. No I haven't any opinion at all in that respect. I was not present at the test, as I said.

Q. Well it is not your purpose to have us understand that Mr. Munroe's test did not cause it, is that right?

A. Not one way or the other.

Q. Now you saw the remains of some solder in the little niche around the bottom of that tank did you not?

A. Oh yes.

Q. I am not clear, Mr. Thompson, whether there is any implication in your testimony that that solder was placed there after the tanks was removed from the compartment. Do you make that suggestion?

A. Why I most certainly do not, Mr. Underwood. How dare you make such a suggestion to me? No, I don't think my evidence at any time can be interpreted in any such way. I hold Mr. Munroe in high regard; do you think I would make any such suggestion against him personally? Certainly I would not.

Q. Well of course you understand Mr. Thompson that I didn't include in my question the application of any solder by any particular individual.

A. I haven't made any suggestion at all that anybody put any there.

Q. Then you do not suggest that the solder was applied in the year 1939?

A. No, sir; and I am sorry that you thought my evidence at any point made such a suggestion.

Q. As to the occurrence of an explosion in the tank compartment Mr. Thompson you have given us, as I recall your testimony, two things on which you base your

testimony that in your opinion there was an explosion there. One is the apparent distortion of the bulkheads. You said, I think, that they were splayed open at the top?

A. Yes.

Q. And the other is that Exhibit 3-W, taken—a photograph taken on the afternoon of the fire, shows the tanks displaced?

A. That is right.

Q. Is that correct?

A. That is correct.

Q. Now you have mentioned nothing else. Have you anything else in mind that indicates an explosion in the tank compartment?

A. No I don't recall anything in addition to that.

Q. Now, do you say that the fact that the bulkheads are further apart at the top than they are at the bottom, if that be the fact, could only be caused by an explosion?

A. I have stated in my opinion that that was due to a heavy explosion.

Q. Will you listen to my question, please, and answer it this time.—Mr. Bryant will you read it to him?

(The preceding question was read by the reporter.)

A. In the circumstances I have heard, I should say, yes, that is my opinion.

Q. Of course, steel expands in heat, doesn't it?

A. Oh yes.

Q. You don't deny that there were some supports of some kind across the top of that tank compartment space before the fire, do you?

A. I don't know. All I found, I found a series of holes with some wood screws in; I don't know what they were there for.

Q. Of course there must have been something there to hold the deck?

A. I assume there was a wood piece to secure,—to screw the deck down with. That is what I assume.

Q. As a matter of fact Mr. Thompson you understand that this vessel did have a deck above that level?

A. That is what I understand.

Q. She had a pilot house and some public social quarters up there?

A. That is my understanding, yes.

Q. There must have been something there to hold them up musn't there?

A. Oh yes; a deck.

Q. Must have been members across from the upper ends of what we have spoken of as the ribs, mustn't there?

A. At the sides? There were ribs on the sides.

Q. Do you remember seeing the top of any ribs in the photograph, and on the boat itself?

A. Do you mean, the top of the frames?

Q. Yes.

A. Yes, and I have seen them on the wreck too.

Q. There must have been something across from those points to hold up the deck?

A. Yes I should think so; wood pieces across there.

Q. Of course that would exist throughout the length of the ship, at various distances, would it not?

A. Yes,

Q. What distances, we don't know, do we?

A. No, at least I don't.

Q. And is it your opinion then that the explosion is the —an explosion is the only possible way to account for what you say is the greater distance between the tops of those socalled compartment bulkheads, and the bottoms?

A. No, sir, because they may have been altered. I am speaking of what I found in the wreck, the appearance I found in the wreck. They have the appearance to me as though they had been forced there by an explosion. People might have come and pulled them apart. I don't know

what has happened between the explosion, but I gave the facts on which I based my opinion.

Q. You didn't find any marked distortion in any particular place, did you, in the bulkheads,—tank compartment bulkheads?

A. I don't recall that.

Q. You didn't find any plates ruptured or broken open did you?

A. I don't recall any; I wouldn't expect to.

Q. You have seen explosions that caused the rupture of plates haven't you?

A. I haven't seen explosions; I have seen the results of explosions.

Q. You have seen plates that have been ruptured by explosions, haven't you,—steel plates?

A. I don't think I have, on steel vessels; at least I don't recall having seen them on any steel vessels.

Q. You looked this morning at Exhibit 3-W, and as I understand it, said that you saw on there that one or more, —I am not sure which you said, tanks, showed displacement,—showed they had been displaced. How many, and which ones?

A. I am just judging the photograph now; just purely what I am looking at. The one that seems to have the most—the two I would rather say, that seem to be displaced more than the other two, would be the two center ones, from the appearance of the photograph.

Q. And you judge that by what?

A. By the appearance that they give to me in the photograph.

Q. Well what is there about the photograph that gives that appearance to you?

A. Well to me, I am judging it, is the distance from the edge of—that is Number Two, is it not?

Q. They were numbered from port to starboard. You are looking from aft, forward.

A. That is the Number Two tank; the top of that, and the top of the next tank, Number Three, seem to show more of the top than the other two.

Q. Is there anything else about the photograph that indicates displacement?

A. I haven't noticed it up to the present; there may be. That is what I base my opinion on, at any rate, Mr. Underwood.

Q. Well now if the top of the after tank compartment bulkhead had spread or moved closer to the stern of the vessel, it would give the appearance of showing a greater proportion of the tops of Number Two and Three tanks, even if the tanks had not been displaced, wouldn't it? Isn't that necessarily so?

A. No I judge that those, in comparison with Number One and Four—I say that in comparison, not with the bulkhead, but in comparison with two other tanks in the same photograph, it seems to me that these tanks lean aft to a greater degree than Number One and Four. That is what I said Mr. Underwood; I am just looking at the photograph; you can judge as well as I can. My evidence—

Q. Well now if there was an explosion in there sufficient to cause those bulkheads to be moved in the way you have indicated, what effect would you expect to see on the wooden timbers that held the tanks together?

A. I couldn't say sir, I didn't notice anything on them at the wreck that I could—my observations in that respect are confined to what I have already given in evidence.

Q. Well now certainly there wasn't an explosion in the tank compartment of sufficient force to break the pipes which you see remaining in Exhibit 5-J, was there?

A. I can't make this photograph out; which way is this looking? What is this?

Q. You are looking practically straight down in the area between Number One tank and the port side of the vessel. This white stuff down here at the bottom of the

photograph is Number One tank. This steel material on the upper section of the photograph is the port side of the vessel; at the left is the after tank compartment bulkhead, and at the right is the forward tank compartment bulkhead.

A. Is this looking down from the top into that space?

Q. Yes.

A. And what is the question?

Q. If there was an explosion there, it wasn't severe enough to break these remaining pipes, four of them, was there?

A. To break them? They are not attached to anything.

Q. It wasn't severe enough to break those remaining sections of pipe, was it?

A. They don't seem to be broken, but they are not attached to anything though; they are just pipes stuck up, as far as I can see, that is a different thing; they are not attached to anything. If they had been broken away from something, I couldn't say. They are just free pipes. If I had looked at those pipes that wouldn't have given me any information in regard to an explosion.

Q. Now I just want to be clear about one thing. Do you say that when rivets are burned out of a steel plate by an oxy-acetylene torch, that one must necessarily discard the plate?

A. In a gasoline tank?

Q. Yes.

A. Well I certainly would. I don't know what the practice of other people is, but I am quite certain, my experience in good practice would call for that. I am not responsible for bad practice on the part of anyone else. That I say definitely, without equivocation whatsoever.

Q. I think you have testified that there was some kind of a beam at the top of the after tank compartment bulkhead; is that right?

A. I don't know; I didn't see any beam there at all. I saw holes—

Q. Didn't you express an opinion that there was a beam there?

A. I expressed an opinion that there was probably a wooden beam across there.

Q. Now how far to starboard did that beam go? Can you express an opinion about that?

A. No I couldn't say sir.

Q. Did it stop at the starboard end of the tank compartment, or did it go over to the starboard frames of the ship?

A. I couldn't say sir; I have said that; I gave that evidence, in view of what I found down in the bulkhead,—a series of holes, with certain wood screws left; and it was on what I discovered there, I gave that testimony, and on nothing else.

Q. And you are unable to express an opinion as to whether that beam, assuming there was one there, went over to the starboard side of the vessel?

A. No, sir, I couldn't give any opinion as to that. I didn't look for it, Mr. Underwood. I am not trying to escape; that is the absolute fact.

Q. Do you say that in stopping up leaks in boilers you sometimes use oatmeal or some such substance?

A. I didn't say, in boilers; I referred to tanks.

Q. Well, to tanks then.

A. No, pardon me; I didn't say I used that. Please correct that.

Q. One sometimes uses.

A. I think the evidence was—

Q. That is a trick you have to watch out for?

A. I think that was tricks.

Q. Well now, directing your mind to that for the moment, does the oatmeal seep out of the little holes and lodge there?

A. I don't know whether oatmeal seeps out. With a sufficient quantity of oatmeal it has been found—I have never actually checked or seen that condition myself; I say, that

is a trick we have to look for, because I have known it to occur. But I have never actually come across a case in my own work where that was done; because if that was found, those men would never come in my yard again. I say, that is in an answer about a commonly known trick.

Q. A somewhat similar practice is used by some engineers in stopping up condenser leaks at sea, is it not?

A. Well sir I have never heard of that; no, sir.

Q. Well how does the oatmeal, when you put it in the tank, happen to get to the place where the leak is?

A. I don't know sir; I haven't had experience. I mentioned that merely as a trick; that is one reason we go to a tank to see that no extraneous matter has been put in the tank that may possibly get into the seam and stop leaks.

Q. Isn't it a fact that the flow of the water through the hole, is what carries the oatmeal to the hole and stop it up?

A. I am talking about tanks in ships, that are caulked on the outside.

Q. You mean this situation about oatmeal does not apply to tanks that aren't caulked?

A. Pardon?

Q. This testimony of your's about oatmeal does not apply to tanks that are not caulked on the outside?

A. I have never had a test on a tank that was not caulked or welded, so I don't know anything about such test.

Q. You never had such tanks?

A. No. I have seen plenty of water tanks not caulked, but I am talking about my experience in tests. I thought you said, confine my answer to my experience in hydrostatic tests.

Q. What I want to do is to take up this oatmeal, and get you to tell me if you know just how the oatmeal gets to the point of the leak and stops it.

A. Why I have never had the experience of the trick, I have already said, and all I can give you now is just an expression of opinion as to what might happen if such

a trick were adopted. I believe the theory is, those who adopt that trick, the workmen in charge of that tank, is that the oatmeal will, in the process of the filling of the tank, some of it will get in it on the inner edge, which is not caulked, and has a crevice all the way down, and it fills up that crevice and swells. I believe that is the theory; whether it is a successful theory or not I don't know, because I have never seen it happen. I have only spoken of things I have heard of happening in other people's yards.

Q. Well isn't it necessarily a fact, Mr. Thompson, that there must be a flow of water through the crack in order to take the rivet there?

A. Yes.

Mr. Botts:

You mean, take oatmeal there?

Q. Take the oatmeal there?

A. Yes, and that is the place they want the oatmeal to go into, where the flow is; that I understand is the object of it. There is no good flowing to where there was no hole there,—didn't do any good.

Q. Now have you testified,—is it your testimony that the rivets around the bottom seams of these tanks were improperly spaced?

A. I don't think I said they were improperly spaced.

Q. I am just asking you whether they were or not, in your opinion, properly spaced.

A. I don't think I have said that in my testimony. I referred to the rivets, that they were not in alignment.

Q. Let's just talk about the spacing. Do you say that they are improperly spaced?

A. That they are not equally spaced; some centers are farther apart than others. I didn't say as to the distances between the centers of the rivets.

Q. Let's talk about that; all I want to find out is whether or not you have any opinion adverse to the spacing of those rivets, so far as the approximate distances between centers?

A. Center to center, no.

Q. You have no criticism on that?

A. No, I never made any.

Q. Will you just bear with me, Mr. Thompson, while I get one or two things straightened up. Now is it your testimony that the vent pipe from these tanks should be not less than half the size of the filler pipe?

A. I think I stated that in my opinion a satisfactory air pipe would not be less than half the area of the filler. I think that was the opinion I expressed.

Q. Well is it your opinion that the Seminole's vent pipe was too small, compared to the size of the filler pipe?

A. In my opinion it was some, yes.

Q. And is your reason for that, that it would build up a vapor pressure while the tank was being filled?

A. I didn't say it would build up, I said it would be apt to create a pressure on the seam, on the joints of the air pipe. I believe that is the purpose of having the air pipe somewhere in proportion to the diameter of the fill pipe.

Q. Is it your opinion that that comparative size of those two pipes was such that a vapor pressure would result, which might affect adversely the seams of the vent?

A. What, make them not tight? No, I say you would build up a slight pressure there; a rapid fill through a big pipe, into a big tank.

Q. A four-inch filler pipe, is that right, was it, on the Seminole?

A. Oh I don't think so.

Q. Two-inch pipe I should say; is that right?

A. I think that is right.

Q. And a half-inch vent, is that right?

A. I believe that is approximately correct.

Q. Well that is four times,—the vent pipe is one-fourth the size of the fill pipe, is that right?

A. You mean—that is right. What do you want now?

Q. Do you say that that would cause any adverse effect on the joints of the vent pipe, in filling?

A. I certainly did not. On the joints?

Q. What is your testimony?

A. I said that in the event of the joints of the air pipe not being tight, building up a pressure of any order in those tanks would be apt to cause leaks through those imperfect joints. I didn't say it would affect the joints,—have pressure enough to affect the joints.

Q. The only effect of that would be, if the joints of the vent pipe are already somewhat loose?

A. Oh yes, certainly; most decidedly. I am sorry if you thought my answer was any other way.

Q. Mr. Thompson I will ask you to assume that in the filling pipe of the Seminole there was a valve at each tank, so that the tanks could be filled individually or in any combination.

A. Yes, sir.

Q. Of course you know, or I will ask you to assume, that the feed line system contained a valve at each tank?

A. That's the outlet from the tanks, do you mean?

Q. That is right, so that gasoline could be fed from any tank individually.

A. Or any combination?

Q. Or any combination.

A. Right, sir.

Q. With that understanding, would it be impractical—impracticable, to apply a hydrostatic test to each tank individually?

A. Without disconnecting—not if you disconnect the air pipe and attach your pipe to the top of that. I think I said that.

Q. In other words, you can put a riser on the fill pipe?

A. Pardon?

Q. You can put a riser on the filler pipe on deck, is that right?

A. What are you going to do with the outlet from the air pipe?

Q. Just answer my question.

A. No, sir, it would be absolutely useless unless you have got a hole in the top of the tank, then what is the use of putting a hydrostatic test, when you have the top of the tank open?

Q. Can you put a riser on the fill pipe on deck?

A. You can put a riser on the fill pipe affecting all the tanks. You are talking about separate tanks, now. You cannot hydrostatically test those tanks individually, without removing that air pipe, because there are no valves on the air pipes. If you want to test one tank you have to test the lot and also that type of air pipe. You can't test those tanks separately without removing the air pipes; that is definite.

Mr. Underwood:

May I suggest a short recess, your Honor? I think I am getting toward the end here.

(Brief informal recess was had.)

(By Mr. Underwood):

Q. Mr. Thompson you could subject all four tanks to a hydrostatic test together, couldn't you?

A. No, sir.

Q. At the same time?

A. No, sir.

Q. Not at the same time?

A. Not at the same time—not without you remove that air pipe. If you remove that air pipe and applied—you would have to—

Q. Couldn't you just plug the vent pipe?

A. Plug the vent pipe? Then you would be subjecting the air pipes to the hydrostatic test, as well, and you wouldn't know where a leak occurred if it did occur.

Q. You could plug the vent pipe couldn't you?

A. Yes.

Q. And then put a riser in the fill pipe, couldn't you?

A. Oh yes, certainly.

Q. And then you could ascertain whether or not there was a leak between the beginning of the fill pipe and the point where the vent pipe passed through the skin of the ship; isn't that right?

A. You would not have a satisfactory hydrostatic test.

Q. Couldn't you tell that?

A. You can tell, but it wouldn't be worth two hoots.

Q. If the water in the riser didn't fall, you would know that your tanks didn't leak, isn't that a fact?

A. Provided you cleaned the tanks out first; the first essential of any hydrostatic test.

Q. Then you don't base the inability to conduct a hydrostatic test, so much on the inability to get at each individual tank, but on the fact that you couldn't get inside to clean the tanks first?

A. On both.

Q. Now you said something about solder on side seams of Number Four tank; how far up did that solder go, as you saw it?

A. Oh speaking from memory, anywhere between—I would give the limit about eighteen inches to two feet, say, as the limit. I don't think it would be less than eighteen inches and I don't think it would be more than twenty-four inches.

Q. And did you observe any remains of solder at all above that point?

A. No, sir.

Q. Did you observe—

A. There were none when I looked at it on the boat, when the Court was present.

Q. Did you observe the height of the ashes in that space?

A. No, sir.

Q. The tank compartment space?

A. No, sir.

Q. Then I take it you did not observe the relation between the height of solder in the side seams of Number Four tank, and the height of the ashes in the tank compartment?

A. I wouldn't have taken any notice of that. The boat had been burned up four years, and the debris,—the boat has been sunk, and floating stuff around; it was of no moment to me whatsoever; I don't think it was evidence of anything. That boat has been afloat and sunk, and all sort of things happen in four years. So I wouldn't have noticed that; it was of no moment to me whatsoever.

Q. Did you notice any mark of any kind around the circumference of the tank that indicated a portion that had been more severely subject to fire than any other portion?

A. No, sir, I can't recall now that I did.

Q. Do you express the opinion that those side seams were never soldered all the way up to the top?

A. In my opinion, they were hot.

Q. And you base that exclusively on the fact that at the present time, that is when you last saw the tank, there was no solder beyond eighteen to twenty-four inches above the bottom; is that right?

A. No not entirely, sir.

Q. What else?

A. I would expect to find some discoloration from the acid of the flux of the solder.

Q. Did you observe any discoloration along the seams at all?

A. Not that would indicate that it had been soldered, sir.

Q. Was there some discoloration there?

A. There was discoloration all over the tank, but I didn't see anything that would indicate solder.

Q. Did you notice any discoloration that ran along the seam, about the same width, above the point where there was no solder,—above the point where the solder ended, as the solder was?

A. It was not present when I observed the tank last—whenever it was, when the Court was present.

Q. You say that the thing you would expect to see there is the effect of the acid?

A. I would expect to see some slight discoloration from the acid, yes.

Q. What acid is used?

A. Well I have never done any soldering; I know it is an acid flux; beyond that, I don't care to say.

Q. What is the acid?

A. I couldn't actually tell you here under oath; I would rather say I don't know.

Q. What effect does it have on a newly galvanized tank when you put it on, just before you put the solder on?

A. I think it will discolor the galvanizing.

Q. And you think that discoloration would remain from the application of the acid, and the burning off of the solder, if that occurred; is that right?

A. I think, sufficient to show evidences of it, sir.

Q. Did I correctly understand you to say just a moment ago that you had never done any soldering?

A. That is right. I have seen a lot done, but I have never actually done it by my own hand, I mean.

Mr. Underwood:

That is all.

By Mr. Botts:

Q. There was one question that I omitted to ask in cross examination; I had a mental note of it and forgot to

put it down. If I can back up to ask that question I would like to; I realize that technically I have slipped on my rights, but it is just a question that I have in my mind and hadn't made a note of it; if I may ask it, I will, otherwise not.

The Court:

All right we will let you ask that.

Q. Mr. Thompson assuming that this filler can, Exhibit 13, was filled a considerable number of times from the draw-off valve in the engineroom and emptied outside the boat, and then filled again repeatedly, what in your judgment would be the effect of such a process in creating gasoline vapor or fumes in the engineroom?

A. Well in the process of the refilling you displace the gasoline vapors that are in the can, Mr. Botts, and those flow from the top into whatever space you are filling the can. You get that exactly with your automobile tank, you can see it yourself when you fill your tank, you can notice the fumes coming out,—at least I have; I have seen something that comes out that does not look like air, and I have understood they are gasoline fumes,—gasoline vapor.

Mr. Botts:

That is all.

Mr. Matteson:

That is all.

(Witness excused.)

The Court:

Well is there anything else?

Mr. Matteson:

Would there be any objection to the reading in the record from Kent, the fact that appears on page 4-62, that

the specifications for kerosene, of the United States Government, show a flash point of—a minimum of one hundred degrees.

Mr. Underwood:

No, I don't object to that, providing we can also put in what this pamphlet, called "Fire Hazard Properties of Certain Inflammable Liquids", shows as to kerosene.

Mr. Matteson:

What does that show?

Mr. Underwood:

It shows the flash point varies from eighty-one degrees to 140 degrees relative heat, and that the explosive range is from 1.1 to 7.0.

Mr. Matteson:

All right; that of course is not referring to that, anyway. I would like to read this part: Kerosene is defined—

(Conference between counsel.)

Mr. Underwood:

Go ahead and read it.

Mr. Matteson:

The Kent's Mechanical Engineers' Handbook, eleventh edition, I read the two following excerpts: Kerosene is defined as a refined petroleum distillate having a flash point not below 73 degrees, as determined by the Tag. closed tester, and suitable for use when burned in a weak flame.—Another excerpt: Specifications for kerosene for general illuminating purposes for U. S. Government, given in technical paper 323, U. S. Bureau of Mines, have flash point, minimum, one hundred degrees Fahrenheit.

Mr. Underwood:

Have you, Mr. Bryant, these figures that I read from Libelants' Exhibit 136: the flash point of kerosene, according to this pamphlet, varies between 81 degrees Fahrenheit and 140 degrees Fahrenheit; and the explosive limits vary between 1.1 percent and 7. percent.

Mr. Matteson:

If your Honor please, there is one correction that I happened to note in the record, Mr. Underwood agrees with me on; there may be others, but I notice this one at this time:

Mr. Underwood:

I imagine we both noticed others that we want to comment on later; I noticed several.

Mr. Matteson:

Page 805, the question reads: "Do I understand that it is your view that no ventilators should lead to the bilges of a gasoline vessel?" The question should have read that "Any ventilators should lead to the bilges of a gasoline vessel". The answer was, yes. That was in the testimony of Captain Patton.

The Court:

How do you want to correct it?

Mr. Underwood:

Just get the stenographer to make the correction physically on your copy.

The Court:

If that is agreed, these other things they have read in the record, are agreeable to you, are they?

Mr. Botts:

They are.

Mr. Matteson:

As Mr. Underwood has said, as we go through, we find little things.

The Court:

If you find any more, you have my sanction, just instruct the reporter before he delivers my copies, to make the corrections.

Mr. Matteson:

I wanted to make it clear that in suggesting that, I am not in any way criticising the reporters, because in a record of this size, completed under the pressure, it has been, it seems to me, that they have done a most excellent job, in minimizing such things.

If your Honor please I also want to offer in evidence a deposition which I took at New York, of Andrew J. Smith, a surveyor, who is also Secretary of the Marine section of the National Fire Protection Association; and incorporated in the front of it is a letter that you requested, giving the names of the Officers of the Companies represented by the Marine Office of America: and the exhibits connected therewith.

Mr. Underwood:

I have no objection to the deposition, but in the course of it I made several objections to various questions, and to certain documents that were offered,—which I do not waive.

(The said deposition was admitted in evidence and filed as Libelants' Exhibit 149.)

Mr. Matteson:

Now if your Honor please just one other thing that I have: I would like to make a formal reoffer at this time

of Libelants' Exhibits 131 and 132 for identification, consisting of the record of testimony and the findings by the Mixed Claims Commission. I realize that if we started to discuss this now we would get into a long argument, and we don't want to take the time, I believe, so I just suggest that we deal with the question as to whether these are admissible, or what attention should be paid to them, in connection with our argument, whenever that takes place.

The Court:
Your suggestion is, I just reserve ruling?

Mr. Matteson:
Yes, sir.

The Court:
I have already ruled on that, haven't I?

Mr. Underwood:
You have excluded them.

Mr. Matteson:
You excluded them, and there was some possible reservation in the ruling, as to whether we might offer them as part of our case; but they were definitely excluded at the time that they were offered.

The Court:
Rather than have a reargument at this time, you can cover that in your briefs; just let the record show that the record remains.

Mr. Botts:
The Respondent Pilkington rests.

Mr. Matteson:

We have no more evidence at this time, if your Honor please.

Mr. Underwood:

We rest.

Mr. Matteson:

If your Honor please, in view of the fact that Mr. Underwood rests at this time, I would like to state that information has come to me—

Mr. Underwood:

I object to any statement on the record about anything at all. Everybody has rested.

Mr. Matteson:

If your Honor please—

Mr. Underwood:

Mr. Matteson has had his opportunity to call any further witnesses that he wants to. I don't know what is in his mind, and I object to his making any statement on the record.

Mr. Matteson:

If your Honor please, I think I am entitled to an answer from Mr. Underwood.

Mr. Underwood:

If he wishes to argue the case, certainly; but if he attempts to incorporate, by his statement, any further fact in the record in this case, I think it is highly improper. I think he ought to be cautioned against it; the record is closed now.

Mr. Matteson:

If your Honor please I would respectfully petition to reopen it, for this purpose, and I will state my reason.

Mr. Underwood:

May I have a ruling on this point? The thing is closed.

The Court:

I don't know what is before me.

Mr. Matteson;

If your Honor please I will state what is before the Court, and the grounds of my application.

Mr. Underwood:

I want to express a view and make a motion; I want to move that Mr. Matteson be instructed not to state any fact at this time, or make any statement of what he considers to be a fact, that is not supported by the record in this case; because everybody has rested; he has had his opportunity; he has waived his rights to go on and put on any further witnesses. The case is closed. I think it is extremely improper and outrageously unfair for him to incorporate in the record any statement of his now that is beyond the four corners of the record in this case.

The Court:

I understand the evidence is closed.

Mr. Matteson:

If your Honor pleases I am moving to reopen it; and the ground of my motion is, that there is certain information in the possession of our opponents, which they have had the opportunity to disclose and produce here, and in good faith they should have, and which they have failed to disclose. I thought they were going to put their witnesses on, following my testimony, and disclose that in-

formation. Now they have failed to do it, and I think the Court is entitled to know it. I think we are entitled to make a motion to reopen this case, on affidavits, and I will procure affidavits if that is required by the Court; but I think it can be disposed of much more simply than this. This is a highly important matter, if your Honor please, and I think the Court is entitled to know that the information which is in the possession of our opponents and which they have had the opportunity to disclose, has not been disclosed; and it certainly was not incumbent upon me to produce evidence as to what they did, as part of my case.

Mr. Underwood:

If your Honor please I don't know what information has come into Mr. Matteson's possession, but whatever it was, it did not come into his possession after he finished his case. He had it as much before—fifteen minutes ago, as he did five minutes ago. You can't have your cake and eat it too. He rested; he had the opportunity to put on any evidence that he might want to put on, to prove any information that has come into his possession, and he didn't do it. He ought not to be permitted to play fast and loose with the Court, and rest with this information in his vest pocket, and spring it after we have rested.

Mr. Matteson:

It is not I that have played fast and loose with this Court. If your Honor please, certainly under any circumstances I would be entitled to make this application, based on an affidavit; and I will produce such an affidavit, if an affidavit is required. But I think, that a simple statement, which will not and cannot be denied by my opponents, will be the basis of my motion, and I certainly think I have a right to state it, unless the Court rules that I have not, in which case I will prepare a proper motion on affidavits. I want to make the motion now and state my grounds for it.

The Court:

I don't see any reason why he could not state it. Suppose I ruled against him; you would incorporate it, file some affidavit, and it would be in the file, even if it wasn't allowed to be stated here.

Mr. Matteson:

It certainly seems so to me.

The Court:

State what it is.

Mr. Underwood:

I move to strike it, if your Honor please. I think the record is closed, and Mr. Matteson had whatever information he has got, he had it in his possession before he rested, as much as he has now. He asked me if I was going to call any witnesses, and I told him I hadn't made up my mind; so he rested under no misapprehension of what I was going to do. I didn't know, I hadn't determined. It seems to me it is highly improper for him to make any statements at this stage. He rested with his eyes open.

The Court:

Well, what is it, Mr. Matteson?

Mr. Matteson:

If your Honor please the motion that I have to make is this: It has come to my information that yesterday the tanks of the Seminole—all four of them, were placed in a plant in Miami; that hydrostatic air tests were applied to them, and that the tanks were cut apart. I would like to move to reopen the record so that I may call one of my opponents' own witnesses, Mr. Munroe, for the purpose of having him testify to that fact, and nothing else.

The Court:

That it was done, and what was found?

Mr. Matteson:

I am not going to ask him what was found; I am simply going to bring out the fact that it was, and let the Court draw its own conclusions from that fact. I certainly think that I am entitled to show that. If your Honor please, the information is developed to our opponents; it seems to me in all fairness it should have been disclosed, and I certainly anticipated that they would have that degree of frankness with the Court, of disclosing what had been done in that particular. It was their time to do it, and after I rested my case I make my motion only after they rested and failed to do that. If your Honor please, this whole case has been the most extraordinary procedure that I have ever heard of. Last May, when we talked about arranging to go out and see this vessel, it was definitely understood that everything would remain as it was, until the Court and counsel should go to visit the vessel, in October, on a date fixed. Instead of carrying out that arrangement, our opponents proceeded immediately, the day following the Court adjourned, last May, to go out there, make arrangements which were completed the following Monday, took the tank out of the wreck, performed certain private experiments, at which no witnesses were present except the man who testified. No one from our side of the case was permitted to be present and observe those tests. The witness has testified to what he observed at that time, and he has admitted on his examination that when we came to examine the tanks in October, the conditions with respect to those tanks were substantially changed, so that there was no opportunity afforded to us to examine those tanks in the same manner as they had examined them, nor to be present and witness the tests that were performed. Now if your Honor please, in addition to that, and without notice to us, or no opportunity to be present, they have taken these same tanks that there has been so much discussion about, they have

taken them to a private plant, without knowledge of anyone else, they have performed tests; and it seems to me that we are certainly entitled to have that fact in the record. And if they don't choose to tell us what the results of those tests were, that of course is their option; but I think we are certainly entitled to have in the record the fact that tests were made.

The Court:

Upon the motion, the reason for it has been stated, do you want to be further heard, Mr. Underwood, on that?

Mr. Underwood:

Will you bear with me just a minute, please.—If your Honor please, it seems to me that it is quite improper to open the case at this time. This is nothing in the nature of newly discovered evidence. Mr. Matteson hasn't denied, and it must be obvious that he cannot deny that he knew as much before he rested as he knows now. So I think that no proper ground has been laid for reopening the case However, if the Court is interested in seeing the tanks, I have no objection to that whatsoever. The primary purpose of what was done, was to open up Number Four tank and see whether or not it was as badly corroded as the witness Thompson in his testimony Friday or Saturday morning, said that is must be. We found certain things about those tanks which we thought added nothing, one way or the other, to the case; nothing that would be of any particular interest or concern; nothing that would help the Court reach its conclusion on the case. Had we found anything that we considered of that character, we certainly would have produced it here in Court. Now if the Court wants to look at the tank, or look at any part of them, we will all go and look. Strictly speaking, it seems to me the motion is without any proper foundation whatever.

The Court:

Well I will grant the motion to reopen.

Mr. Botts:

If the Court please, before we get that, there is just one suggestion that I wanted to make here. It is possible, with all the numerous exhibits that have been filed for identification, and then later offered in evidence, it is possible that one side or the other may have filed something for identification and inadvertently failed to offer it, whether admissible or not. I am just going to suggest,—I don't think any of mine are in that category; I am just going to suggest that if it should occur, that when we go to checking up, that some exhibit offered for identification has not possibly been offered in evidence and ruled on, one way or the other, that we be allowed to make the formal proffer at the final hearing, and let the Court rule then whether it is admissible or not, just to avoid anyone's being embarrassed by inadvertence of that character.

The Court:

You mean, some exhibit as to which there will be no question about its being admitted?

Mr. Botts:

Even if it is questionable, it may be admissible, but we want the opportunity of offering it and having a ruling. I don't know that anything of that kind will happen, but with all these exhibits it is possible that somebody might inadvertently fail to offer some that they might deem important. The Court may deem it admissible or not admissible; but in view of the very complicated situation with respect to exhibits, that neither side wants to preclude the other from offering any exhibit which has been marked for identification, merely because we inadvertently overlooked it.

Mr. Underwood:
I have no objection to that.

The Court:
All right, let that be understood. Well, with the granting of the motion now, it is ten minutes of five, I suppose we had better take the course now of letting me appoint Mr. Bryant as the Commissioner, and let him conclude the testimony.

Mr. Matteson:
I have only about four or five questions I would want to ask the witness.

The Court:
I am afraid if we get into that then, the other side will want to introduce Mr. Munroe, and I don't see where it would terminate; so I imagine we had better just let it take this course.

Mr. Underwood:
If we are going to go into this, we want you to come down and see these tanks. I don't want you to have any idea that we have been hiding anything, because we haven't.

The Court:
I don't know exactly when I will go.

Mr. Anderson:
We would like you to go this afternoon.

The Court:
If we just look at them, aren't you going to get something into the record?

Mr. Underwood:

Put it in the record that you looked at them. You see there was a very decided inference from the testimony, or an implication, as we got it, that we had soldered this bottom seam of this Number Four tank. Mr. Thompson has withdrawn any such implication, if there was one.

Mr. Botts:

I can assure you that from discussion with all counsel, that we never had in mind even to intimate that we thought that was soldered after it was removed. I am sure that I didn't, and I don't think the others intended to intimate that it was soldered after it was removed.

The Court:

Well I might go and look at it, but I don't imagine that you want the record to rest there; I think you would want to put on testimony; we have reopened now, Mr. Matteson has indicated he wanted to call a witness from the other side, let him testify; and then if the other side wants to rebut that, that's the only way I know to go at this. I don't think it would be satisfactory just for me to go out there and look at it and then let it rest right there.

Mr. Underwood:

I think it would, because there are some things there that might be worthwhile for you to see.

Mr. Anderson:

I think it is important that you do it now, your Honor, and not wait until after a lapse of time.

The Court:

That might be in addition to the other, but I think you want some testimony, don't you?

Mr. Botts:

Oh yes.

Mr. Underwood:
They are going on with their case again.

The Court:
We are going to conclude, though; I can't go on with this case tomorrow; I have announced and given you notice that I can't go beyond this afternoon with this case.

Mr. Anderson:
Judge, don't you live in Coral Gables?

The Court:
Yes.

Mr. Anderson:
How do you go out there?

The Court:
I can go out, but I am talking about testimony now, that would be hereafter taken.

Mr. Anderson:
We would like for your Honor to see those tanks, if the case is going to be reopened, this afternoon.

The Court:
If you want me to ride by there as I go home, I could go on out there now. Are the tanks at the same place?

Mr. Anderson:
They are much closer.

The Court:
Where are they now?

Mr. Anderson:
They are at a foundry just the other side of the bridge, over the Miami River; and if you go out to Coral Gables that way, Brickell Avenue, it won't be out of your way one block.

The Court:
But I wanted to bring it out so you gentlemen wouldn't expect me to go on with the case tomorrow, because I have other engagements, that I can't give the time beyond tonight.

Mr. Underwood:
I think we all understand that.

The Court:
Hadn't we better deal with the situation on the basis of there being some testimony?

Mr. Anderson:
Yes I think so.

The Court:
Then wouldn't it be better for it to be understood that I will appoint Mr. Bryant as Commissioner to hear the testimony, and let it take its course hereafter?

Mr. Underwood:
That is all right.

(Thereupon the taking of testimony before the Court was concluded, and the hearing was adjourned to be resumed before the Commissioner on the following day.)

Tuesday, November 21, 1939, 2:05 o'clock p. m.

Be It Known, That on this 21st day of November, A. D., 1939, before me, Ernest L. Bryant, Commissioner, duly

appointed by the Honorable John W. Holland, Judge of the United States District Court for the Southern District of Florida, Miami Division, personally appeared Alfred F. Warriner, C. E. Stevens, John A. Thompson, and J. N. Patton, witnesses on behalf of Libelants, and George W. Gibbs and Wirth Munroe, witnesses on behalf of Respondents, in a certain civil cause now pending and undetermined in the District Court of the United States, for the Southern District of Florida, Miami Division, in Admiralty, wherein Charles Coryell, et als., are Libelants, and George J. Pilkington and John S. Phipps are Respondents.

4289 Thereupon: ALFRED F. WARRINER, a witness on behalf of Libelants, was duly sworn and testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Mr. Warriner, what is your business?

A. Machine shop foreman.

Q. Where do you live?

A. Miami, Florida.

Q. What is the name of your machine shop?

A. Warriner & Des Rocher.

Q. And where is it located?

A. 27 Southeast Fifth Street.

Q. Are there at your plant now the four large gasoline tanks from the Seminole?

A. There are.

Q. Within the last week, were some tests performed on those tanks, at your yard?

A. There were.

Q. Were you present when the tests were made?

A. Yes, sir.

Q. Will you tell us what tests were made?
A. Just air pressure applied to the tanks.
Q. What was that?
A. Air pressure was applied to the tanks.
Q. All four of them?
A. All four of them; five pounds of air pressure.

Mr. Underwood:
I didn't hear that; will you read that?

(The answer was read by the reporter.)

Q. Each individually?
A. Yes.
Q. And what position were the tanks in?
A. One tank was upright, and three of them horizontal.
Q. How much air pressure was applied to the tanks?
A. Five pounds.
Q. And how was that determined?
A. How was it determined?
Q. Yes, how was it measured?
A. We had a gauge on the tank.
Q. And what was the result when five pounds of air pressure was applied to the tanks?
A. There was leaks noticed in the tanks.
Q. And how long was the five pounds of air pressure applied to the tanks?
A. About five or ten minutes.
Q. And within that time the leaks were observed?
A. Umh hmh.
Q. How could the leaks be observed? How were they observed?
A. Well the first, we just listened; then the next tank, why we put city water on them.
Q. How did that show?
A. Bubbles in places.

Q. Where were these leaks observed in the different tanks?

A. Down the seams on the side, and on the heads.

Q. Did you make any observations of the bottom of the tanks?

A. Not particularly. The bottoms were kind of dirty, that was all.

Q. At whose request did you make these tests?

A. Mr. Underwood.

Q. And after the tests, was something else done to the tanks?

A. Sections cut out.

Q. Of each of the tanks?

A. Yes, I think there was.

Q. And was the lower section cut off of one of the tanks?

A. Yes; one tank.

Q. That was number four tank, was it?

A. I wouldn't say for sure; I didn't pay much attention to the numbers of the tanks.

Q. Which was the tank that you did not have the soap test on?

A. That was the tank we cut the head off.

Q. At whose direction did you cut the sections out of the tanks?

A. Mr. Underwood's.

Q. Do you know why the soap test was not applied to the number four tank?

A. Well, you couldn't very well apply it on a tank, vertical.

Mr. Matteson:

That is all.

Cross Examination.

By Mr. Underwood:

Q. Mr. Warriner, I was there at the time, was I not?

A. Yes, sir.

Q. Mr. Anderson was there?
A. Mr. Anderson was there.
Q. Mr. Munroe?
A. Umh hmh.
Q. And Mr. Gibbs?
A. That's right.
Q. Were you there all the time while the tests were going on?
A. I was there when the air was applied; when the first tank was being filled full of air—standing on end. The tanks had already gotten there, but the pressure hadn't built up on the first tank.
Q. Now you said that all four tanks were subjected to an air test. Are you entirely certain about that?
A. Yes.
Q. Couldn't be mistaken about that?
A. No, sir.
Q. Did you notice any leaks around the bottom seams of any of those tanks?
A. No, I didn't notice any leaks around the bottom at all.
Q. Did you notice that there was a certain amount of solder up to the side seams for a certain distance?

Mr. Matteson:

I object to that; I haven't asked him anything about that. If you want to make him your own witness, that is all right. This is on cross examination.

Mr. Underwood:

It is cross examination. The question of leaks on the side seams has been gone into.

Q. Do you want the question read, Mr. Warriner?
A. Yes, I would like to hear it.

(The question above objected to, was read by the reporter.)

A. Yes.

Q. Did you observe any leaks where there was solder up the side seams?

A. No.

Q. Segments were cut out from each of those tanks, on Monday, were they not?

A. Segments cut out of two tanks on Monday; two tanks were cut Saturday.

Q. You cut the bottom out of one?

A. Cut the bottom out of one, and two sections, Saturday; the other two were cut out Monday morning.

Q. Well now let's get this straight. On Saturday you cut the bottom out of one tank?

A. We cut the bottom out of one, and a section; and then a section out of another one, and a piece, a flat plate.

Q. Well you cut out of the tank that you cut the bottom off of—

A. Yes.

Q. You cut out of that tank, two sections on the side, did you not?

A. No, sir; we cut out one section, out of the bottom, and one section out of the side.

Q. That is your recollection?

A. Yes, sir.

Q. And is it your recollection that you cut a flat section out of the side of one of the other tanks?

A. Yes, sir; and cut out a bottom section from one of the other tanks to, at the same time.

Q. Do you remember that you delivered to me on Monday morning three sections of the bottom seam?

A. Two sections.

Q. Your recollection is, two?

A. Yes.

Q. Do you remember that I called you up and spoke to you about the markings on those sections?

A. Two sections were cut out Monday morning; because there were two tanks on the outside.

Q. Well do you remember that I telephoned you on Monday morning about markings on those tanks—on those segments from the bottom seam?

A. No, you didn't talk to me; you talked to the foreman of the shop.

Q. It was the foreman I talked to?

A. Yes.

Mr. Underwood:

All right; that is all.

Re-Direct Examination.

By Mr. Matteson:

Q. Did you make any observation of the bottom of the tank when it stood in the vertical position?

A. No, sir.

Q. Was that standing on ground, or somewhere else?

A. Standing on wooden blocks.

Q. When was it that the air tests were made?

A. At the same time; Saturday afternoon.

Q. Last Saturday afternoon?

A. Yes, sir.

Q. Would you ask the other man to come in?

A. Yes.

(Witness excused.)

4296 Thereupon: C. E. STEVENS, a witness on behalf of Libelants, was duly sworn and testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Where do you live, Mr. Stevens?

A. I live at Price's Tourist Camp, on Northeast 2nd—1st Avenue.

Q. And where do you work?

A. Warriner & Des Rocher.

Q. Have you seen the large cylindrical iron tanks that are at Warriner's shop now?

A. Yes, sir.

Q. And what sort of work do you do in Warriner's?

A. I am a machinist,—or mechanic, rather, and metalizer.

Q. Were some tests made on those cylindrical tanks last Saturday afternoon?

A. Yes, sir.

Q. Will you tell us what was done? What did you have to do with it?

A. Well I took the plugs out of them and put a gauge in them and tested them with air pressure.

Q. You did the work yourself?

A. I done—Well I done the testing of them; yes, sir; there was four fellows—three of us there; but I was the one that was checking the gauges.

Q. And what sort of a gauge did you use?

A. We used a regular air gauge; a gauge Mr. Warriner has in the shop; and on the other end of the line we used a regulator, that holds the pressure to five pounds.

Q. Do you know whether the gauge is accurate or not?

A. Yes, sir; they are tested by a master gauge.

Q. Was that done?

A. Well I don't know whether it has been recently or not; but it has been, I understand.

Q. What position were these tanks in when the air pressure was applied?

A. Well the first tank that we tested was standing on end; the rest of them were lying on their sides.

Q. How long was the five pounds of air pressure applied?

A. About ten minutes.

Q. And while the air pressure of five pounds was on the tanks for that period, what did you observe?

A. Around the seams, around the top, and sides, small leaks, oh, from ten to thirteen inches apart, something like that.

Q. Was there any liquid in the tanks when this test was made?

A. No, sir.—You said, was there any liquid? I had water in some of them, and drained it all out again, by all but just the moisture; there wasn't any amount.

Q. How were you able to observe these leaks?

A. Well on one of the tanks, the first we tested, we could hear it seeping out; and then on the others we took soap and water and a brush, painted it on; and bubbles formed; we could see the bubbles.

Q. Where did you paint the soap and water on?

A. Seams on the side, and around the top.

Q. A line along the seams?

A. Yes, sir.

Q. Subsequently did you do some other work on these tanks?

A. Yes, sir; I did.

Q. And what was that?

A. Well I cut out some corners or seams out of them; and I took two rivets out of one of the tanks; and filled them with water, and put tetrachlorid in them, so they wouldn't blow up when I cut them. Put some plugs in them.

Q. Did you cut off the bottom of one of the tanks?

A. No, sir, I didn't cut that off; Henry cut it off, but I was working with him when he cut it off.

Q. And what other cutting besides that was done?

A. Well we cut two square places in them, so they would have an air place for the fumes to get out, so they couldn't explode. Then we cut some pieces about six inches long out of each end; I cut those out myself—or out of the bottom end of them.

Q. Were those pieces cut out of each of the tanks?

A. Yes, sir; one piece cut out of each tank.

Q. And the tank that was—that the bottom was cut out of?

A. Yes, sir.

Q. Were there additional pieces cut out of that?

A. No, sir; I don't believe there was.

Q. You don't remember that?

A. I don't remember that for sure; I just cut four pieces out of the bottoms, one piece out of each tank.

Q. When was that cutting done?

A. I done that cutting yesterday morning.

Q. Was some of this cutting done Saturday?

A. Some of it was; yes, sir.

Q. Do you know which was done on Saturday?

A. That piece that was cut out of number four tank, was cut out Saturday; and the pieces that was cut out of the other three tanks, I cut those out Monday morning.

Q. Now you say you cut a rivet out of the top of one of the tanks?

A. Yes, sir.

Q. Was that the number four tank? Or was it the tank that you cut the bottom off?

A. I believe that was number four tank; the tank the bottom was cut off.

Q. And speaking of the rivet that was cut out, at the bottom of the tank, where the convex stands up—

A. Yes, sir.

Q. Will you tell us how you did that?

A. Took a torch and heated the rivet until it was red hot, and took the drift punch and punched it out.

Q. Did you flow the metal?

A. No, sir; just heated it red hot, white hot.

Q. Then drove it out?

A. Then drove it out with a punch.

Q. Then there was another rivet that was cut out on the side seam, of the same tank?

A. Yes, sir.

Q. And how was that done?

A. It was heated with a torch, and drove out with a drift punch and hammer.

Q. Did you use the same sort of a flame on both rivets?

A. Yes, sir, as near as a person could.

Q. And what sort of a flame was that?

A. Acetylene torch; acetylene welding torch.

Q. Did it have four points, or one?

A. One point. The first rivet we cut out, we started to cut it out with a cutting torch—that is an acetylene cutting torch, and we decided it would flow the metal; so we just heated it red hot and—until the welding torch got red hot, and punched it out with a punch.

Q. I didn't quite understand you. You said you thought it would do something to the metal?

A. Well the first rivet we started to cut out, we started to just cut it out with the torch; but if we had, why we naturally would have cut tank and all with the torch; so we didn't do that; we took that cutting tip off and put on an ordinary welding tip and had it red hot, and punched it out.

Mr. Matteson:

That is all.

Cross Examination.

By Mr. Underwood:

Q. Do you remember when I got there Saturday afternoon, number four tank lay on the side, outside of the shed?

A. Yes, sir.

Q. No cutting had started at that time, had it?

A. I couldn't remember. I don't remember just exactly the time you came there; I don't remember positively.

Q. You didn't do any cutting until I got there, did you?

A. I don't remember exactly what time you came there. I don't remember whether they had done any.

Q. Well you didn't make any air tests until I got there, did you?

A. I don't remember when you came down. I don't remember the time you came in there.

Q. Well do you remember when the three of us came down, right after lunch, together?

A. What time was that?

Q. Around half past one; do you remember that?

A. Yes, sir; I do.

Q. You remember there was only one tank there at that time?

A. Yes, sir.

Q. That was number four tank, wasn't it?

A. Yes, sir.

Q. Do you remember that when I got there, there was a hose running water in number four tank?

A. Yes, sir.

Q. And we had to wait until that got filled with water before you could do any burning?

A. Yes, sir.

Q. You never did hook up that air line to number four tank, the one that was filled with water, out there on the ground, did you?

A. Yes, sir; we tested all four of those tanks.

Q. Do you have any recollection of any plugs in number four tank?

A. I think I did; I wouldn't swear to it; I am almost positive we tested all four tanks.

Q. Don't you remember that number four tank was being filled with water when I got there?

A. Yes, sir.

Q. And when Mr. Munroe and Mr. Gibbs got there?

A. Yes, sir.

Q. Don't you remember the truck coming with another tank, and while we were waiting for number four tank to be filled with water, that tank was rolled inside of the shed and put up on blocks?

A. Didn't I take the hose outside and take the plugs outside and put that in, and take them all outside, and put them in the front place?

Q. The first tank that was subjected to the air test, was standing on blocks, upright, inside of the shed, wasn't it?

A. Yes, sir.

Q. In the meantime number four tank was being filled with water, wasn't it?

A. Yes, sir; it was; we filled it at that time.

Q. Isn't it a fact that as soon as number four tank was filled with water, you got your cutting torch and cut out a square piece near the bottom?

A. Yes, we did, but I don't remember—it seems as though we tested all four of them. I don't know, but it seems—I am almost positive we tested all four of those tanks. I think I put air pressure on all of them as they came in. I went outside and made a test on two tanks, then we rolled two inside, then rolled the other back inside.

Q. That is pretty complicated. You are sure about putting air on three of them?

A. Yes, sir; I am positive, and I am almost positive we put it on four; because I know I had to take the hose and all outside to test it while it was laying out there.

Q. You tested one tank on the ground outside, did you?

A. Yes, sir.

Q. You didn't test any tank with air while there was water in it, did you?

A. No, sir.

Q. Now do you remember number three tank, anything about that bottom plug?

A. Yes, sir.

Q. The bottom opening?

A. Yes.

Q. Did you find any threads at all on that bottom opening, in number three tank?

A. No, sir.

Q. There are threads there today, aren't there?

A. Yes, sir.

Q. How did they get there?

A. Henry took a two-inch tap and ran through there and put threads in it.

Q. Did you see him do that?

A. Yes, sir; I stood there.

Q. Do you think you can identify the piece that you cut out or saw cut out of these tanks?

A. Yes sir.

Q. I show you a more or less bare piece of metal with an arrow, re[illegible] arrow, on it?

A. Yes, sir.

Q. Will you tell me where that came from?

A. Came out of the side of a tank; I think it came out of number four tank.

Q. That is the tank from which you cut the bottom?

A. Yes, sir; from the tank we cut the bottom out of.

Q. Can you be sure whether that is the upper piece that was cut out, or the lower piece?

A. That is the upper piece.

Q. That you cut out Saturday?
A. Yes, sir.

Mr. Underwood:
I offer that.

(Said section of metal was admitted in evidence and filed as Respondents' Exhibit 5-V.)

Q. Now I show you another piece; don't read what is on there, but just look at it and tell me whether you can identify that.
A. It is a piece out of the side of one of those tanks.
Q. Well you only cut pieces out of the sides of one tank, didn't you?
A. Yes, sir.
Q. So it must be out of the same tank that this other piece is out of?
A. It must be.
Q. And that's the lower piece, is that right?
A. Yes, sir.

Mr. Underwood:
I offer that; and for your information I will say that the words painted on it in red, "From number four tank, a part cut from side, thirteen and a half inches above bottom", and then upside down, the word, "bottom", were painted on there by Mr. Munroe.

(Said section of metal was admitted in evidence and filed as Respondents' Exhibit 5-W.)

Q. Now did you mark in any way the piece, the segment that you cut out of the bottom of number four tank on Saturday?
A. I didn't mark it.
Q. Did you see it marked?

A. No, sir; I didn't.

Q. Well I wasn't there on Monday when you cut out the segments from the bottoms of the other three, was I?

A. No, sir.

Q. Did you cut those yourself?

A. I cut those myself.

Q. Did you mark them?

A. Yes, sir.

Q. With what?

A. With red paint.

Q. I show you pieces of metal; can you tell me from which tank they came?

A. Well I marked all the other three pieces; they must be from number four tank, because I marked all the rest of them.

Q. After you cut the piece out of the bottom of the segment, what did you do?

A. Took my hacksaw and sawed off the ends of them.

Q. So these two ends of this piece don't represent the metal as it came out of the tank?

A. No; that is the same metal that came out of the tank, only it was put in a saw and sawed off.

Q. You sawed something off of each end?

A. Yes, sir.

Q. Well were the ends of this segment from the bottom, when it came out of the tank, burned in the manner somewhat similar to the edges of Exhibit 5-W?

A. Yes, sir; they were burned out.

Mr. Underwood:

I offer this, and mark it 5-X.

(Said section of metal was admitted in evidence and filed as Respondents' Exhibit 5-X.)

Q. I show you another bottom segment, with #1 painted in red on it. Did you cut that out?

A. Yes, sir.
Q. And from what tank?
A. From number one tank.
Q. Where did you get the number of the tank?
A. On the head end of the tank; top end of the tank.
Q. And you sawed this—sawed the ends off of this with a hacksaw?
A. Yes, sir.
Q. The same way as the others?
A. Yes, sir.

Mr. Underwood:
I offer this, and mark it 5-Y.

(Said section of metal was admitted in evidence and filed as Respondents' Exhibit 5-Y.)

Q. I show you another piece, with a red "2" on it; did you cut that out?
A. Yes, sir; I did.
Q. From what tank?
A. Cut that out from number two tank.
Q. Did you saw the ends off?
A. Yes, sir; I did.

Mr. Underwood:
I offer that, and mark it 5-Z.

(Said section of metal was admitted in evidence and filed as Respondents' Exhibit 5-Z.)

Q. I show you another segment, marked #4; did you cut that out?
A. That was the last tank we worked on, and it was number three tank; the fourth tank that I worked on and just automatically, by being the fourth tank, I out Four on it; but that came out of number three tank.

Q. This segment with #4 painted in red—

A. Actually came out of number three tank; but it was the fourth tank that I worked on, that is how the "four" came to be on there.

Mr. Underwood:

I offer it, and mark it 6-A.

(Said section of metal was admitted in evidence and filed as Respondents' Exhibit 6-A.)

Q. In burning out these rivets you did, at least a part of the time, use a tip that had four jets in it, didn't you?

A. Yes, sir; we started to use it, and then stopped; just got the rivet hot, and started to use it, and then stopped.

Q. Did you do that on both rivets that you punched out?

A. No, sir; just one rivet.

Q. The first one you punched out, was at the head of the tank?

A. Yes, sir; it was.

Q. And the seam that goes around the top of the tank?

A. Around the top of the tank.

Q. The second one was punched out very near—

A. The bottom side.

Q. Bottom side; and when you did that, the bottom had been cut off?

A. Had been cut out.

Q. And the point you were working on was upwards?

A. Upwards; up in the air.

Q. Did you handle hammer or punch?

A. I handled the hammer and punch.

Q. You had to get that part hot to get it out?

A. Yes, sir.

Q. You hadn't to burn the shank of the rivet all the way through, in every case?

A. No, sir; we just got the rivet red hot.

Mr. Underwood:
That is all.

Re-Direct Examination.

By Mr. Matteson:

Q. I want to ask you another question or two. Did you do anything else to these pieces that were cut out of the tank, Exhibits 5-X, Y, Z, and 6-A?—these four pieces?

A. I took the three I cut out, and took a steel brush and brushed them off; the three that I cut out Monday morning, I took the steel brush and brushed them off.

Q. And did you do anything to the edges of them?

A. Just sawed those edges off, was all.

Q. Well, did you see any one else do anything else to these edges?

A. Yes, I did; when they are sawed out there was a razor edge on them; I done that to keep some one from cutting their hands; I took a file and gave them a rap across the edge with a file and knocked that razor edge off; because the saw will leave a razor edge.

Q. Did you use a hand hacksaw?

A. No, sir; used a power saw.

Q. Do these pieces that I have referred to, these four sections, of the bottoms of the four tanks, look now the way they did when they came out of the tanks?

A. They do outside of the ends being sawed off of them.

Q. And the brushing?

A. And the brushing.

Q. Well, what difference in appearance does that make?

A. Just cleaned them up, is all; they would have been pretty dirty to handle, with rust scale and all on them, without brushing them off.

Mr. Matteson:
That is all.

Re-Cross Examination.

By Mr. Underwood:

Q. Nothing but loose materials were brushed off of any of them, was there?

A. That's all; just took it off with a hand brush.

Q. Now the razor edge you spoke of taking off with a file, that was on the corner, was it not, on the flat edge of the plate, was it not?

A. Just the corner; the sharp corner right there.

Q. And these corners here?

A. Yes, sir.

Q. And you didn't put your file on the flat edge of the plate at all, did you?

A. No, sir.

Q. On any of them?

A. No.

Mr. Underwood:

That is all.

Further Re-Direct.

By Mr. Matteson:

Q. Isn't it a wire brush you used to clean them?

A. A wire brush; steel brush.

Mr. Matteson:

That is all.

(Witness excused.)

(Informal recess was had.)

4311 Thereupon: MR. JOHN A. THOMPSON was recalled as a witness on behalf of Libelants and further testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Mr. Thompson, did you accompany the Court and counsel to Warriner's machine shop yesterday afternoon, and there observe the tanks of the Seminole?

A. Yes, sir.

Q. And did you again observe those tanks in the presence of counsel this morning?

A. Yes, sir.

Q. Now will you tell us what your observations were with respect to those tanks?

A. You mean, in general, or in particular?

Q. Well I want you to take up the individual tanks, each of them; and also any observations that apply to all of them.

A. Well I observed the exterior of all four tanks. I observed the interior of one tank—I think it was number four. In my opinion, the plating generally was corroded and pitted, wherever I observed. I observed that the fittings varied in the tanks; that three of the tanks had brass plugs at the bottom, and one had an iron plug.

Q. Is that what you refer to as a reducer?

A. No, I am just referring to the plugs, first.

Q. Was that on the bottom of the tank?

A. Bottom of the tank, yes, Mr. Matteson. I observed that the metal in the way of the inlets,—that is what I would call the top of the tanks, the metal was brazed. I observed that the fittings of the bottom of the tanks—outlets, was not all the same; that they varied considerably. I observed that the bottoms of the tanks were all—or had been all soldered around the bottom of the lap of the end. I observed—at least I failed to observe

any soldering around rivets in the way of that seam, nor the vertical seams. I observed that the tops of all the tanks had on opening between the top of the side plates, that is the inner edge of the top of the side plates, and the crown plate, in some places—

Mr. Underwood:

Had no what?

A. I observed the space—

Mr. Underwood:

I thought you said, had no—something.

(First answer on this page, read by reporter.)

A. —quite a noticeable opening. I observed that the joint rivets—that is the top rivet on the vertical seams, had a space adjacent to them in which I could put my pen knife, to the extent of approximately three sixteenths of an inch, to approximately five sixteenths of an inch. I had a photograph taken of one of those pieces. I consider from that particular thing, and the fact that the plate had not been properly thinned out during the course of the building of the tank, that in my opinion those tanks were not built to contain any liquids of a dangerous character: because from my experience, plates that were so fitted should be welded, in any case, at that point. I observed that certain pieces had been taken out, burned out, of all of the tanks; and that the bottom of one tank—I believe number four tank, had been burned out completely, from a point I think approximately—I didn't measure the point—from a point six or eight inches above the bottom. From my observations of the whole of the tanks, I still maintain the opinion I have always expressed, that I see no reason why I should criticize their structural strength, even today, but I still confine my criticism of

them as gasoline tanks, only insofar as the tightness was concerned. I observed on one of the tanks, number two, that one of the vertical seams had been damaged in the process of manufacturing; that is during the process of shearing the plate; that through inattention or from some other reason I don't know anything about,—what I call bad workmanship, the shear blade had been allowed to cut into the landing edge of that plate, and thereby causing an imperfect seam; and in my opinion that plate should either be made good by welding, and afterwards machined, or should be condemned. In my opinion, that tank was defective at the time it was built, and after it was built.

Q. Did you make any other observation in respect to that part of the tank?

A. That particular part?

Q. Yes.

A. Oh, yes. At the point of this imperfection, and particularly at its greatest depth, away from the landing edge, which as I say was about—I measured about 5/32nds—it will show in the photograph, I observed that the landing edge was free of the plate; that I could insert the blade of my pocket knife in it. Furthermore, I observed adjacent to that imperfection, a series of clear water—of balls, just small balls of water. That particular tank, at the time I made my observations, was partly filled with water; and just before I made the observation, I think on that particular tank, assisted by Captain Patton and Mr. Munroe, rolled the tank over a little in order to bring that seam into close observation. It was immediately thereupon that I noticed that imperfection that I have spoken of, and also those little balls of water I have spoken of.

Q. What is the significance of the balls of water?

A. Well I looked closely at it, and in my opinion they indicated that that seam had leaked since water was put

in, and apparently that was subsequent to any air pressure that had been applied to the tank. I have no knowledge myself, of course, of any of those air tests. I did observe in some of the tanks at least that, up and down the vertical seams, and along the horizontal seam of the tank, what had apparently been a mixture of soap and water, had been applied; but I was not satisfied that the lines that ran from—that same material running from that particular line mentioned, was caused by any air pressure, though probably caused by an excess of the testing fluids. So I don't think I could say that there is anything in evidence on the tanks as I observed them today, or yesterday, of any leakage of air, due to such tests.

Q. Before we leave this space at the side seam, that you were speaking of, where you said you observed the drops of water, at the time you made that observation was there water in the tank?

A. Yes, I think I said, it was partially filled, I think.

Q. And how was the level of the water with respect to that seam at that time?

A. At my inspection here, taking into account the amount it had rolled, or at least I helped to roll it, the pressure was less at the time that I actually observed it than it had been slightly before I rolled it. I estimate, and I confess it is but an estimate, that the maximum head of water on that seam, provided that tank had remained in the position in which I first found it, I estimate that the maximum head on that particular seam would have been somewhere certainly not in excess of twelve inches, or a half pound per square inch; it may be less, but I don't think any more.

Q. Well was the water inside the tank at that time you made that observation, higher or lower than the seam?

A. Well to be perfectly true, I didn't measure it, and I can just give you what I think on that. At the time

I made the observation, I think some of the water had spilled out of that tank; I don't think much came out through the outlet; but I don't know whether at the time of the observation, whether the water was actually above the seam or below it. That is an observation I say, that will approximate probably about the level of the seam at that particular moment that Mr. Matteson is referring to.

Q. Just a minute, before we leave that; you say the tank had been rolled just before that?

A. Yes, I think it had been rolled sufficient—I just made an estimate, I didn't measure the length of the roll or the amount that the seam had come up; but I think we rolled that tank somewhere between eighteen inches, I should imagine, as a minimum, to three feet as a maximum. I think eighteen inches would probably be a nearer guess, to the guess, than three feet.

Q. You spoke of a twelve inch head; what did you mean by that?

A. Well, I spoke as to the twelve inch head, it was my estimate as to the load—the distance between the head of the water then in the tank, and the seam, before we started to roll.

Q. At that time the water, I take it, was that much above the seam, according to your estimate?

A. That was my estimate, from my observation, but I didn't measure it. You asked me about the construction of the tank, and I think I have given you two observations; but there is another. I still fail to find on any of the four tanks, any evidence of caulking. I did observe that all the plates, as far as I could see them—I couldn't see all of the plates but I should imagine that the crowns were machined edge inside; but as far as the vertical plates are concerned, both as to their vertical edges and their horizontal edges, at least the horizontal edges on the top of the tank, because I looked at them

particularly, that they had been cut to the required dimensions by a plate shear; and there was evidence, apart from the fault I have mentioned, there is still evidence on those plates of them having been cut by a plate shear, and not planed, as has been my custom in building any kind of vessel, that we wish to use for any duty other than containing water.

Q. Did you observe a point that was pointed out on one of the tanks by Mr. Gibbs, where it was indicated there might have been caulking?

A. Pardon? (Question was read by reporter.)—No, Mr. Gibbs didn't point that out to me, Mr. Matteson. I didn't have any discussion with Mr. Gibbs on that; at least I can't recall any such conversation. Do you mean he called it to my attention, as having been pointed out?

Q. Well if you don't know—

A. My particular attention was called, not by Mr. Gibbs, to a particular spot, I looked at that; but that wasn't called to my attention by Mr. Gibbs.

Q. Where was that spot?

A. Well I don't know the tank it was on. Mr. Botts called my attention to that, and I examined it, and failed to find any signs of caulking there.

Q. Did you observe anything there?

A. I have stated, I failed to find any traces of caulking on any parts of the tanks I looked at. The other observations I made, and I think I made them in relation to the particular tanks, but I think I would apply them generally, because the same conditions seemed to be more or less general, varying in different places,—that they were riveted heads. I am speaking of the rivets now in the tanks, both around the bottom seam and the top seam and the vertical seams; they were riveted heads; that is that part of the rivet that had been hammered down, either hot or cold, I observed that quite a considerable number of them were cracked, some of them in sev-

eral places; that quite a considerable number of them had wasted very, very badly. And I observed that the rivet head in many cases had not come down to the plate; by that I mean that it was visible, a visible distance between the under side of the riveted portion of the rivet, and the plate below.

Q. What is the importance of that?

A. Well in my opinion, it was there to some extent originally, but if not that, it was either that, or heavy corrosion had been taking place, which had reduced the rivet in that particular spot, since the construction of the tanks. Now I of course have no means of telling which is correct, or whether both are correct; I wouldn't know. I can only tell you what I found.

Q. What would be the effect of such a condition on the tightness of the tank?

A. Well if I had found a rivet of that description—I will put it this way; if I found a rivet of that description at any time, in a tank, I would immediately condemn it and have it renewed.

Q. My question, Mr. Thompson, was, what would the effect of such a condition be on the tightness of the tank?

A. I think it would have a detrimental effect on the tightness of the tank.

Q. Why?

A. Because, you tighten your rivet there—you depend upon, briefly, the complete filling of the rivet hole by the rivets, the shank itself. But the head—I have never had—the head had either never had, or had subsequently lost the property that is called—the duty that it is called upon to do—that is to remain to help in keeping that tank tight through that rivet hole. That is a duty apart from merely the attachment of the two plates by means of the rivet.

Q. Now you spoke of a variation in the fittings of the bottoms of the tanks; you didn't give us any details with respect to that.

A. Well I think I could give you perhaps more details when I see the photographs; in the meantime, they seem to be—out of character altogether. And while not denying the right of a man to use any fittings he likes, my own judgment is that if those fittings had been supplied by the tank maker, at the same time that the tanks were all delivered as one order, it would indicate that he was a very poor tank maker, unless his instructions were to do such a thing. Or if they had been fitted by any one subsequent to the delivery of the tank, my own impression is—and I must admit it is just an impression, that he had used—he had not taken care, proper care in putting the fittings of a uniform character and design, and that he had actually used such fittings as he had convenient at the time.

Q. Did you notice the size of the reducer in the number four tank?

A. I did, but I did not actually measure that, because—I feel I have already said enough about that, and I don't want to say any more. But I did notice there was a difference in the bore. Now there are other things I observed in connection with those fittings.

Q. Well before we get to that; you saw a reducer fitting in the number four tank, did you?

A. Yes, I saw the reducer fitting.

Q. And you saw a reducer fitting in some of the other tanks, did you not?

A. Yes, some that were out and some were in; they were taken in and out while I was there. Even those fittings, I didn't actually try the different tanks, although I was down there, they couldn't get the fittings, sometimes, and manage to get them in with the right threads.

Q. You spoke of the difference in bore; what did you refer to by that?

A. I mentioned that; I said the fittings, in bore, of the reducer itself, not the outside periphery; not the periphery but the bore in the center of it, to which would be attached the outlet fitting connecting to manifold or other line.

Q. Well now what was the difference in bore between that fitting and the other fittings?

A. I didn't measure that.

Q. Can you tell us in a general way?

A. Well they were noticeable, I know: I think I would have to be satisfied with that; I didn't measure them.

Q. Well put it this way: was the reducer in number four tank such as would have taken a 3/8ths line?

A. Pardon? (Question was read by the reporter.)—Well I think it is only right to say that I haven't definitely fixed in my own mind the difference in fittings in relation to any particular number of tank: so I don't think I can answer that. I am sorry, Mr. Matteson, if I have dropped down on that for you, but I didn't actually connect the various bores, with any particular number of tank.

Q. Without connecting it with any particular tanks, you saw the reducer fittings?

A. I did.

Q. Were they such as would have taken, all of them, a similar sized pipe?

A. No; no, they were different bores, and noticeably different. They were so noticeably different that I really didn't think it was worth while measuring them, because they were observably different.

Q. Well when you say, observably different, do you mean, small difference or great?

A. It seemed quite enough, to be able to distinguish there was a difference in the size, without going to the trouble of measuring them; just looking at them, it was apparent.

Q. Well can you give us some estimate of the fitting which the larger coupler would have taken?

A. Well subject to the qualifications I have already mentioned, of course I have to depend upon my memory,—I think this will be probably under what I actually think; I will give you a minimum, that the fitting varied at least 3/16ths—fittings and bore; but I can't connect which tank was the small one or which was the large one. But I would give you a minimum of 3/16ths; and my own frank opinion is, it would be considerably more; but I would be safe on that, not having measured them.

Q. Now I think you were going to—

A. I think that they were considerably more, but I am just—

Q. Were those openings illustrated in one of the pictures that were taken?

A. Pardon? (Question read by the reporter.)—I think so. I asked the photographer to note that, and I really depended more on the photographs, than my evidence—my actual memory. I want my memory refreshed by the photograph. I didn't know you were going to ask me that question, and I have had no notice about questions you would ask me on this particular line, so I am just stating what I actually remember, or what notes I have taken.

Q. Well, we will have the pictures here in a few moments.

(Discussion was had off the record.)

Q. Mr. Thompson, I think you were going to take up your observations of individual tanks; will you do that, please?

A. Well I think I have covered quite a lot of it. I should say that I want to correct evidence I have given before in this case, from an observation now I have made

on the tank itself. I think my evidence states that in my opinion, from the observation that I had,—and frankly I thought it was this; but I said they were 3/8ths, but I wanted to be on the right side, and I thought they were 3/8ths diameter. My observation now from the hole—two holes I observed, in I think number four tank, I know one is not far away from where the tank had been cut at the bottom, that was on the vertical seam, and I think the other was on the circumferential seam at the top of the tank: I wish to correct my evidence in this respect; that I believe the rivet used there was a 5/16ths rivet, and not a 3/8ths.

Q. Why do you say that?

A. Because I measured the hole; I find a 5/16ths rivet was the biggest rivet you could put in.

Q. What is the significance of that?

A. Well if these plates were 3/16ths in diameter—in thickness, I mean—I know to my own knowledge that 5/16ths diameter rivet would not be considered satisfactory for a 3/16ths plate—too small. The minimum rivet is 3/8ths, to be used; and my opinion, based on experience, I would say that that would be detrimental to the tightness of the seam. I made certain observations regarding those two holes I refer to; the lower hole I mentioned seemed to have been burned out—at least the rivet had been burned out, I mean; and the plate was locally considerably bellied or pressed in the way of that hole. The other hole was not compressed, but disclosed that the holes originally had not been opposite one another, and the holes therefore had not been reamered out during manufacture. It is my opinion that the rivet that had occupied that hole, had been an imperfect rivet.

Q. What effect would that have?

A. That again I think has a detrimental effect on the tightness of the seam and upon the strength of the rivet, and can be definitely considered bad practice.

Q. Did you make any observation with respect to the manner in which the fittings at the bottoms of the tank were affixed?

A. Oh—well only in relation—as far as I could feel, on those I could get at, in three of the tanks. I should say that all the tanks were similarly fitted, with doubling plates in the way of the fittings.

Q. Doubling?

A. Doubling plates.

Q. In the way of what?

A. In the way of these other fittings; that is of course the usual practice.

Q. What is the purpose of the doubling plate?

A. Well the doubling plate of course is to increase the thickness in the way of the fitting, so as you get a better attachment for your fitting; you get a longer—thicker piece of metal to screw into. Before doubling plates are fitted in a tank or other structure, which has to be even water-tight, it is good practice and ordinary practice, as far as my experience goes, to use water-tight pitch—spacing, if you prefer, of rivets, to attach those doubling plates to the tank or other structure. I did not observe, nor recall—I did not observe the spacing of the rivets in these doubling plates any more than in the one tank, which I believe was number four tank, which had the bottom cut off; I confined it to that doubling plate because that doubling plate I could see readily, and without any possibility of making a mistake as to the pitch of the rivets. The doubling plates, which were square in shape, in that particular tank I looked at, were attached by four rivets to the shell of the tank, one rivet in each corner. The pitch or the spacing of the rivets in that particular doubling plate, I think I took—I think it is two and 5 16ths—

Mr. Botts:

Inches?

A. Yes, two inches and 5/16ths. No; I haven't that in my notes, but I asked Captain Patton to check that dimension with me and to make a note of it, and I believe he did so at the time.

Q. Well before we leave that, Mr. Thompson, you spoke of the ordinary pitch or spacing of rivets for water tightness; with respect to a tank that was tight, what would that be?

A. Four diameters.

Q. And in inches what would that be?

A. It depends upon the size of the rivet. In this case it would be 20 16ths; in the case of 5 16ths rivet, it would be 20 16ths; that is an inch and a quarter.

Q. Well then is that center to center?

A. Pardon?

Q. Is that center to center?

A. Center to center; yes; from outside edge to outside edge; but center to center, we count it; we always do the pitching to center-line.

Q. In this tank, if that doubling plate had been fitted for water tightness, what would have been the pitch and the distance apart of the rivets?

A. I just said, an inch and a quarter, center to center; that is four times 5 16ths.

Q. Now what is the effect of that?

A. The effect of that is that you have a water tight pitch, and that you have—I should say if those plates were not caulked, those doubling plates were not caulked, the tightness depended entirely upon the spacing of the rivets—you have a joint then that in my opinion is not water tight; that is that liquids, particularly under any pressure, would be apt to creep, between the two surfaces of the plates; that is the inner face of the doubling plate, and the face of the plate to which it is attached. Therefore the threads in the doubling plate would not be considered as a proof of the tightness of the fittings, as the

pressure would come on the tank side of the doubling plate—that is the side of the doubling plate close to the tank, rather of course than where it should be, on the inner side, that is the side towards the center of the tank. Even supposing then that you have your fitting also threaded through the shell of the tank, all you have for tightness would be the threads in the thickness of the tank. To my knowledge—

Q. Could you make a drawing and illustrate to us what you are telling us?

A. Oh certainly.

Q. A pencil?

A. No, I think I have one here. You want just a sketch—

Q. Describing what you just told us.

A. This is not to scale, just merely a sketch, and I don't know if I am putting the right dimensions or not; I have no intention of showing a larger distance than four diameters, so I will put quite large rivets in the corner. Now I will take the tank side plate—this is a hypothetical case, Mr. Matteson; I am not referring this as to the—(witness draws). Now on one side I will put a thread extending through the plate, also through the—in the other case I will put a bored hole. I won't be able to get my fitting in if I don't mind; the worst of these sketches. I do not offer this sketch to sample my draftsmanship, just merely to illustrate the point I have been giving evidence to. In this sketch, on the right hand side—

Mr. Botts:

Let's identify this, so we can refer to it in that way.

(Said sketch was admitted in evidence and filed as Libelants' Exhibit #150.)

A. This sketch does not refer in any shape or form as to dimensions, to the doubling plate that has been referred

to; this is just describing what I mean. Do you want me to mark anything on it?

Q. Just mark it as you have called attention.

A. I will put this, a section—call that section?

Mr. Botts:

Section—tank wall, put it.

A. We will call that—perhaps we might call that Plan, or Elevation; it doesn't matter which it is, Mr. Gibbs; I will take his choice. Is Plan all right, Mr. Gibbs?

Mr. Gibbs:

Yes, exactly right.

Q. On the right hand of the sketch—of the paper, there is a sketch which is the section through the side wall—that is the tank side, if you like.

Mr. Dyer:

Mark that.

A. Call that—that there is called, A?

Q. Call it tank side.

Mr. Underwood:

Side plate of tank.

A. Side Plating, will do? This is Doubling.

Mr. Botts:

Doubling plate.

A. Doubler, shall we call it? All right.

Q. Now, on the Plan, indicate the rivets, and the—

A. I will describe the pitch of the rivet there in that case, is from the center of the one rivet on the left hand

side of the plan, to the other rivet hole on the side of the—on the right hand side; we will just call that "pitch of rivets"; is that good enough, to refer to that? Pitch of rivet. That is the same thing this way too.

Q. What is the hole in the center?

A. Well I put this in in two ways; in sections I have shown the hole as if it had been tapped right through the full depth, through the side plating and the doubler. On the lower half of that section I have shown it as a plain hole through the plate,—a plain drilled hole and tapped through the doubler. We will call that, Bore, or Hole; that hole refers to the place for the fitting.

Q. Now will you point out to us how the effect that you were describing, operated?

A. Well in my opinion it would be impossible to guarantee water tightness of the edge—shall I mark "A"; A to B; because that edge has not been secured to the side plating by a water tight pitch of riveting. The effect of that would be, that if the side plating as indicated on the lower half of the hole in the section, were not tapped, the tightness of that fitting would depend upon the tightness of the joint A to B.

Mr. Underwood:

Could I interrupt you just a minute?

(The answer was read by the reporter.)

Q. And by tapped, you mean, threaded?

A. Threaded, yes. But if the threads, as you prefer to call it, were continued through the side plating, the joint would then depend solely, in my opinion, upon the threads in the side plating.

Q. Now what is the importance of that?

A. I don't think it is a good joint; entirely contrary to the whole of my experience.

Mr. Botts:

Could I ask a question right here while I have it in mind, so I won't have to come back to it? Mr. Thompson, if I understand you correctly, in non-technical terms, you mean to say that because the rivets were too widely spaced, they would not be sufficiently close to draw up a tight joint, and the contents of the tank would be likely thereby to leak through the joint A to B, up as far as the threads; and if it were not a threaded joint, then there would be nothing to prevent the liquid from leaking out; and if it was a threaded joint, it would depend upon the—

A. No, you are taking me too far. I don't say that, because you might have then a fitting—I am assuming this is a flat plate, not a circular plate. In a circular plate, in my opinion it would do that, that you suggest. But if this were a flat plate, you may have a type of fitting to which you could have an additional joint by a shoulder on the fitting and the insertion of a packing material; or by the grinding of those two surfaces at a greater diameter than the hole. Do you follow what I mean? I will etch in such a shoulder and call—the diameter of that will be indicated by the letter "C". The packing material, or the ground joint could then be—I will put that in red, now; as shown by the red line marked "D". Is that clear?

(By Mr. Matteson):

Q. In other words, what you are indicating here is that if the fitting which was screwed into this hole had a flange on it, there might be some way of getting a ground fit between the flange and the side of the tank?

A. Provided you are tightening up against a flat side. Of course you can't use a shoulder and get a joint on a circular surface.

Mr. Botts:

Well, this was a circular surface, wasn't it?

A The tanks were, yes, sir. Did I make that clear?

Mr. Botts:

That is all right.

(By Mr. Matteson):

Q. Did any of the coupler fittings which you observed on the Seminole tanks, have such flange?

A. I didn't observe such flanges, no, sir.

Q. Now I call your attention to Exhibit 6-A, which is one of the sections which has been offered in evidence here, and ask you what you observed with respect to that?

A. Well I haven't seen this exhibit, until it was brought into Court this afternoon.

Q. I am particularly referring to the rivets.

A. Oh, the rivets; well the snap-heads which formed the original head of the rivet before it was inserted, seem to be in fairly good order. May I just examine those heads just a little further? (Using pocket knife.) I won't destroy any evidence, Mr. Underwood. I don't think I need to—a bare touch would indicate the center head of the rivet to which I have just referred was either not wholly driven home, as we call it, or forced up to the plate, or has subsequently corroded underneath; I don't know which,—or perhaps both. And the present appearance definitely shows that that rivet—the head is away for at least part of its periphery, from the plate itself.

Q. What is the significance of that?

A. Well, you have asked me the significance of that; the significance of that, to me, is that fluids or any other thing that may cause corrosion, may get—is likely to get at the shank of the rivet and rust the rivet inside the hole; and to whatever extent that shank is affected, will likely cause seepage.

Q. You are referring now to the central rivet?

A. Central rivet, and to the manufactured head; not the head riveted during the process of riveting; the original head. Looking at the rivets on the other side, that is I believe the outside of the tank—have you got a magnifying glass here? May I go to the window? (Witness going to window.) I think that is almost visible with the naked eye, without looking at it through the magnifying glass. Take the rivets in order, looking at the plate from outside, with the rivets as the top side of the exhibit, the head of the first rivet is definitely broken.

Q. Now, so we will know what rivet you are talking about.

A. On the right-hand side, with the rivets at the top; would that be clear?

Q. It is better.

A. The first rivet, counting from the right-hand side of the rivets at the top, is definitely broken. In fact, to be quite fair, I mean part of the top of the head is broken; I am not referring to the shank, by any means. The second rivet is in very bad shape, as one can observe, on the upper side of the rivet,—the rivet hole. The third rivet—may I have that glass again: the third rivet has either never been driven home properly or has wasted considerably.

Mr. Botts:

Or has what?

A. Wasted considerably between the plate and the riveted head of the rivet; and that is to the extent that you can see the hole, at the top of this rivet. Now the fourth rivet I want to use a knife; is there any objection to using a knife?

Q. Go ahead until somebody stops you. (Witness goes to window.)

A. The fourth rivet from the right is an extremely bad rivet; it shows that the tank was in my opinion not carefully manufactured; that the holes, before the rivet was placed in, were not opposite; that the center of the rivet on the outside of the tank is visibly higher or lower, whichever way you happen to be looking at the edge of the seam, than the head of the rivet—that is the riveted head is not the same center, by any means, as the rivets. I think that constitutes, and did constitute a poor rivet.

Q. And why is that, Mr. Thompson?

A. Well I think I could describe that better by giving you a sketch.

Mr. Botts:

All right, go ahead.

A. Before making a sketch, I would like to refer to the next and final rivet; that is the rivet in the left-hand corner, looking at that portion of the tank plate from outside, with the rivets on the top. The succeeding rivet—that is the final rivet, shows a similar defect, but not to quite the same extent. I will now explain what I mean, by means of a sketch. I will do it in larger scale than the exhibit, purely for the purpose of showing it perhaps more clearly. I want to show the sketch before I add in the rivet.

(By Mr. Matteson):

Q. All right, you can proceed.

A. This sketch indicates a seam of two plates, the overlap of the seam being from point A to point B.

Mr. Botts:

Wait a minute now, suppose you draw two sketches, one showing the hole without the rivet, and then another sketch putting the rivet in.

A. If you would like it that way.

Mr. Botts:

Then let it show how the hole was before the rivet was put in.

A. I was intending to do it with red pencil, but I will do it the way you suggest now. Now on this sheet I have drawn two rough sketches, the upper one showing the plates brought together with the holes not opposite one another. I am trying to explain this in just simple language. The holes,—the overlap, as I stated, of the two plates is located A to B on the sketch; the hole on the upper plate being marked C, and the hole in the lower plate being marked D. Good practice, through the whole of my experience, and which is confirmed by various sources to which I could refer you in writing, calls for, in the event of this misalignment of holes, for the reamering of the holes. That practice consists of using a drift. It would have been impossible, in my opinion, with a normal hole clearance, to have inserted the rivet in either of the two rivet holes—last two holes to the left of the exhibit, without the use of a drift.

Mr. Botts:

Explain what a drift is, right there.

A. A drift is a round piece of steel, made, in my experience, of one of the commoner tool steels, or perhaps one of the better wrought steels, shaped generally about six inches long, with a head, the shank being tapered from its outward end towards the head. In effect you have got a taper pin with a head on it. That drift is inserted by its smaller diameter end and by the means of a hammer, and forced in until you can get the holes as far as possible in alignment; at least into sufficient alignment that you can insert the rivet. By the use of such a drift you elongate both holes. You elanogate, on the top sketch, the hole on the edge marked E; and you elongate the hole on the bottom plate at the point

marked F. That practice results in an oval hole, and disrupted material at the edge of the hole; and one effect that it causes is to make a crack in the rivet. Because it is impossible, in my experience, to prevent such a crack, although it may be but a slight surface crack; and that means that that practice is universally condemned, and not permitted in any good class works, where they are building ships or building tanks. The use of a drift is precluded absolutely. Now if that hole had been reamered out, you would of course have to use a larger size rivet, or otherwise condemn the plate; unless you built up the hole with material, with welding, and then drilled a fresh hole right through the two plates.

Q. Now what does the rivet in this particular case indicate?

A. In my opinion, that it is a hazard to the tank, from the view of tightness.

Q. Now you have talked about reamering and drifting: can you determine whether either of those measures were followed in this case?

A. In my opinion it would have been impossible to get those rivets in unless the holes were considerably oversize, without the use of a drift. Of course the holes were not reamered because the same size rivet is there as in the other holes, and the centers are not in line. I think the appearance of the rivet heads here on the outside of the tank will show signs of heavy corrosion.

Q. You were going to complete this sketch by showing the rivet in the second hole.

A. Well you cannot get a rivet, unless it is very much smaller in diameter than it should be, and therefore a wrong rivet, into those holes without either reamering or drifting the holes. And with a drifted hole you force the rivet in in the way I will indicate in red.

Mr. Botts:

On the bottom sketch?

A. On the lower sketch. If the rivet—I show it in red, the rivet here, that is the snap-head, the original snap-head of the rivet, I mark G; the shank of the rivet I mark H extending from point J to point K. In red I mark the rivet head, head of the rivet. It will then be noted that the center of the riveted head is out of line with the center of the original head of the rivet before insertion.

(By Mr. Matteson):

Q. What is the position of the shank of the rivet with respect to the plates it passes through?

A. The shank of the plate—shank of the rivet, I am sorry, does not fill the hole perfectly, and is subject to stress with the returning of the material shortly after the removal of the drift and the insertion of the rivet, and you get a cutting edge placed on the shank of the rivet from the distorted hole. The hole is not fully filled even with a hot rivet; and that is why we always condemn the use of a drift in any good class work.

Q. Do I understand you to say that if the rivets were placed in as illustrated in the second part of the sketch, that in your opinion that rivet would or would not fill the hole?

A. It would not fill the hole up, and I think would be apt to add to the hazard of seepage or leakage.

Q. If the holes as prepared for the rivets are exactly opposite each other, how does the shank of the rivet pass through the plates, vertically or otherwise?

A. Well vertically or horizontally, it depends on the way you do the riveting. It passes through just like, more or less like a fitted bolt.

Q. At right angles to the plate?

A. At right angles to the plate, yes.

Q. And if the rivet is driven as you have indicated in the second part of this sketch, how does it pass through?

A. It passes through with a little less, depending on the way you look, a little less or a little more than right angles, whichever way you happen to see it. It doesn't pass through. And then you are apt to get the original head, the snap-head, at an angle which I will indicate here; at an angle to the plate. I will mark that spot as L,—an angle which I have indicated by the thickening of the red line in a wedged form. Is that clear?

Q. What would be the effect of that with respect to a gasoline tank?

A. A rivet fitted in that manner is defective and should be removed, and a new rivet put in when the tank is constructed. It is evident before construction, and the effect would be, in my opinion, to increase the hazard of wastage of the shank, and thereby add to the hazard of seepage or leakage.

Q. Now referring to this exhibit that we have been talking about, 6-A, how many of those heads are out of line in the manner that you have described, with the riveted heads on the opposite head?

A. I want to get the right-hand.

Q. Just a minute.

A. I should say two are definitely out of line; two at least. The two I refer to are the two to the left-hand side. It is very difficult to test,—make that test, on the rivets, in a vertical way. There may be some more that I would have to look—I think I will just check the heads that way; I check them this way easily. I am looking at the edge of the two plate and across the two heads of the rivets, so I can find out. Those two at least, in my opinion, have been inserted by means of drift.

Q. I refer to Exhibit 5-Z, ask you whether any of those rivets are out of line in the manner you described.

A. The riveted heads of these rivets seem to be in much better condition, in my opinion, then in the previous exhibit.

Q. What I was asking was, how many of them—or whether any of them are out of line as you have described?

A. Not to any noticeable extent. I can't notice any there that I can comment upon.

Q. I would like to ask you what you noticed with respect to these four exhibits, and with respect to soldering on the rivets on 5-X?

A. You apply—

Q. Whether the rivets are soldered.

A. I notice that the soldering of the seam has run up to one of the rivets and is attached to the head to the extent of about perhaps three-sixteenths of an inch of its periphery.

Q. Otherwise is there any other solder on the rivets?

A. I can find none.

Q. We are talking about the heads of the rivets; now how about the reverse side of the plate.

A. May I go to the window? (Witness goes to window.) There is a certain brightness on a part of the rivet, but I don't know whether it is the remains of solder or not; I couldn't say. I don't know whether that is solder or not.

Mr. Matteson:

I want to mark this drawing as an exhibit.

(The said sketch was admitted in evidence and filed as Libelants' Exhibit 151.)

Q. From your examination of the tanks this morning what did you observe with respect to any indication of solder on the side seams of the tanks?

A. I think most of the side seams were soldered up to—a distance I didn't measure, but I imagine possibly up to two feet from the bottom. But I noticed on, I think

it was on tank Number Three, that at least one of the vertical seams as I recall—I could find no evidence of soider on that seam at all. You are referring to solder on side seams only?

Q. Yes. Do your notes of your observations—

A. On the other seams I endeavored to find solder above the place I mentioned, two feet, and failed to find any indication of solder or anything that indicated that there had been solder there.

Q. And how close was your examination?

A. Well I made a fairly close examination, in view of the questions Mr. Underwood put to me in the evidence before.

Q. Did you find any evidence of discoloration?

A. I find none, sir; no discoloration; alongside the seams, that appeared to be the same discoloration that was on the surfaces, more or less general on the tank, and certainly some considerable distance away from the seam. I saw no difference in discoloration alongside the seam, that I did a distance from the seam.

Q. In your opinion, from your observation, had the side seams of these tanks been soldered at any time before the fire, above the point which you have mentioned, about two feet from the bottom?

A. Not from what I observed, sir.

Q. I have these pictures here now, Mr. Thompson; I show you this one. Will you describe what is illustrated by that picture?

A. This shows part of the top crown plate of one of the tanks—that is Number Two tank; and also the number of the tank, which is Number Two. It also shows a knife I placed in,—pocket knife that is. I placed in the circumferential seam just adjacent to the jointer hole. Am I allowed to mark this?

Q. Yes.

A. Which I will mark—jointer rivet, rather, which I mark as—letter A?

Q. Yes.

A. With this jointer rivet you have got three-ply riveting, and you get the overlap of the side plates, and the thickness of the crown plate. The rivet goes through three thicknesses and forms what we call a jointer rivet. The inner edge of the center thickness, which is the underside of the lap of the two side plates, should be thinned out by fire, to what we may call a feather or thin edge. My observation, that edge had not been fired to that extent, as it still had an edge of measurable depth, in my opinion, of a full sixteenths, square edge; and I should be glad to give you a sketch showing the effect of that.

Q. Well I think we can see from the picture all right Mr. Thompson.

A. In my opinion, as I say, that is not only bad, but unless you juggle the other plates,—that is the plate above, to overcome that thickness, you are going to get at least a pin hole through there. At that point I stuck my penknife in, as I did in practically all of the tanks in similar position, and I found a more or less equal condition—that is a condition in which I could insert my penknife to a considerable depth. By considerable depth, I mean an average of from three-sixteenths to nearly three-eighths.

Q. Well what is the importance of that, Mr. Thompson?

A. In my opinion, that that was not a tight joint even when manufactured. By tight joint I mean it would not prevent the escape of gases.

Q. In your opinion did the tank leak at that point?

A. Pardon?

Q. In your opinion did the tank leak at that point?

A. No, I should not say the tank leaked there.

Q. Because that would be rarely in the area of liquid?

A. That is at the top of the tank.

Q. I am not necessarily referring to liquid gas; what will be the effect of a condition like that on the top of the tank?

A. The tank would not be tight at that point.

Mr. Matteson:

I would like to have that photograph marked.

(The photograph so tendered, was admitted in evidence and filed as Libelants' Exhibit 152.)

Q. Now is there something else that is illustrated by this photograph, that you wish to call our attention to?

A. Yes, this photograph shows what I have referred to as the mixture of soap and water that was applied to the tank for the purpose of testing it by air. It further shows that this crown was poorly fitted in relation to the side plate.

Q. In what respect?

A. Insofar as the radius of the corner of the outside of the crown plate was not finished, when it reached the top of the outside plates; so therefore in my opinion it gave me an imperfect lap on the top of the tanks; that is, lap or seam between the crown of the tanks and the body of the tank.

Q. Well I am not entirely sure that I understand your last answer. Can you put it in simpler language, perhaps?

A. Can I make a sketch?

Q. If you can put it in simpler language, I would prefer it.

A. Well the space I mean is the—marked with a pen here or something?

Q. Here is a pen.

A. Sort of a small space; the space I mean lies all around the top of the side plating, between the points of

the two arrows marked B and C. That space—I think that is clear.

Q. Let's see if I understand it. The flat part of the crown of the tank, which might come in contact with the side plating of the tank, is placed so high that some of it does not—is that what you are saying?

A. No, it is so low. You see that briefly, from that I consider there would not be a good seam, circumferential seam.

Q. And what would be the deficiency in that seam?

A. I consider that poor workmanship in a tank, and that the seam would form a poor joint.

Q. Now passing to this next photograph, will you tell us—

Mr. Botts:

Get it marked first.

Mr. Underwood:

Better describe it first.

(By Mr. Matteson):

Q. Will you tell us what is illustrated by that photograph, to which you wish to call our attention?

A. Well there is a difference here between the two—between two outlet fittings, which I referred to earlier in my evidence on the stand.

Q. Now can you describe the photograph so we will understand what it is?

A. Well I am at a little bit of a loss, to be frank, about this photograph; I don't quite place it; I don't understand why this space should appear here.

Q. Well aren't they part of the two tanks, or all one tank?

Mr. Underwood:

Number Three and Number Four, isn't it?

Mr. Botts:
That is where we rolled the two tanks together.

Mr. Underwood:
It is agreed that this photograph taken this morning shows the outlet hole near the bottom of Number Three tank at the left.

Mr. Botts:
Number Two.

Mr. Underwood:
You are right, Number Two tank at the left, and Number Four tank at the right; the more or less vertical line in the center of the picture being between the bottom ends of the two tanks.

A. I would like first to call attention to corroboration of—

Mr. Underwood:
Put Number Two, with the pen, there; put here, Number Four tank.

Mr. Matteson:
Now will you mark that as an exhibit?

(Said photograph was admitted in evidence and filed as Libelants' Exhibit 153.)

Q. Now will you tell us your observations which this illustrates?
A. This confirms first what I said in relation to the non-water tight pitch of the rivets on the doubling plates. Shall I mark in each case?
Q. Yes.
A. Those rivets I refer to I will mark—

Q. A, B, C and D.

A. A, B, C and D, on the Number Two tank; and E, F, G and H on Number Four tank; and also to the fact that they are the same sized rivets as in the tanks generally; that is, they are five-sixteenths of an inch diameter.

Q. Now is there something else there you wish to call attention to?

A. I wish to call attention to the fittings. The fitting on Number Two tank is a different type of fitting to that on Number Four tank; that the outlets are appreciably different in bore; and it would indicate to me that the fitting on Number Four tank would require a further reducing piece for use as a fuel line discharge.

Q. You spoke of the possibility of a coupler having a flange that would fit against the tank. I call your attention to the coupler appearing on Number Two tank; did that have such a flange?

A. Not as I observed; and I don't think, on a round tank, that the fitting of another pad outside of the tank would be practicable. You don't screw it up tight on a round tank; you have to have a face to screw a shoulder on to, on a round tank. I further call attention to this, to other evidence, as to the wastage of the riveted heads of the rivets in Number Two and Four tanks, as comprised within the scope of these photographs.

Q. I show you still another photograph, and ask you to describe that, and tell us what it is?

A. This is a photograph of one of the side seams on Number Two tank; I will mark it "Number Two tank". This shows what I have already given evidence to, as to the bad workmanship which was present when the tank was built.

Q. Will you indicate that?

A. I indicate that by showing where the bad workmanship occurred; that is the cutting into the seam from

point A, and stopping suddenly at point B, when the mechanic was handling the shears; brought the plate back again into correct position under the shear. At point C it will be observed that the edge of the plate there, the point of the plate opposite point B is practically up to the edge of the riveted head of the rivet; whereas in the remainder of the photograph generally it will be observed as at point D to E, that the edge of the plate is about half the diameter of the rivet away from the edge of the rivet. The depth of that cut from the proper edge of that seam, I measured to be—I know I measured it and gave it to Captain Patton, is that Number Two? Five-thirty seconds; and it was at this point, at point B I inserted the pocket knife to which I have already referred, and at which point my pocket knife went in for a full three-sixteenths. It was also at this, about this point, that I noticed several beads of water.

Q. Will you indicate approximately where you observed those?

A. For the full length of the seam as shown at certain places, and beyond—right and left, further along the seam, right and left as well, of what is shown on the photograph.

Q. What in your opinion did those beads of water indicate?

A. I have already given—leakage from the tank under the head of water that was in it. That tank was lying horizontally on the ground, and the head of water, in my opinion, would not have exceeded twelve inches—or half a pound per square inch pressure.

Mr. Matteson:

Will you mark this photograph please?

(The said photograph was admitted in evidence and filed as Libelants' Exhibit 154.)

Q. Is there anything else that you want to call to our attention in this photograph?

A. There are evidences here of cracked rivets,—rivet heads, not so badly cracked as I have seen in other places, but I will mark one if you wish. The rivet marked F; I also call attention to the fact that in these few rivets the alignment is extremely poor, showing in my opinion bad workmanship, either through drifted holes or through bad punching or drilling.

Q. I show you this other photograph and ask you what that is; please describe it.

A. That was the tank, the farthest tank; what was that one?

Mr. Munroe:

Number Three.

A. This shows the outlet near the bottom of Number Three tank. I will mark the photograph "Number Three tank".

Mr. Matteson:

Will you mark that one for us.

(The said photograph was admitted in evidence and filed as Libelants' Exhibit 155.).

Q. Is there anything on this photograph that you wish to call to our attention?

A. To shorten the record, I call attention to the condition of the heads of the rivets, and call attention to the outlet fitting—at least the hole; and that the rivets in the doubling plates are identical as I have mentioned it before in other photographs,—practically identical, the four rivets on the doubling plate. This particular fitting had a maximum of two full threads, with the attachment of

some cock or other fitting that came out of it. I used a pocket knife on the outer edge and the inner edge, and made bright,—the plates bright at those two points; I will mark those two points A and B. I did that because I wanted them to show up, and I could describe them much more easily. The distance between A and B, in my opinion, did not form, or could not form, a joint. Therefore in my opinion a joint at this particular fitting would solely consist of such a joint as you could make with two full threads in a fitting as I have already described.

Q. Well now Mr. Thompson, there has been some testimony here this afternoon that these two threads that appear there were made by a mechanic who was making the air tests on these tanks. So aside from those two threads, what is your opinion of the joint?

A. Well I didn't see any other evidence of what could have made a joint.

Q. What is this surface that appears between A and B? Is that part of the plate or part of the doubling?

A. Well I couldn't see inside of the tank, so all I can say, I don't think it is part of a plate. I couldn't see inside that tank; so I would rather not say what it is. I could only say I know it isn't part of the tank plate.

Q. Now generally speaking, from your observation of the tanks, some of which you have called to our attention, what is your opinion at this time as to whether they were suitable tanks for gasoline tanks?

A. Structurally I think they were quite suitable, in spite of the defects I have mentioned. But from tightness, I think that the tightness of seams and of rivets, I do not think that they were suitable for use for storage of gasoline at any time in their history. I am including in that, from the day they were first installed.

Q. When you said structurally sufficient, what do you mean by that?

A. I simply draw my observation of the section of the steel and the general construction of the tanks; I think

they would stand up under all pressures without deflation. In other words, a strong enough tank, but in my opinion they were not tight enough tanks. Since my observation at this time, I see no reason to change my opinion that they were structurally strong enough to stand up under all strains; but in view of the seepage, I consider that the evidence I gave last March I believe, that they were—that I was certain that seepage would occur within a period of—I believe, I stated four or five years as a maximum,—my opinion has been strengthened and confirmed by all that I have seen of the four tanks.

Q. Now what was your observation, Mr. Thompson, as to whether these tanks have been affected as to their tightness, or structurally, by the fire?

A. Oh, they were not distorted in any way by the fire. I don't think, structurally or from the view of tightness, that they were affected in any way by any heat that could have been applied to them there. Because we have vertical boilers of that type, which are regularly subject to heat, and furthermore not only heat, but concentration of stress, due to the inclusion of stay-bars, floor tubes or water tubes, that in my opinion, from a long experience with vertical boilers, I am quite satisfied that those tanks remained almost unchanged as the result of the fire. I would say that I have seen no signs on those tanks—any signs that they had been in a fire; but I don't deny that they have been. If I had to judge these tanks purely from what I see today, or of the tanks earlier, I have no evidence from the tanks themselves that they have even been in a fire.

Q. I refer to this exhibit 5-Y; is there something about that which you wish to call to our attention?

A. Oh; some particular thing? I call attention to a local lamination.

Q. Where does that appear?

A. Shall I mark the exhibit now?

Q. No, just describe it.

A. It occurs on the outer plate, that is the tank plate, at a point approximately half an inch up from the bottom, and nearly at the inner edge of the tank side of the plate.

Mr. Botts:

What exhibit is that now, please?

Mr. Matteson:

5-Y.

Mr. Underwood:

What did you call it?

A. A local lamination.

(By Mr. Matteson):

Q. What is a local lamination?

A. A local lamination is the thing that we frequently get in steel plates and is one of the causes whereby we take precaution to see that the seams are made tight by welding; and the rivets are made tight, to overcome this weakness which may appear or may not appear during the course of construction. These laminations frequently don't turn up for some time; that is, don't turn up,—they are not noticed during the course of construction; but I have seen them occur in boiler furnaces years after—not occur, to the observation of them, considerable years after the boilers were made. They are in my opinion caused by the inclusion of a small piece of slag, or by other things, in the course of the construction of the plate,—that is the manufacture of the plate. That thing may be discovered during machining, and the imperfect part, or the lamination, pulled out, during the cutting process or other processes of manufacturing. The effect is that if you get such small laminations in a tank,

particularly in the seam, they are not discoverable; they form added hazards and undiscoverable hazards; lasting effects, if you like, which have to be provided for; and one of the known hazards in the construction of steel vessels. We overcome the risk of that hazard in steel vessels by caulking the plate on the water side. I think it is incidental to the manufacture of mild steel plates, and cannot be done away with. One has to take every precaution to overcome the hazards that arise from such an error or trouble in the plate.

Q. What are the precautions they take?

A. Normally, a small imperfection, as is shown there in the body of a tank, away from a joint, is you might say no moment. But if a fault like that occurs in a seam it is apt to cause that seam to become other than tight; and to overcome that hazard we weld the edge of the plate and the rivets, where any dangerous fluids are to be carried. I think that is the only observation I can make on that.

Mr. Matteson:

That is all.

Cross Examination.

By Mr. Underwood:

Q. Mr. Thompson, look at Exhibit 5-W.

A. Yes, sir.

Q. Do you notice the four bright spots on there?

A. Yes, sir.

Q. Apparently made with a wire brush?

A. Undoubtedly made by a wire brush, I should say.

Q. What is the grey colored material exposed?

A. In this case I should say it is the wire brush; that is the case on the top right-hand corner.

Q. How about the other three?

A. I should say the same applies to the lower right-hand corner.

Q. Well is that or is that not the original galvanizing, in your opinion, that is exposed?

A. In my opinion, sir, there are just particles of galvanizing left in all corners; most of those are marks left by the wire brush.

Q. You see particles?

A. Just particles.

Q. What is the shiny grey stuff you see?

A. Wire brush mostly, sir.

Q. You mean, particles of the wire brush adhered?

A. No, sir; the same kind of thing as if I do any part of a rusted plate, with a wire brush, that is what we get after wire brushing plates, if the plates are not galvanized.

A. I say the grey stuff there is the marking from a steel brush.

Q. You mean, part of the steel brush has worn off on the—

A. Apparently are the marks set up,—the rubbing you get on any steel plate from the use of a steel brush. That appears regularly on brushed surfaces.

Q. Don't tell me what you have regularly done; I am asking this particular question and I want an answer to it. What is the grey stuff, is it steel, is it the original steel of the plate, steel left there by a steel brush, or what is it?

A. Steel brush, a part of the original appearance of the plate, if you want a complete answer, I should say.

Q. I call your attention to the edge of Exhibit 5-X, part of the portion of the vertical plate; do you notice the rust on there?

A. Are you referring to this here, now?

Q. Yes, on the edge.

A. Yes, that appears to be rusted there.

Q. Why did that which was cut on Monday, rust where there could never have been any galvanizing, where these exposed surfaces on Exhibit 5-W, which were cut on Saturday, did not rust?

A. I couldn't tell you, sir.

Q. Isn't it a fact that the galvanizing on there is what kept it from rusting?

A. I do not agree. I do not agree, absolutely. No question about it.

Q. Do you say, Mr. Thompson, that because the fitting in these tanks varied, they necessarily leaked?

A. No, sir, that was not my testimony at all.

Q. Did you say that you observed no soldering whatever on the vertical seams of these tanks?

A. Oh, no, that is not my testimony.

Q. You did observe soldering to about eighteen or twenty-four inches up the vertical seams of some of them?

A. I think most of the seams were soldered; that is my testimony. I referred to one seam only.

Q. Did you observe any difference in the soldering at those seams, at the upper ends?

A. I believe in one case, or perhaps more, I noticed that the solder—I don't know whether it was high up as twenty inches, but I will say this,——I saw a difference in the soldering on at least one of those portions you refer to.

Q. Isn't it a fact that the upper end of the portion which now shows solder, shows more solder than it does at the lower portions?

A. Yes, in one case.

Q. Isn't that true generally?

A. No, sir, I wouldn't agree with you as to that generally.

Q. Where do you suppose this extra lumping of soldering came from on the one you speak of?

A. Oh, I should imagine that it ran down, with the heat, from that upper portion.

Q. Do you mean to say that you observed no evidences of solder remaining on the vertical seams near the top of the tanks?

A. I did not observe it, sir. I looked for it especially and I couldn't find it anywhere. I thought that that question would be put in Court, and I looked for that.

Q. According to my notes you said the tops of all the tanks had openings at the lap. Do you mean, openings through which you could insert an instrument right out through into the tank?

A. Oh, no, sir, I didn't say that.

Q. You don't refer to that type of opening?

A. Oh, no. I think I described it, and offered to make a sketch to illustrate it. But I didn't describe it that way at all.

Q. And you didn't mean to convey the impression that where you put your knife in, you could put it all the way through into the tank proper?

A. No, sir; because I gave you the actual depth the knife went to; which was less than the depth of the seam. I might also say Mr. Underwood, that—

Q. Have you answered my last question?

A. Yes, sir, and I would like to make comment, if you don't mind.

Q. If you want to amplify your answer, I have no objection to that.

A. Well amplifying my answer to the very point you have just raised.

Q. Of course you may answer my questions fully.

A. Well I think—you are referring to openings I observed with my knife; and I wish to amplify that answer.

Q. Go ahead.

A. I say, I inserted my knife in various places on the side seams,—the blade of my knife, in several places, to

a depth two to three-sixteenths, on all the tanks. I tried every tank with my knife, on the side seams.

Q. And by that depth, do you refer to openings clear through into the tanks?

A. No, sir; I refer to the opening I described.

Q. Let's get it straight on the record: do you say that at any point you could put your knife through the seam so that it came out at a point inside the tank?

A. No, sir; I never discovered any such place.

Q. So that the places where you could put your knife, do not necessarily indicate leaks; is that correct?

A. No, certainly not. I am just describing what I found. I am not referring to leaks, I was referring to what I found,—physical facts.

Q. Mr. Thompson, have you ever been told that one of the purposes of cross examination is to clear up any lingering doubts in the mind of the cross examiner?

A. No, sir, I don't believe I have been told that.

Q. Will you please assume that. You observed, I take it, a bulge in the bottom of only Number Four tank?

A. That is right, the only one I observed.

Q. Well, isn't it a fact that the other three were not bulged at the bottom?

A. Yes, I think I will agree to that, sir.

Q. Do you consider Mr. Thompson, in the situation of these tanks, exposed to the elements, after the superstructure of the Seminole had been burned away, it was a favorable condition to their preservation, or an unfavorable condition?

A. I should say, unfavorable. That is contrary to what Mr. Gibbs said, that the rust protects them.

Q. Do you think they, in that situation, would have corroded some?

A. I should say they did, definitely so.

Q. Do you say that the condition of the plates, and the rivets in the tanks today is any fair criterion of their condition in the boat just before the fire?

A. May I have the question read? (The question was read by the reporter.) Oh, I think reasonably so, yes, sir.

Q. In what respect?

A. That I don't think that the space from the top of the tank, I refer to, is any greater now, appreciably greater; I don't think—

Q. Just before you go any farther, Mr. Thompson, I would like to know just which space you mean. Between the crown and the vertical plate?

A. That is right.

Q. All right, now go ahead.

A. And all the remarks I have passed as to the jointure rivet, I think that is the same, because that was their construction.

Q. Of course there haven't been any structural changes?

A. No. I think the distance between the outer edge of the overlap of the vertical seams, and the body of the tank, would be approximately the same today; that condition which I noted with my pocket knife, I think that all the cracked rivets that I observed there were the same, —practically the same.

Q. You mean you think all the rivets that are cracked now, were cracked before the fire?

A. Yes.

Q. You don't think that the effect of the elements in the intervening four years, has had anything to do with that?

A. Not with the cracking, sir; no.

Q. You don't think it would be possible that the fire had anything to do with that?

A. Certainly not.

Q. You think they were cracked from the beginning?

A. Absolutely, in manufacture.

Q. From the day they were riveted?

A. From the day they were riveted; that is my evidence.

Q. And what percentage of the rivets in these tanks do you think are cracked now?

A. Well, merely a guess; I wouldn't be able to give you a fair figure, Mr. Underwood. I said, a considerable number.

Q. Would you say five or ten percent, two percent?

A. Oh, that is not a fair question. I wouldn't care to go on record, it would be the wildest guess, as to percentage.

Q. Isn't it a wild guess too as to when the cracks occurred?

A. Not at all, sir; not a guess at all. That is evidence based upon my experience, and no guess whatsoever.

Q. Do you say that from your experience you can express an opinion with any degree of reliability, as to whether or not a crack existing today, existed in 1922?

A. With absolute certaintude; no question whatsoever.

Q. Where does a rivet head begin to waste?

A. Where it is affected by the elements of wastage.

Q. Suppose the whole rivet head is affected by the elements, where does it begin to waste?

A. Well I don't think I could give you any particular spot; I should think, generally,—on the whole; that is my experience. It would depend upon how many rivets were driven home, if you have a crevice inside or out, which is apt to collect moisture and retain it, probably the wastage will be more observable there than in the body or the head.

Q. You think wastage will occur at the edges more quickly than at the heads?

A. You are assuming a perfect head—

Q. A sound rivet.

A. I think if that were driven well home, I think the surface that was exposed to the elements that cause rust, would have an equal effect. If on the other hand the head were not driven well home, I think the periphery

of the rivet would show the biggest signs of rust. That is a complete answer.

Q. Those rivets are driven hot, aren't they?

A. I have never had a five-sixteenths riven driven hot, in my life. We never dream of driving a five-sixteenths rivet, driven hot; we use softer iron in England and drive a five-sixteenths rivet cold.

Q. You assume in your testimony that these rivets were driven cold?

A. No, I haven't mentioned anything about it. My opinion is, from the appearance of the rivets, that they were driven hot. I don't think I stated anything about whether the rivets were hot or cold.

Q. What I am asking you, Mr. Thompson, what is your judgment on that point,—that the rivets were driven hot or cold?

A. In my opinion the rivets in that tank were put in hot.

Q. Now in ordinary practice, when rivets are being driven hot, what color are they when they come out of the forge? Call them cherry or white, or what?

A. When they come out of the plate in which they are inserted—come out of the forge?

Q. Out of the forge.

A. The same way with a rivet there, in my opinion, they are approaching between—the range between cherry hot and white hot, somewhere in that range.

Q. So they are inserted—

A. Please don't forget, they vary according to the temperatures and the attention of the riveter.

Q. Assuming they are driven—usually passed one by one, and driven as they come from the forge, aren't they?

A. Oh, no question about that; they are thrown to the holder-up, by the rivet boy; the holder-up inserts the hot rivet in the hole, and he uses his Tommy bar and drives that rivet through the hole.

Q. Mr. Thompson, I don't mean to cut off your answer.

A. My answer is full.

Q. If you will just confine your answer to my question, we will get through here a lot more quickly. Now the rivet flows when it is driven, to some extent, does it not.

A. It would have to be delivered very, very quickly from the forge, to flow. By the time it gets to the rivet hole it is by no means white; it is approaching at that stage a cherry stage.

Q. A hot rivet head changes its shape under the force of the hammer, does it not?

A. You mean, the original rivet head?

Q. I said, the rivet head.

A. There is no rivet head there until it is riveted.

Q. Do you say that the process, by the force of the hammer, changes the shape of the rivet so it assumes a head on the other end, does not have any effect in shortening the shank of the rivet in the hole?

A. You happen to be asking me questions I don't know anything about, Mr. Underwood.

A. I am glad I have found one subject on which you do not. Now proceed to answer, will you?

A. They are shortened?

Q. That is the question.

A. Well if it didn't, it wouldn't hold the plates together.

Q. Now you have spoken about these plates where the holes don't overlap properly.

Mr. Botts:

I want to be excused a few minutes, because I have to tell my folks where to meet me.

Q. Isn't it a fact Mr. Thompson, looking now at Libelants' Exhibit 151, that a rivet such as you refer to

on that drawing would be driven into the corners, and fill up the space?

A. No, sir.

Q. You say, not?

A. Definitely so.

Q. What would keep it out?

A. The fact that it is not molten enough. If it did, that rivet is so much the worse, because you would have a definite neck in the shank of the rivet; and if it is suggested that that was what happens, that rivet is so much more the worse.

Q. In other words, if it fills up that space, it is worse than if it does not, is that what you say?

A. That is true.

Q. Which, in your opinion, is the stronger rivet; a cold rivet or a hot rivet, in such condition as these tanks?

A. Cold riveting.

Q. You prefer the cold?

A. Undoubtedly; unquestionably.

Q. Is a hot rivet any different in size than a cold rivet?

A. No; the rivet has a relation to the diameter of the hole; it doesn't matter whether it is hot or cold.

Q. Well does a piece of steel, a rivet for example, get any larger when it is hot?

A. Oh, yes.

Q. And then when it cools off it gets smaller, doesn't it?

A. That is right, yes.

Q. Isn't that what pulls your plates together and holds them tight,—the shrinkage of the rivet?

A. I hope not.

Q. In your opinion that isn't it?

A. No, sir; I hope no one depends upon that type of rivet. If it is suggested that type of riveting is done in this tank, it was poor riveting throughout. Hot riveting

should be followed up every five or six rivets, as Mr. Gibbs knows quite well.

Mr. Underwood:

I move to strike out what this witness says Mr. Gibbs knows.

A. You follow up every fifth or sixth rivet.

Mr. Underwood:

Now read that last answer; I didn't get it.

(Preceding testimony was read by the reporter.)

Q. Now Mr. Thompson, do I understand clearly or correctly that you say the rivet should not contract after it has been driven together in the hole?

A. Should not? It does contract. Contraction of metals—certainly it contracts; it contracts both ways.

Q. Well should a rivet be under tension when it is driven—after it is driven?

A. I am afraid I don't follow you. It is under tension undoubtedly until it cools of; that is why we need a follow-up.

Q. How about after it cools off?

A. We then follow-up.

Q. No; it is under tension after it cools off?

A. It is under tension until it has cooled right off.

Q. After it has cooled off, cold, it is no longer under tension?

A. It certainly is when the tank is in operation, under movement; every rivet is under tension, undoubtedly.

Q. Just assume two plates, standing up in the yard, and you want to rivet them together,—nothing else but two flat plates; and you drive rivets in them, hot; are they under tension after they are cooled off?

A. Certainly they are; tension all during the life of the rivet. When they get out of tension they are no longer rivets. Most decidedly they are.

Q. Then why do you follow up?

A. I have done riveting myself—

Q. I didn't ask you that.

A. And I know that a hot rivet cannot be satisfactorily tight unless it is followed up; and men who are paid so much a hundred for rivets would not go to the extra trouble of following up unless they are forced to, because it means additional labor on their part; they are paid so much per hundred rivets.

Q. Does the riveter do the following up on his own rivets?

A. Unquestionably. I thought you had been advised; otherwise I would say that is a foolish question.

Q. Did you say that you have not discussed the line of your testimony this afternoon, before testifying?

A. I just had a few words with Mr. Underwood—with Mr. Matteson; and I have not discussed what I was going to say.

Q. You have not discussed with Mr. Matteson except beyond a few words, what you were going to say this afternoon; is that right?

A. What I pointed out on the pictures, as I did to Mr. Botts and to Mr. Dyer; but we have had no consultation as to what I was going to say this afternoon. I didn't know what I would have to say. Mr. Matteson is here.

Q. Did you observe the size of the doubler plate around the outlet at the bottom of Number Four tank?

A. I looked at it, so I must have observed it. I didn't measure it Mr. Underwood.

Q. Do you know what relation its size bears to the thickness of the side plating of Number Four tank?

A. Do you mean, the relation to the thickness?

Q. Yes.

A. I didn't measure it. I should say it is thicker, quite considerably thicker than the side plating of the tank; but I didn't measure it, Mr. Underwood.

Q. Have you any opinion, Mr. Thompson, looking at Exhibit 5-X, as to whether the shanks of those four rivets have been affected by corrosion or rust?

A. You mean, the shanks inside the holes?

Q. Yes.

A. No, I couldn't say.

Q. Is that true of the other two segments of the bottom seam?

A. I think, as to what one would call the shank of the rivet, yes, I think that is true.

Q. Mr. Thompson, I take it that this Exhibit 151 was intended in a general way to represent the lap between the side plating and the bottom crown of the tank?

A. No, sir, it was just a hypothetical case, indicating the effect that would be experienced from holes that don't come opposite one another. I didn't refer that to the tank at all, it was a hypothetical case.

Q. Mr. Thompson, this Exhibit 155 showing an outlet hole of Number Three tank:

A. Yes, sir.

Q. What do you say the material or the piece marked B is?

A. I don't know; I didn't ascertain that. I couldn't give you an answer.

Q. I am not asking you whether it is made of steel or brass or copper or anything of that sort, but whether or not it is part of the doubler plate or part of the original side of the tank, or what it is.

A. I gave evidence that in my opinion that I was quite certain it was not part of the side plating.

Q. Can you say anything more about it?

A. No, I couldn't say more than that. I do say the space doesn't form a place for a joint, that is all.

Q. I refer to what it is. You can't say whether it was part of the doubling plate, is that right?

A. No, I couldn't say; I don't know what it was; I didn't note that. I couldn't get inside that tank, and I was not satisfied my evidence would be good on that point.

Q. Do I understand you to express an opinion that these tanks leaked from the very beginning?

A. No, I didn't express that opinion.

Q. Did you testify that seepage would occur at any particular length of time after they were first manufactured?

A. I think I did, in March; I think that I expressed—

Q. I am just talking about your testimony today.

A. No.

Q. Do you have any opinion as to how soon after the manufacture of these tanks, seepage would begin to occur?

A. No; I think I am satisfied with what I have already said.

Q. I am sure you are, but I want to know whether you have any opinion on that point.

A. I haven't thought it out, Mr. Underwood, and I wouldn't care to give a jump decision.

Q. That is to say you at the moment have no opinion as to when these tanks would begin to show signs of seepage?

A. I am not prepared to express one, sir, only as far as in my opinion it would be in the early stages; but without giving it due consideration,—and even then I don't know that I would care to say a definite date; I don't say that.

Q. Well did you understand the question that I was asking you?

A. I don't know, a definite period or a certain period; I say that I would not have been surprised if they had shown seepage right from the day they were put in. I will go that far, I wouldn't be surprised. I haven't expressed an opinion as to any period.

Q. Well have you expressed an opinion today as to whether these tanks leaked on the day of the fire or prior to that time?

A. No, I don't think I have today, Mr. Underwood? If you turn to your notes, —I don't recall that.

Q. Do you say that they leaked at that time?

A. No, I haven't said that. I don't know that they ever had gasoline in. I don't know anything about those tanks in fact.

Q. You have no opinion as to whether they leaked on the day of the fire or prior to that time?

A. No, I haven't expressed any opinion. I have no evidence myself that they actually contained gasoline. I don't know what they are.

Q Of course you understand, Mr. Thompson, I am not asking you the question from the point of view of observation, because you never saw the tanks before the fire?

A. No.

Q. You understand I am asking you whether you have any opinion on that subject.

A. I don't think I have one now as to any particular period. I have gone as far as to say I wouldn't have been surprised, from what I have observed of the tanks today, and their construction, that they may have seeped from the very day they were put in. I can't go beyond that, and that is going a long way, in my opinion.

Q. You mean they may not have leaked or seeped in their life, up to the time of the fire?

A. That may be so, but I would be very very surprised, from the whole of my experience.

Q. Did I understand you correctly to say that the tank showed no signs of distortion by fire?

A. In my opinion, they did not.

Q. They don't show any effects of an explosion?

A. No, I didn't observe any effect that I would put down to an explosion of fire whatsoever, Mr. Underwood.

Q. You think they came through the fire physically unscathed, do you?

A. Well I see no signs pointing to the reverse of that.

Q. Did you notice any effect of fire on the zinc on the tanks, anywhere?

A. Zinc on the tanks? You mean, the galvanizing on the tanks?

Q. Yes, galvanizing, if you like.

A. I didn't see. Whatever particles of galvanizing, or whatever particle I would consider would be what may be left of galvanizing, I didn't notice any effect of fire on those particles at all; no. I say, I didn't notice the effect of fire on any part of the tank. That will include what you allege to be particles of galvanizing. I saw no effects on any part of the tank.

Q. Examine Exhibit 5-X, Mr. Thompson.

A. Yes, sir.

Q. And tell me whether you see any effects of corrosion on the inside.

A. Effects of corrosion inside? As far as I can see: I can't see the seam, you see.

Q. As far as you can see.

A. These have been cleaned off. I should think there has been quite a lot of rust taken off these tanks, and I see the effects of corrosion all along the curvature of that seam.

Q. And how deep do you say that effect goes?

A. I do not know. I have never said the structural strength of these tanks was affected beyond what the tank was able to carry out fully all it was called upon to do in that respect, structurally. You asked me; I say, I see definite signs of corrosion there, and these plates have

been cleaned in a way that tanks are fully cleaned once or so a year, and protected by paints thereafter.

Q. How deep do you say the effects of that corrosion go?

A. I couldn't say, sir.

Q. I would like your best estimate, Mr. Thompson, of the depth of the effect of that corrosion?

A. I couldn't tell you, sir. I don't know what the origin of that plate was. This plate has been very carefully cleaned with wire brush, and I haven't the slightest idea. If you would show me that plate as it came out of the tank, you would have given me an opportunity to answer the question in an intelligible form. Now you present an exhibit to me that has been altered.

Q. Well now suppose you assume that the thickness of the plate originally was as thick as the vertical side plating now is at the top of that piece.

A. Well there is an edge on the top of that side piece already; you have to take that edge off before I can give you that answer. There is already an edge on the top, that apparently gives a thicker side plate, and so you would have to alter that.

Q. Is it fair to say it is approximately a three-sixteenths plate?

A. Yes, I think so.

Q. Now assuming that the plates were originally three-sixteenths plate, how deep has the effect of corrosion gone in that crevice?

A. Not enough to affect the structural strength of the tank.

Q. I want a measurement.

A. I can't tell you. I can't measure in that way at all; I couldn't tell you, Mr. Underwood.

Q. A measurement in a small number of thousandths of an inch; would it not? Just answer the question. (The question was read by the reporter.)

A. A small,—what do you mean by a small number?

Q. Of thousandths of an inch.

A. What is a small number of thousandths of an inch?

Q. Three?

A. I couldn't say without trying it out with calipers.

Q. Have you any calipers here?

A. No, I haven't.

Q. You decline then to make an estimate of the depth of the corrosion effect?

A. No measurement. I will admit this, that the corrosion, to whatever extent it was, has still left an appreciably strong plate.

Q. And do you see any signs in that joint of corrosion having affected the inside of the seam, so much as you can see of it?

A. I can't see any of it inside the seam, sir.

Q. Then you can't say whether it leaked or not, can you?

A. Oh, no. I couldn't say that, certainly not.

Q. Now when you observed the bottom that had been cut off from Number Four tank,—you didn't observe that today?

A. Oh, yes, I stood inside of it.

Q. A great portion of that had not been cleaned with the wire brush, had it?

A. No, but I formed the opinion that it had been swept out. I formed the opinion that quite a considerable amount,—that is merely an opinion, because I was not there when it was taken off; that an amount of rust had been taken off, swept off; and I noticed quite a lot of rust had accumulated in the V-section. In fact I noticed an amount that was brushed up yesterday, by His Honor—or by someone for His Honor; I don't know whether it was Mr. Munroe. The crevice was almost filled with loose rust.

Q. Assuming that the tank had been subject to rise and fall of water within it at some time,—muddy water, would you expect to find that the mud would protect the plate from corrosion or rust?

A. No, sir, I wouldn't.

Q. Would you expect the process of rusting to go right on?

A. Apparently so. Yes, it would go on, I think.

Mr. Underwood:

I think that is all.

Re-Direct Examination.

By Mr. Matteson:

Q. Mr. Thompson, some references have been made to the significance of your observation, as to your ability to stick a knife point into the side seam of some of the tanks to a distance that you mentioned, and into the top seam. I want to be clear as to just what the significance you do attribute to that condition, is?

A. I think that is a poor seam, sir; a poor joint. I consider it was a poor joint.

Q. Why does that indicate a poor joint?

A. Because the two plates are separated; allow a space between the plates.

Q. And a good joint, would the two plates be in contact with each other?

A. Oh, absolutely.

Q. Why is it that you say it is customary in riveting, to follow up every fifth or sixth rivet?

A. To be quite sure that the head of the rivet is firm up against the plate on the inside; that the finish of the outside—that that rivet in a cold,—semi-cold state, is properly finished and closed on the plate on the outside. Because all riveting, paid by the hundred rivets, is checked

up by a separate checker, who tests from the inside, the looseness,—or rather tightness of the rivet, to see if that rivet is loose. If that rivet is loose, that rivet is marked on the outside with a chalk mark, which means that rivet has got to come out, and is not included in his hundred; he has to renew that rivet.

Q. What is accomplished by following up every fifth or sixth rivet?

A. The tightening of the rivet, and the guaranteeing, more or less, of the tightness of the head against the inside plate, and the tightness of the head against the outside plate. There you have the rivet not red-hot by any means, it has cooled off rapidly in the atmosphere, and from appearance it looks dead cold. I admit it is not dead cold then. But you get the advantage, to a certain measure, the advantage that we get in cold riveting. And that is invariable, the practice in all the yards that I have ever been in, both here and in England and Australia.

Q. Now referring to Exhibit 151, your drawing, you refer to that as purely a hypothetical case?

A. Yes, sir.

Q. Was that intended to illustrate your testimony with respect to the conditions you found on the Seminole tanks?

A. I think it was in connection with one of the exhibits here, wasn't it?

Q. Well you were referring to a riveted plate.

A. Yes, but in connection with a particular exhibit here, where I found the centers of the head—I think that is some exhibit number; one that Mr. Underwood produced, I think.

Q. The point I just want to be clear, Mr. Thompson:

A. I didn't observe that on the tank. I observed that on the exhibit.

Q. Well now the point I want to be clear about is this: that wasn't intended to be a drawing of any particular rivet on the exhibit?

A. Oh, no, sir; purely an illustration of what I was trying to give in evidence; to clarify what might not have been clear by the words I used.

Q. Taking one of these exhibits, 5-Z, it has been testified here that this section of the tank, after being cut out by burning, that the sides were trimmed with a power hack saw. What would be the effect of that on the exhibit?

A. In my opinion, to close over the steel on the inside of the seam, from both plates.

Q. If there were rust or corrosion present in the seam, what effect would that have on the appearance of the exhibit?

A. I think that would prevent one from looking into the seam and discovering and testifying as to what the extent of the corrosion was.

Mr. Matteson:

That is all.

Re-Cross Examination.

By Mr. Underwood:

Q. Are you saying, Mr. Thompson, that the effect of a power saw would be to force particles of something or other in between the edges of the two plates on Exhibit 5-X, so that you couldn't see the seam?

A. I think the effect would be to close up the seam, in other words, so I could not observe the appearance of the seam between the two plates.

Q. Of course you couldn't see the appearance of the seam at all if it weren't cut off, could you?

A. Oh, no.

Q. You could see the burned edge?

A. Yes.

Q. You could see a lot better this way than with a burned edge?

A. You get a fused metal, those flat exhibits; you just get a burned mass, with the plate destroyed, as I have already said that a burning tool or welding tool, particularly burning tool does destroy the edge of a plate.

Q. What does a power hack saw put into the space between the two plates?

A. I haven't said it put anything between the plates. It closes the metal over to the extent that it has put an edge on the side here, and an edge which the man referred to. You asked that question; you said he cleared off with his file. You can see here where he hasn't completely filed it off.

Q. It would have the same effect where the two plates are in contact?

A. For anything that were an absolute dead fit, you wouldn't, because there would be no space for that to go; but the effect on the exhibit itself, the outside of the plate, is what I refer to.

Q. Will you draw a sketch, please, of the upper crown of these tanks?

A. I will, with pleasure.

Q. Showing where the knife was put in. I don't mean any particular plate; just to illustrate your testimony.

A. Do you refer to where I put that knife, as in this photograph?

Q. No particular point, but a general illustration of your testimony on that point; the shape of the two plates.

A. Well I don't know more than one place, but I will give you the one. Here is—of course this is a much smaller radius than the tank is. Will that be good enough?

Q. We will assume that this is not to scale.

A. We will assume that it is not to scale. I will have to use two colored leads, I am afraid. Then we get—now to illustrate this, probably I will have to assume that I have cut off the top of the plate, the crown plate, to a position where it is opposite.

Q. Perhaps you haven't understood my question, Mr. Thompson. What I would like is a vertical cross section.

A. Vertical, that will illustrate only one thing; a vertical cross section will not satsifactorily explain what I mean. I will give you both. Here is the vertical plate.

Q. Mark it V.

A. This is marked V; I think you said V?

Q. Now the crown.

A. Crown plate; it is not to scale, Mr. Underwood, please note. It comes down here and forms the C. This is the similar sketch that I proposed to make earlier, to describe what I meant by the space.

Q. Now mark the crown with the letter C, please.

A. Mark that C.

Q. Now indicate with an arrow—the points of an arrow, where you put your knife?

A. I can't do it on that sketch, that is the point I am getting there, on that particular spot where my knife was in. I have to give this plan to give that.

Q. That is one thing I want to get clear, Mr. Thompson.

A. I will give you another sketch, so I think I can partly—

Q. Just a moment please. Do you say now that you did not insert your knife down between the top edge of the vertical plate and the top crown of the tank?

A. Top edge—apart from the joint?. I did, in several places.

Q. Can you indicate on there where you did?

A. Well this is not to scale. I did it in between here, where my knife went down. Now this is not to scale;

down in there, beyond where the round of the top plate had finished.

Q. Draw an arrow and mark it, Knife.

A. Knife blade; and I will put it in a wedge shape, and I finish the edge at a point where it goes below the tarnin, and I will mark that—what? K?

Q. K, for knife.

A. Okay. No, I want that for Point; K means knife point, and K-1 is the remainder of the blade, or part of the remainder of the blade.

Q. As you like.

A. All right.

Q. Now draw the rivet in there.

A. Oh, I have not made this in scale. I will draw a rivet in there; there is the rivet hole, here is the rivet. That is the top plate, and the inside, I presume, in that tank, had the same kind of head as they had on the others; that is a snap-head. Not to scale. Shall I mark that Rivet?

Q. Mark it R.

A. Mark the head,—the rivet?

Q. Either one. Now do you say that your knife blade went down to the rivet?

A. No, I didn't say so, sir.

Mr. Underwood:

I offer that.

A. I did not say so; I don't know how wide it was; I couldn't tell you. As a matter of fact that was put in between the rivets, and not on the rivet.

(The said sketch was admitted in evidence and filed as Respondents' Exhibit 6-B.)

Mr. Underwood:

That is all.

Mr. Matteson:
I think that is all.

(Witness excused.)

(At 6:00 o'clock P. M., the hearing was recessed until 7:00 o'clock P. M. of the same day, to-wit, November 21, 1939.)

Evening Session.

November 21, 1939, 7:08 o'clock P. M.

4383 Thereupon J. N. PATTON was recalled as a witness on behalf of Libelants and further testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Captain Patton, you observed the gasoline tanks from the Seminole at Warriner's Yard last night, and in company with Court and counsel, did you?

A. I did.

Q. Did you observe them there again this morning?

A. Yes, sir.

Q. I mean, the tanks.

A. Yes, sir.

Q. And will you outline to us what you observed with respect to the tanks?

A. The first thing I observed was that lamination about an eighth of an inch deep, in Number Four tank; an indentation.

Q. Will you describe that to us, Captain?

A. It was just an indentation in the steel.

Q. About how long?

A. Oh, I should say an eighth of an inch long and an eighth of an inch deep.

Q. That was in what tank?

A. Number Four tank; the first tank I examined.

Q. That was in the side of the tank?

A. Yes, sir. The next thing I observed was, that the riveted seams were not in line, casting my eye on them, they were kind of staggered; some rivet edges were nearer the seams than the others.

Q. Are you referring to Number Four tank?

A. Yes, sir.

Q. And what did that indicate to you?

A. Well, a poor riveting job, I should say.

Q. All right.

A. I observed the bottom piece was—there was two pieces about seven inches by eight inches, cut out of the side of the tank, and the bottom cut off. Near the remainder of this Number Four tank, where the bottom had been cut off, I observed three rivets that were very badly corroded,—that is, on the outside. Then in that—what do you call that piece inside of the tank?—The doubling piece, that was somewhat thicker than the shell plating of the tank; and four rivets in that,—four five-sixteenths rivets, from center to center was two and seven eighths inches.

Q. What is the significance of that?

A. Well that would hold this doubling piece on the shell of the tank; and these particular tanks, the fittings were screwed into that.

Q. You speak of the rivet being two and seven eighths inches apart?

A. Center to center.

Q. What importance did you attribute to that?

A. Well I thought it was too wide apart to make a water-tight joint there, or a gasoline joint. That's pretty far, for that sized rivet, from center to center.

Q. All right, what else did you observe?

A. In the top of the crown of the tank, of course a little space before the flat of the lip part of the crown flattened,—I think I could draw that better than I could explain it.

Mr. Underwood:

The space between the crown—

A. I say, the side lip of the crown, the curve, made quite a V space between that lip and the shell of the tank; so that you,—in spots you could insert the blade of a knife in for some little distance.

Q. What is the importance of that?

A. Well my opinion, that that entire flat part of that side lip should be flat surfaced against the shell of the plate.

Q. And the fact that you observed something different, what did that indicate about the tank?

A. Well I don't think that the tank was properly—the crowns were properly put in,—riveted.

Q. All right, what else did you observe?

A. On this tank it was about twenty inches of solder at the foot of it, but no evidence of solder on the rivet heads for the rest of the seams; none on the top.

Q. Do I understand that above the twenty inch space at the bottom where there was solder, you found no evidence of solder in the side seams?

A. No, sir.

Q. In your opinion had that seam above that point ever been soldered?

A. No, sir, I don't say so, in my opinion. I also observed that there was two rivets burned out of the seam.

Q. Two had been burned out?

A. Two had been burned out, yes, sir.

Q. What did you observe about that?

A. Well in the one at the head of the tank I observed that one hole, in one sheet, was staggered from the hole underneath it; that is, they didn't line up.

Q. What is the importance of that?

A. Well that hole looked to me from the oval shape of it, as if it had a drift pin in it when it was riveted.

Q. In your opinion was that proper construction?

A. No, sir. I wouldn't pass it if I was inspecting a boat, a steel hull, or a steel boiler, such as that.

Q. All right, what else did you see? You are describing that hole, what about the other hole?

A. Well the other was, looked to me as if it had considerable heat on, and in driving the—in heating the rivet they got the plates so hot, they used such force, as to belly out both plates.

Q. What else did you see?

A. The filler inlet fitting had been brazed.

Q. While you are on that, was the outlet filler fitting brazed?

A. No, sir.

Q. At the bottom of the tank?

A. No, sir. This tank also showed leaks when we rolled it over, practically all the way along the seam,—the sides.

Q. From the water that was in it?

A. Yes, sir.

Q. Was that on one seam, or both?

A. Well when we first saw the tanks there was a seam pretty near on top of the tank; that naturally was dry. So we pushed that tank over—wait a minute, no, this is the Number Four tank; I am thinking about the one outside, that was an empty tank. I don't know about the seams on Number Four.

Q. All right; well now, are you starting to tell us about another tank, now?

A. No, sir, all this is correct on Number Four, except the leaking.

Q. You couldn't tell about the tightness of that?

A. No, sir.

Q. Now did you notice the state of the rivets on the Number Four tank?

A. Yes, sir; they were corroded, and you could get your knife blade under some of the edges of the rivet heads.

Q. Anything else?

A. Well they were not in line; that is, you could run your eye along, you could see where the rivet heads were staggered.

Q. Anything else?

A. Nothing I can think of.

Q. Did you notice the state of the inside of the tank?

A. Well I didn't go in the tank, but I could see there was considerable rust and corrosion there.

Q. Now did you examine the part of the tank that had been cut off?

A. Yes, the bulged part.

Q. What did you observe about that?

A. Well there was a bad bulge in the crown of that tank, that I could tell.

Q. Did you notice whether there was any evidence of solder on the rivets around the bottom?

A. Yes, sir, I believe there was rivets on the bottom of the tank, not at the side.

Q. Yes, but did you see solder on the rivets?

A. No, not on the rivets, no; in fact I didn't see solder on any rivets of any of the four tanks.

Q. Well now is there anything else you had in mind to tell us about Number Four tank?

A. No, sir, I think that covers Number Four.

Q. Which is the next one?

A. Then I looked at Number Two tank.

Q. What did you observe about that?

A. There were several places along the seams where you could insert the point of a knife between the two

plates; and the rivet next to the joiner piece on that side seam, the head of it was crushed into the space in the corner of the two seams. I don't know whether that makes it plain or not.

Q. Well perhaps you could tell us a little more about it, and we may get the idea.

A. May I demonstrate with this?

Mr. Botts:

A demonstration won't go into the record, Captain, and will mean nothing to the Court.

Q. What do you mean by the joiner rivet?

A. Well that is where the two side plates met. The inside plate is tapered off, supposed to go to a feather edge; and where this outside plate lapped the inside plate, that makes a little hollow there, and that rivet, right in that corner, was jammed in there pretty bad; in fact the head of it was not properly headed up.

Q. And what was the effect of that, in your opinion?

A. Well there was only half of the rivet head which was holding anything, in my opinion.

Q. What would be the effect of that with respect to the tightness of the tank?

A. Well my opinion, that is one place where you should have a perfect rivet.

Q. Well considering the conditions as you observed them, what is your opinion of the effect on the tightness of the tank?

A. Well it didn't make as strong a job as if there was a good rivet in there.

Q. Now along the side seam, you said you could put a knife in spots; what does that mean?

A. Well that meant that the outside plate, where it lapped, did not permit perfect contact with the plate under it.

Q. Now did you notice anything about the riveting on the side seam in that tank?

A. Well those rivets,—in fact in none of the tanks did the rivets line up in perfect line.

Q. All right.

A. The filler inlet was also brazed in this tank; and on this tank I observed at least three cracked rivet heads.

Q. What does that mean?

A. Well, imperfect riveting is all I can say. And then underneath these cracked heads you could slip the point of a knife in a short way.

Q. And what does that mean?

A. Well, imperfect riveting.

Mr. Botts:

Why?

Q. Why do you say that, Captain?

A. Well, it wasn't riveted right. It should have been backed out; if there was an inspector on the job he would have condemned that rivet and they would have had to ream it out and put a heavier rivet in.

Q. If the rivet had been in perfectly, how would it fit to the surface?

A. Well the whole lip of the rivet should be down contacting the plate. In other words, it should contact all around the lip of the rivet.

Q. What else did you observe about that tank?

A. There was one very bad rivet, about in the middle of the seam, that didn't contact the plate all the way around; you could get your knife blade under it pretty well. No solder on any of the rivets. This is the tank that we first rolled over, and found bubbles of water all along the seam, after rolling. Of course when that seam is on the ground you couldn't see it, but when we rolled it, it was still oozing out.

Q. Was there water in the tank?

A. Yes, sir, I should say it was a little better than half full, something like that.

Q. Did you observe one side seam on that tank, or both?

A. Just the one; one seam had been on top; we rolled that over, and that was dry when we rolled it.

Q. Was that above the surface of the water?

A. That was above. The tanks were not full.

Q. What else did you observe?

A. At that bubbling attack, was where two plates lapped; that little point where there is supposed to be a feather edge, you could put a knife blade into that little crevice a full half inch. There is a picture of it.

Q. What does this exhibit indicate?

A. This is the one I have reference to. In good boiler and tank work, that should come right out to a feather edge.

Mr. Botts:

In the record, that won't mean a thing; when you point, we can see it, but it won't mean a thing to the Judge. Remember your testimony has to be in shape so the Judge can understand what you are talking about.

A. I am perhaps not acquainted with the proper language. Here is the knife blade; I had my knife in there myself; that went in, I don't know whether it touched the rivet or not, but it would be pretty close to it.

(By Mr. Matteson):

Q. Which plate is it you say should have a feather edge?

A. This one that goes underneath.

Q. This one that goes underneath the outside plate?

A. It should be tapered right out as thin as possible. Instead of that, this inside plate has quite a thick edge.

Q. And what did that indicate to you with respect to the tightness of the tank?

A. Well it is quite apt to leak there unless it was brazed.

Q. What else did you observe with respect to that tank?

A. Well we saw the traces of where they had used soap water in testing it out, on the tank.

Q. Is that what these streaks are on the tank?

A. Yes, sir; and you can see by this photograph, that this line of rivets are not in line.

Q. The line of rivets along the side seam?

A. Yes, sir; are not in line; some are closer to the edge than others.

Q. This photograph that we are looking at now is Libelants' Exhibit 152, is it?

A. Yes, sir.

Q. Now what else did you observe with respect to this Number Two tank?

A. No solder on the seam; no solder up there; no evidence of its having been there.

Q. Captain, let's get that straight. You say there was no solder around the top seam between the crown and the sides?

A. Or the side seam.

Q. Or the side seam, on the end toward the crown?

A. No, sir.

Q. Did you notice whether there was any solder on the side seams of this tank?

A. None except for that twenty inches on the end of it.

Q. Did you examine the seam above that point, for the purpose of determining whether there were any traces of solder or not?

A. Yes, sir; I examined that very closely, and scraped it; but I couldn't see where there was any solder or residue of solder, or discoloration of solder.

Q. What else did you observe about this Number Two tank?

A. Well we found some of these rivet heads cracked. That number one, that shows there.

Q. You are referring to the rivet ends at the top, on the side seam?

A. Yes, sir; that is a cracked rivet.

Q. That shows in the picture, does it?

A. Yes, sir; these rivets along here. Here is a cracked rivet.

Q. You are referring now to the second one?

A. On the right.

Q. It is the second one on the left, isn't it?

A. No, this is your tank, standing up.

Q. Oh, I see. We will call this the bottom, where the date appears on the tank?

A. That is the bottom of the picture, but not of the tank.

Q. If you hold the picture with the bottom down, the rivet you just referred to is the second rivet to the left?

A. Yes, sir.

Q. Of the seam, is it not?

A. Yes sir, and this second one at the top.

Q. And the second one on the side seam?

A. On the side seam. Here is another cracked rivet; the rivet is cracked, and you could get your knife blade under that plate.

Q. Now you are referring to the rivet which is the fourth to the left of the side seam, and the second one in from the margin of the picture, is that right?

A. Yes, sir.

Q. Anything else?

A. I did testify regarding those bubbles of water when we turned it over.

Q. Yes. Is this the seam in the picture, where the water appeared?

A. No, sir, that was on the top, and we rolled it so we could see the bottom seam.

Q. What else can you testify to about that tank?

A. That is all I can say about the tank; I didn't get into that tank.

Q. Had any piece been cut out of the tank, did you notice?

A. Yes, sir, there was a section cut out.

Q. Did you put your hand inside of that tank?

A. Yes, sir.

Q. What did you observe in that fashion?

A. Well there was evidence of corrosion in there, and dirt.

Q. Where was the section cut out of the tank? Was that on the other end?

A. The other end of this, the bottom.

Q. That would be the bottom of the tank?

A. Yes, sir.

Q. And what evidence of corrosion did you find in there?

A. Well it felt like hard globules of rust in there.

Q. Was that on the bottom or the side of the tank?

A. On the side and on the bottom, where I could feel.

Q. Now, did you notice the double plate on that tank?

A. I noticed the one that is in that photograph.

Q. Here is a photograph.

A. No, sir, I didn't look inside of that. I looked at the rivets; they were pretty badly corroded,—the heads.

Q. The four rivets holding the doubler plate?

A. Yes, sir. One of them was very bad,—or two.

Q. You are referring now to the rivets on the doubler plate on the Number Two tank, which appear on the left-hand side of Exhibit 153, is that right?

A. Yes.

Q. Which were the ones you said were particularly corroded?

A. This one here.

Q. The one that is marked B?

A. B, yes.

Q. The one that is marked D on the photograph?

A. Yes, sir.

Q. When you say they were badly corroded, just what do you mean?

A. Well there was no head to them, practically; it is all rusted away.

Q. Referring to the one marked D?

A. Yes, sir, and also B; in fact they were all corroded; these two were bad.

Q. A and C were not as bad?

A. No, sir. That was a different fitting.

Q. When you speak of a difference in the fitting, what is that? Just explain to us what you mean.

A. This is small, I should say a quarter inch pipe; I didn't measure it.

Q. And you are referring now to the fitting on Number Two tank; you say the opening in that fitting, in your opinion, was for approximately a quarter-inch bore pipe?

A. I think so.

Q. What is the difference between that fitting and the fitting shown in the right-hand side of the picture?

A. Well that looks like a three-quarter pipe. I didn't measure that, I don't know. A much larger pipe.

Q. If a pipe such as would fit the bore on the fixture in Number Two tank, were to be affixed to the fixture on the Number Four tank, how would that have to be done?

A. You would have to put a reducer bushing in there.

Q. Then you would have two reducers attached to the tank?

A. No, you can get a three-quarters to quarter; that is in addition to these.

Q. You have a reducer shown in the picture?

A. Yes.

Q. And if you wanted to use a pipe the same size that apparently was affixed in Number Two tank, you would have to put a second reducer?

A. Yes, sir, that is right.

Q. Can you give any reason, from your experience, why they would use two reducers in a tank, such as may have been done on Number Four?

A. I have no knowledge of why they did it, unless perhaps they couldn't get a sufficient number of standard fittings, of all one kind, to put in there.

Q. Now do the rivets on the doubler plate appear on this section of Number Four tank shown on Libelants' 153?

A. Yes, sir; you can see them here.

Q. They are marked C, D, F and G, are they not?

A. Yes, sir; they are corroded away too.

Q. Is there anything else you want to call our attention to with respect to Number Two tank?

A. Number Two; well I found a lot of rivets along the bottom of Number Two tank that was badly corroded,—rusted; very little heads remaining.

Q. Is there anything else on Number Two tank?

A. No, sir; none I can think of.

Q. Now what is the next tank that you want to tell us about?

A. Then I examined Number Three tank, that was outside in the back.

Q. What did you observe with respect to that?

A. Have you got the picture there, of that fitting?

Q. I show you Exhibit 155; is that the one you are referring to?

A. Yes, sir; let's see. I examined that for the threads, and I could find one full thread and two apparently badly worn threads. And that wouldn't be sufficient for me to even put a water—screw a water pipe in, for safety.

Q. Well, what else did you observe about that?

A. That has got one of these plates back of it. I didn't measure the distance of the rivets, but I assume they are about the same.

Q. They appeared to be about the same?

A. Yes, sir.

Mr. Underwood:

What was that which appeared to be about the same?

A. The rivets in that—rivet heads.

(By Mr. Matteson):

Q. Suppose you indicate those rivets. Is this one here?

A. Yes, sir.

Q. Let's call that C. Is this one, here?

A. Yes.

Q. Call that D.

A. I imagine that is—

Q. We will call that one E.

A. And that—

Q. Call that one F. Were you able to determine the condition of those rivets, Captain?

A. There wasn't much of the head left,—the rivet heads, I mean.

Q. Did you notice anything else in that connection?

A. No. We also rolled this tank over, the dry seam was on top, and we rolled it over so we could observe the lower seam; and that seam was leaking, about seventy-five percent of the distance; little bubbles of water coming out.

Q. And how much water was there in the tank, Captain,—about half full?

A. Just a little better than half full, I should think.

Q. The tank was lying on its side?

A. Yes, sir.

Q. Anything else about the Number Three tank?

A. This is the tank that didn't have any solder on—

Q. On what?

A. On rivets or side or top or bottom seams, that I could see.

Q. Well now—

A. I didn't look at the bottom; I wouldn't swear to the bottom. But on the side seams there was none down to the bottom.

Q. And did you examine it for the purpose of determining whether there were any traces of any solder having been there?

A. Yes, sir; I did examine it.

Q. And you found none?

A. No, sir. There was no solder on the seams either, that I could find. I made these notes while I was there; none on bottom seam or top seam on that tank.

Q. What else did you see?

A. There was several rivet heads that were bad, on this tank, up from the plate, so that you could get the point of the knife under. In other words, they were not headed up properly,—or headed down.

Q. Where were they, on which seam?

A. On the side seam.

Q. Does that show in this picture?

A. I don't know whether it does. One of them was caulked up on one edge pretty high, so you could get your knife pretty well under; we didn't take a picture of that. This tank had a brass plug in the bottom.

Q. It had a brass plug in the center of the bottom?

A. Yes, sir.

Q. What did the other tank have?

A. Let's see; iron was in one; Number Two had a brass one; I wouldn't say what Number Four had, although I examined it, I didn't mark it down there.

Q. Number One had an iron plug, and Number Two and Three had brass; is that what you say?

A. Number Two had brass, Number Three had iron—no; Number Three had brass and Number One had iron. Now I have got it right. These filler plugs, they were all brazed in with bronze or brass.

Q. Those are the two-inch holes at the top of the tanks?

A. Yes, sir.

Q. Were the openings of the bottoms of the tanks,—with the outlets attached, were they brass?

A. You mean, where the feed line went out?

Q. Yes.

A. No, sir.

Q. Anything else on Number Three tank?

A. No, sir, not that I know of.

Q. All right, what is the other tank?

A. Then we went to Number One. That was leaking badly along the side seam, and from some rivets—that is after we rolled it over.

Q. And how much water was there in that?

A. I didn't measure it; there was a lot of water in it.

Q. About half full, or more or less?

A. Possibly a little more than half full.

Q. The tank was lying on its side?

A. Yes. I also made notes that there was water leaks near one of the seams on the top.

Q. Just where do you mean, there?

A. Well on the top of the crown.

Q. Where the crown—

A. At the side, on that seam, what I am referring to as the top seam.

Q. Is that in a place similar to that which is illustrated—

A. Yes, on the other side, though, from where I had the knife in.

Q. A position similar to that shown by the knife in one five two?

A. Yes, sir, that was wet; several bubbles of water.

Q. This knife as in one five two, is on tank Number Two, you are referring to Number One?

A. There was a leak on Number One.

Q. Do you remember whether there was a leak in the vicinity of the point on Number Two tank where the knife is inserted as shown on one five two?

A. As I recall it, it was on the other side of the seam.

Q. Now I think you are telling us about Number One.

A. Yes, sir, and there was evidence of leak at the plug at the bottom.

Q. In which tank?

A. In Number One; there was evidence of water leak at the plug in the bottom of Number One tank; that was an iron plug.

Q. Anything else?

A. There was some badly corroded rivet heads around the bottom edge of that tank, and several corroded ones on the sides; that is Number One tank.

Q. All right, anything else?

A. There was several rivet heads where the heads were cocked up.

Q. By that you mean not in contact with the face of the plate at one side?

A. No, sir; that's right.

Q. Anything else?

A. No, sir; that is all I observed about those tanks.

Q. Captain, I show you this exhibit 6-A and call your attention to the riveting of that tank. Is there anything you want to call our attention to in connection with those rivets?

A. From the left, number one rivet, three rivet, and four rivet, and five rivet, they are all off center, and are staggered. Number two is the only one anywhere straight to me.

Q. When you say, off center, or staggered, what do you mean?

A. I mean the punched hole in this tank, or in this plate, didn't line up with the punched hole in the crown. Naturally the rivet had to be—the hole had to be drifted and the rivet put in, and follow that line of the drift; in other words, it went in crooked.

Q. What in your opinion is the effect of that?

A. Well the hole, the punched holes in the two tanks didn't line up properly.

Q. What difference does that make?

A. Well then you don't get a straight driven rivet.

Q. What difference does that make?

A. It is not a good job; it is a weak job.

Q. Now is there anything else about those rivets you want to call our attention to?

A. These two are pretty bad; you can get your knife, a knife blade, I believe, down alongside of the—

Q. You are referring to Exhibit 6-A, and you are referring to the section of the outside of the tank, held so the rivets are at the bottom; is that right?

A. Yes, sir.

Q. All right.

A. You can get your knife blade right down alongside of that one.

Q. You are referring to the—

A. Number four rivet and number five rivet.

Q. Numbering from the left?

A. Yes, sir. The reason for that is because your rivets don't go through straight.

Q. Now do you observe any evidence of soldering about those rivets, Captain?

A. No, sir, I don't. Number two rivet is the only one I would pass, if I was inspecting the tank.

Q. Is there any evidence of solder on the heads of the rivets on the inside of the crown?

A. No, sir; on the edge, but not on the crown.

Q. None on the crown?

A. None on the rivets, no, sir.

Q. I show you 5-Y; is there any evidence of solder on the riveted heads of the rivets, on the outside of the tank?

A. No, that is just rust.

Q. How about on the heads of the rivets on the inside of the crown?

A. No, sir, that is rust.

Q. No solder there?

A. No, sir; none except on the edge.

Q. I show you Exhibit 5-X; is there any evidence of solder on the riveted heads of those rivets?

A. No, sir.

Q. Any on the rivet heads?

A. No, sir; except that little spot that run down from soldering the edge. The number one rivet is bad.

Q. Number one rivet—

A. From the left.

Q. From the left, when the riveted heads are held at the bottom, is that right?

A. Yes, sir; that's in crooked.

Q. I show you now 5-Z; is there any evidence of the rivets being soldered,—and rivet heads, that you are speaking of?

A. No, sir.

Q. How about the rivet heads?

A. No solder on the rivets.

Q. On either side?

A. No.

Q. How do those rivets line up?

A. One two and three are decidedly staggered; one, two and three from my left.

Q. When the rivets are held towards the bottom?

A. Yes, sir.

Q. Looking at it from the outside of the tank?

A. Yes, sir.

Q. Now I show you this Exhibit, Libelants' 154; can you tell us what that shows, or what observation is illustrated by that?

A. It shows that whoever cut out that sheet, this outside sheet—

Q. That is the sheet in the upper half of the picture?

A. Yes, sir; evidently the sheet got away from them under the shears, and he went in there—I have got the distance of it; he went in on the sheet five-thirty seconds of an inch.

Q. And what is the result of that?

A. It weakened that sheet in the way of these rivets.

Q. Did you notice whether or not there was any leakage along the seam?

A. Yes, sir; there was.

Q. Where about?

A. Right along here by the rivets, on different spots along that seam. Yes, sir, that whole seam was leaking pretty much, the whole length of it.

Q. You mean from the head of the water that a little more than half filled the tank?

A. When we rolled that over we could see little bubbles of water; not bubbles, but—

Q. Globules?

A. Globules of water was all along in there. I want to point out to you, I just want to use this for a ruler; if you put that straight edge on the bottom of that rivet head and the bottom of this one, you will see what an uneven job they did of riveting.

Q. If you put a straight edge along the line of rivets on the side of Number Two tank as shown in Libelants' 154, you are calling attention to the fact that the rivets are out of line?

A. Yes, sir; decidedly out of line. This is too high, that is too high, that one is too high; so is that one.

Q. Now, Captain, taking into account what you have now seen of these tanks, in your opinion were they proper

tanks for the containing of gasoline on a vessel such as the Seminole?

A. I think I testified to that question before; that in my opinion, those tanks were the type of single riveted galvanized tanks used for storage of water.

Q. In your opinion would they be adequate for the storage of gasoline?

A. No, sir, I wouldn't pass them for gasoline; not riveted galvanized tanks of that size.

Q. When you say that, are you taking into account these conditions that you have observed?

A. Yes, sir; but had I never seen this condition, I wouldn't care to have passed those tanks for gasoline.

Q. After seeing the way the tanks were actually constructed, what is your view on that?

A. I am positive I wouldn't have them. There is no way to examine the inside of those tanks, or the outside. A tank of that construction, where that feather edge—may I ask what is the proper name of that? Well, the inside plate was supposed to be feather edged for the riveting. That's one bad hazard, unless that is put in properly.

Q. You are referring now to the places similar to the place where the knife is shown in the picture?

A. Yes, sir. I am not a boilermaker, so I don't know the terms to use.

Q. Captain, did you see any evidence that the condition of those tanks had been materially affected by the fire?

A. No, sir; I can't.

Mr. Matteson:

That is all.

Cross Examination.

By Mr. Botts:

Q. Mr. Patton, referring to the Number Two tank, and the opening in which the plug shown in Exhibit 153 appears:

A. Yes, sir.

Q. Did you observe the thickness of the doubler plate in that hole?

A. No, sir, I didn't measure it.

Q. Well did you observe it, to see whether it was as thick or thicker than the metal of the tank?

A. I believe it is considerably thicker than that.

Q. Irrespective of its actual thickness, it was thicker than the—

A. Than the shell of the tank; I am pretty sure of that.

Q. Now in the Number Four tank, in which you were able, because that end was shut off, to examine the doubler plate on the inside of that tank, weren't you?

A. Yes, sir, we could see it.

Q. Was that doubler plate thicker or thinner than the walls of the tank?

A. That was thicker, I believe. I think, all that I could feel or see were thicker, to the best of my knowledge.

Q. At least on those two tanks, the doubler plate was thicker than the walls of the tank?

A. Yes, sir, and I felt in on one of those holes with my hand, and I didn't in the others.

Mr. Botts:

Have those rivets been marked in evidence, yet?

Mr. Underwood:

No.

Mr. Botts:

Well, Mr. Pilkington is an innocent sort of a party in this thing—

Mr. Underwood:
We dispute that.

Mr. Botts:
I believe it is conceded that those rivets which you have produced, are the rivets that came out of the two holes in the Number Four tank; is that right?

Mr. Underwood:
Not conceded, but asserted.

Mr. Botts:
I would like to have those marked in evidence now as Pilkington's Exhibit, under that statement, just to get them in as somebody's exhibit; so you may give those rivets Pilkington's next number.

(The said two rivets and burrs were admitted in evidence and filed as Pilkingtons' Exhibit 17.)

(By Mr. Botts):
Q. Could you observe whether or not the rivets on the doubler plate on Number Four and Number Two tanks, whether they were apparently the same size as the rivets in the seams of the tank?
A. As far as I know, they are.
Q. I will ask you if in your judgment rivets the size of the rivets which are in evidence as Pilkington's Exhibit 17, would, in your judgment, be strong enough to create a liquid tight joint for water or gasoline, where the space between the rivets was two and seven-eighths inches?
A. No, sir, not that far apart.
Q. Now I call your attention to the position of the riveted heads along the side seam of tank Number Two, as shown in Libelants' Exhibit 154, with respect to their relative position as to being in line horizontally, and their relative position with respect to each other; and I will ask

you if you observed whether or not that seam of rivets is in line?

A. No, sir; I testified to that.

Q. I will ask you whether or not the rivets seem, as indicated by the heads, the rivet heads, are equally spaced relative to each other, or whether some are closer and others farther apart?

A. They appear to differ in the space from rivet to rivet. That would be hard to prove, because the rivet heads are squashed down further on some than on others. I wouldn't care to answer that. See, for instance, some of these rivet heads are squashed over on one side.

Q. Now referring to Exhibit 154 and 155, I will ask you whether or not you—

A. This is 153.

Q. Make that, 153 and 155, please, Mr. Bryant: I will ask you whether or not the plug from Number Two tank as shown in Exhibit 153,—whether or not you applied or attempted to insert that plug in the hole in Number Three tank as shown on Exhibit 155?

A. No, sir; I didn't attempt to do it.

Q. Did you see it done?

A. I can't say that I did. I know I screwed one plug in, I think it was on Number—it was a fitting that had been chewed up so bad; I know I tried that.

Q. But you didn't try to see whether that same fitting would fit the other tank?

A. No, sir.

Mr. Botts:

All right. I think that is all.

By Mr. Underwood:

Q. Captain Patton, you referred to an indentation in Number Four tank an eight of an inch long, and an eighth of an inch deep; did you put some sort of an instrument in there?

A. My pocket knife.

Q. Is it your testimony that that is a hole through the side plating of the tank?

A. I didn't testify to that, no.

Q. I am asking you, is that your testimony?

A. No.

Q. The hole does not go through, does it?

A. No, sir.

Q. Now you said that these side seams and bottom seams of rivets were not in line; does that necessarily mean that these tanks leaked?

A. No, sir; not necessarily. It shows poor construction.

Q. And you said that the rivets were not equally spaced; does that necessarily mean that those tanks leaked?

A. No, sir. It means poor construction. I didn't measure off the punch holes equal spaced.

Q. According to my notes, Captain, you said that there was no solder around the bottom seam on one of these tanks; is that correct?

A. There is one didn't have any.

Q. According to my notes, that was Number Three tank. Will you look at your notes and see whether that is what you noted today?

A. That is right, no solder on bottom seams or on side seams.

Q. By the bottom seam you mean the little rectangular space?

A. Yes, sir.

Q. Between the bottom edge of the side plating?

A. Yes, sir.

Q. And the bottom edge of the vertical crown?

A. Right.

Q. I show you Exhibit 6-A and ask you to examine the bottom seam. Do you see any solder there?

A. Some little, yes.

Q. Take your knife.

A. I can see some traces there. I didn't notice any on the rest of the tank that I examined.

Q. Isn't it a fact, Captain, that there is considerable solder in that bottom seam?

A. No, I wouldn't say so.

Q. You just picked a piece of it out.

A. That is loose.

Q. It came out of the bottom seam, didn't it?

A. Yes.

Q. Do you notice where your fingernail has been down there just then, do you notice how bright that is in the crack? Isn't that solder?

A. I wouldn't swear it was.

Q. You did say a few moments ago that you didn't see any, didn't you?

A. Yes, and I am not positive it was not on that twenty inches on the other side.

Q. I am talking about the bottom seam now, Captain. Isn't that solder you are digging up right now?

A. Yes, sir.

Q. There is then, solder on the bottom seam, isn't there?

A. There is on this piece.

Q. You were mistaken about that, were you?

A. Yes, yes; I believe I was.

Q. Did you confer with Mr. Matteson this evening before you testified?

A. No, sir.

Q. Or, this afternoon?

A. No, sir; I have not been coached in this matter.

Q. You didn't confer with him at all before testifying on this point today?

A. Not on this stuff, no.

Q. Not at all?

A. No, sir.

Mr. Matteson:

Eminently correct.

(By Mr. Underwood):

Q. Did you confer with anybody before testifying today on this subject?

A. At the tanks, I pointed out things to Mr. Matteson; he called to my attention, things; that was the conversation; we did not compare notes at any time.

Q. Do you remember when you testified last March?

A. On what?

Q. Do you remember that you did testify last March?

A. Oh, yes, sir; I did.

Q. Did you confer with anybody before you testified that time?

A. Not to any great extent. No one told me the answers.

Q. Captain, I don't want you to get the impression that I am suggesting there is anything wrong in your conferring; I am just trying to ascertain what the fact is.

A. No, we did very little talk, that Mr. Matteson and I went over on this subject, whatever.

Q. Before you testified in March, didn't you tell Mr. Matteson what your observations were?

A. Yes I told him my observations, but he didn't tell me.

Q. Now, Captain, let me say again, I will ask you to assume that there is nothing wrong in your conferring?

A. There wouldn't be, with me.

Q. I don't want you to think that I am making any such implication; I am just trying to find out what the fact is. Is it a fact that before you testified last March, you told Mr. Matteson your observations—

A. I told him everything I knew about this case; yes, sir.

Q. And you had been aboard the Seminole?

A. Oh, yes.

Q. Many times?

A. Well when she was up at Lauderdale I was aboard her quite a number of times, and perhaps three times at others.

Q. And you have made observations for the purpose of this case, had you not?

A. Yes, sir.

Q. You testified last March, did you not, that you observed that the rivets on the tanks were not welded; isn't that the fact?

A. Yes; I testify now they were not welded.

Q. And did you also testify last March that you observed that the seams were not caulked?

A. I may have. I would still stick to that.

Q. You didn't testify anything last March about seeing this aperture, or this space between the upper crown of the tank, and the side plates of the tank, did you?

A. Just what is that space?

Q. Between the upper crown, or the top piece of the tank, and the side plating,—did you?

A. I don't recall that I did.

Q. They were exposed to view from the beginning, after the fire, were they?

A. I walked all over the tanks, several times.

Q. They were exposed to view from the beginning, right after the fire, weren't they?

A. That is quite right.

Q. You didn't testify last March about seeing any rivet heads corroded, did you?

A. I don't know that I was asked.

Q. You didn't testify anything about it did you?

A. I can't recall; if you read the records, I will substantiate anything that is in the record.

Q. You didn't testify about any rusted rivet heads or cracked rivet heads, last March, did you?

A. Not that I recall. If I was asked, I answered.

Q. You don't want us to understand, Captain, do you, that the spacing of the rivets in the doubler plates in these tanks, would necessarily involve a leak, do you?

A. Yes, sir; I do; I don't think they were close enough. If, instead of four, they put eight in there, it would be a much safer job.

Q. You think then that if these tanks were constructed as you say, with only four rivets in these doubler plates around the outlet hole, they would necessarily leak; is is that right?

A. It is quite possible they would leak.

Q. That isn't my question. Is it your testimony that they would necessarily leak?

A. I didn't say that.

Q. I am asking you, Captain, is that what you say, or is it not what you say?

A. They might never leak with those four rivets in, and then again they might. But I contend,—I still contend there should be more rivets in there for that space.

Q. Captain, I appreciate your contention; all I am trying to find out at the moment is whether or not you say that because of that construction, those doubler plates necessarily leaked?

A. I never said that.

Q. You don't say that?

A. No, sir.

Q. Is it your testimony, Captain, that you see no effect of fire on those tanks?

A. No, I don't see any material effect, no.

Q. What do you mean by material effects?

A. Well, the galvanizing would be discolored from being in the fire; but you can still take that side of that galvanized plate and polish that up.

Q. Which plate do you refer to?

A. That one is pretty well gone. This one might polish up a little bit.

Q. Indicating Exhibit 5-V.

A. I won't say yes or no until I get a chance at this. There is some galvanizing left there.

Mr. Underwood:

Let the record show that the witness takes his knife and scrapes a place a quarter of an inch wide and three inches long, approximately, on the outer surface of Exhibit 5-V.

A. I can't say that those tanks are materially changed from before the fire.

Q. The galvanizing material is zinc, isn't it?

A. Yes, sir.

Q. Do you know what the melting point of zinc is?

A. Give me the book.

Q. No, I am just asking you.

A. No, I refer to the book.

Q. What is that you see, on that plate you just scraped off? What is that grayish material you see under there where you scraped?

A. I think that is the galvanizing.

Q. And looking at the concave side of Exhibit 5-W, do you see four scraped places on that?

A. Yes, sir.

Q. What is that greyish stuff you see?

A. There is traces of galvanizing; it is pretty thin though.

Q. It isn't all gone is it?

A. Well ninety-eight percent.

Q. You mean ninety-eight percent of the galvanizing is gone?

A. Yes, you can just see,—get the light on there now, you can just see what is left of the galvanizing.

Q. What is the grey stuff you see?

A. I am not a chemist; I can't tell you.

Q. Can you recognize that for galvanizing or for steel?

A. I can the shiny part. Steel would be shiny if you got into it and scraped it. You will have to ask a chemist what that grey stuff is. I don't know; I am a sailor.

Q. You don't know whether that is galvanizing or steel, on Exhibit 5-W?

A. Yes I do; zinc is shiny; if there is any particle of zinc adheres to steel, you scrape it, it will still be shiny.

Q. Then all the shiny stuff you see there is zinc?

A. No; where the light hits it and it shines like silver, I say that is zinc.

Q. Now is it your testimony that because there was no solder on the rivet heads, these tanks would necessarily leak?

A. No I didn't testify to that.

Q. Well is that your testimony?

A. No. But you have got a peculiar way of putting a question up to a man, to lead him to think that he had testified.

Q. Do your questions embarrass you, Captain?

A. No, not at all.

Q. Your conscience or your recollection?

A. I have got a clear conscience.

Q. Now is it your testimony that these tanks would necessarily leak because of what I just suggested?

A. No. I am surprised, though, that this type of riveting does not leak.

Q. By the way Captain, when you spoke of cracked rivets that you have observed on these tanks within the last thirty hours, I take it you refer to cracks around the head of the rivets; is that right?

A. The edge, the lip of the rivet in there.

Q. You don't refer to cracks in the shank?

A. No, of course we can't tell what shape the shank of a rivet is in, after it is driven in crooked, but this edge is where the cracks develop or start.

Q. You refer to the outer edge of the head?

A. The edge of the mushroom.

Q. Well, Captain, is it your testimony that these tanks necessarily leaked at or prior to the time of the fire?

A. That they necessarily—

Mr. Botts:

I am going to object to that form of question, for this reason; the question is confusing in that it does not specify, when it states, "Is it your testimony", that the question refers to the testimony previously given, or whether or not it is intending to interrogate the witness as to his

present opinion. I think the question is unfair in that respect.

Mr. Underwood:

Well rather than argue the point, I would be glad to accept Mr. Botts' suggestion.

Q. Captain, is it your testimony right now, at this minute, that these tanks necessarily leaked at or prior to the time of the fire?

A. I never testified to that effect; but something did leak.

Q. Is it your testimony that the tanks necessarily leaked at or prior to the time of the fire?

A. No, sir; I never testified to that.

Q. Do you now testify to that?

A. I don't know whether they did or not.

Mr. Underwood:

That is all.

By Mr. Botts:

Q. With reference to these rivets, do you think that a riveted tank, with metal of the thickness indicated by the pieces of the various tanks filed in evidence, where the riveting consisted of a single row of rivets, that if those rivets were spaced two and seven-eighths inches apart, it would make a proper and tight tank?

A. You have reference to the tanks now?

Mr. Botts:

Read the question.

(The question was read by the reporter.)

A. No, sir; it would not. I think it would be impossible to make a tank tight with that spacing, unless welded afterwards.

Mr. Botts:

That is all.

Re-Direct Examination.

By Mr. Matteson:

Q. Is it your testimony, Captain,—what is your testimony as to whether the tanks leaked at this time or not, today?

A. Today? I should say they did leak.

Mr. Matteson:

That is all.

A. Especially with water. If you put gasoline in there in that tank today, it would run out.

Re-Cross Examination.

By Mr. Underwood:

Q. Captain, I have one more question which I have to ask. Is it your testimony, this minute, right now, that these tanks necessarily leaked at or prior to the time of the fire?

A. That they did leak at—

Q. Yes.

A. It is quite possible they did leak.

Q. Do you say that they did?

A. No, but I say it is quite possible. Something leaked in that bilge. I was up there that night.

Q. Well now, Captain, we will assume that there was a fire and an explosion on the Seminole. You don't know where the material that burned and exploded, in the first instance, came from, do you?

A. I was not there at the start of the fire.

Q. Assuming that there was a fire and explosion on the Seminole, is it your testimony that these tanks—gasoline tanks, necessarily, leaked at or prior to that time?

A. I can't say.

Mr. Underwood:
That is all.

(Witness excused.)

Mr. Matteson:
Mr. Underwood asked me if we had heard from Mr. Lawton, in response to Mr. Underwood's request that he communicate with his Head Office in Atlanta,—the request for any additional papers that they might have relating to the inquiry made. I have reported to Mr. Underwood that Mr. Lawton has reported to us that he communicated with the Atlanta office, and is advised by them that they have no papers whatever relating to the matter. I understand that that is satisfactory, and it is admitted that Mr. Lawton would testify to that?

Mr. Underwood:
Quite right.

4424 / Thereupon GEORGE W. GIBBS was recalled as a witness on behalf of Respondents and further testified as follows:

Direct Examination.

By Mr. Underwood:
Q. Mr. Gibbs, since you last testified, have you examined the interior and exterior seams of Number Four tank?
A. Yes, sir.
Q. And the exterior seams of the other three?
A. Yes, sir.
Q. What did you observe with reference to indication of caulking on those seams? I am excepting of course the bottom seam on each tank.

A. I observed in Number Four that the crown was caulked on the inside, and that the seams were caulked on the inside as well as on the outside.

Q. Vertical seams?

A. Yes, sir.

Q. And how about the top crown seams on the other three tanks?

A. The top crown seams, they may have been caulked; there would be no way to tell, because you couldn't get in there unless you had cut a section out.

Q. You couldn't see that?

A. I could see, but not to the point where you could tell.

Q. What did you see that indicated to you that Number Four tank was caulked inside?

A. I saw a small ridge that would indicate that the caulking iron had been driven up against the edge.

Q. Are you familiar with the appearance of a caulked seam?

A. Yes, sir.

Q. Tell me again now whether or not those interior seams in Number Four tank indicated to you that they had been caulked?

A. They did.

Q. Did you examine the outside seams of the other four tanks, and the top circumferential seams for evidence of solder?

A. I did.

Q. What did you find?

A. Found evidences of solder, marked in the lower seams of the tank; the upper seams, evidences that solder had been there, but the appearance of great heat.

Q. What evidences of solder did you find above the approximate level of the twenty inches above the bottom?

A. I found a discoloration of the galvanized portion of the tank, which checked exactly with the test piece that I made, which was soldered; a galvanized strip was sold-

ered and burned, and I found a lump of solder on the top of the soldered portion of this vertical seam.

Q. And approximately how many different lumps of solder did you observe about this twenty inch level, on the vertical seams, and in the circumferential seams? Did you make any count of those?

A. You mean, some globules of solder?

Q. Yes.

No. I found traces throughout the job.

(A preceding answer by the witness, was read by the reporter: "I observed in Number Four that the crown was caulked on the inside, and that the seams were caulked on the inside as well as on the outside.")

Q. Did you mean by that, Mr. Gibbs, that the outside seam of Number Four tank, the outside vertical seam, showed signs of caulking?

A. Yes, sir.

Q. And the circumferential seam at the top?

A. Yes—well, on the inside, and on the top, I could not see, I don't believe there was space for caulking.

Q. Which place,—which top seam could you not see,—the inside or the outside?

A. From the outside of the tank I could not see down into the crevice well enough to recognize the track of a caulking iron.

Q. Could you on the inside?

A. Yes, sir.

Q. Did you have a light?

A. I had plenty of light.

Q. Now were you present on Saturday last when some air was put on the tanks?

A. Yes, sir.

Q. Was any air put on Number Four tank?

A. Positively not. The test was run under my personal direction, on instructions by you. You and I arrived, and Mr. Munroe, at the same time; and one tank, Number Four tank had arrived and was filled with water, and they awaited our instructions as to what to do. We told them to proceed to cut up the one with the water, which they had prepared.

Q. That is Number Four?

A. Number Four; and when the next tank arrived, after a considerable time, we decided on the test that would be made.

Q. Well now you were present at these tests?

A. Yes.

Q. Did you observe any leaks whatever around the bottom seams of any of those tanks?

A. Absolutely not.

Q. Did you observe any leaks whatever around the vertical seams up to the point where the solder stopped?

A. Absolutely not.

Q. Did you observe any leaks around the filler outlets,—I should say, the feed line outlets on Numbers One Two and Three tanks?

A. Absolutely not.

Q. How about the bottom plug?

A. Absolutely not; no.

Q. From your examination of those tanks can you tell us whether or not the galvanizing is intact or destroyed, or in what condition did you find it?

A. In all the tanks?

Q. Yes.

A. Well the galvanizing on all of the tanks shows that it has been exposed to forces that it was put there to resist, and that it has suffered by exposure to tremendous heat, and in many cases it has completely melted off. All the tanks are filled with—when I say filled, I mean that wherever there is any residue, that I was able to find, there are bits of molten zinc. The galvanizing

on some places is crazed; that is, it has trenches; it is called —the back of an alligator; this is called alligatoring, in some shops.

Q. Is that a word that has a meaning—

A. It has to do with a smooth mass that cracks up under the influence of sudden cold.

Q. What in your opinion caused the present condition of this galvanizing, or was it one or more things?

A. I think it was two things; intense heat, and water.

Q. Did you find some eivdence of—any evidence of galvanizing on Exhibit 5-W?

A: Oh, yes, sir; it is, unquestionably.

Q. In your opinion has there been any substantial reduction in the thickness of that plate due to rust and corrosion?

A. From the outside of that plate, there has been some slight reduction; on the inside nothing but—no reduction in the steel; there has been some reduction in the galvanizing.

Q. Mr. Gibbs, in your experience in tank work of this sort are the rivets ever driven cold?

A. We never drive rivets cold except in tiny pans, and very small work, where there is no great strain, or where the heat is a bad thing.

Q. You have heard the suggestion that some of these rivet holes in one plate didn't fair with the rivet holes in the other. Assuming that the rivets were driven hot; in your opinion would that make an adequate gasoline tight joint?

A. Oh yes, there is no question about making a gas tight joint.

Q. Why do you say that?

A. Because the rivet driven hot, is in a molten condition, it is ready to become a forging. It is considerably longer than the hole that it is to fill; and when that is put in this hole, as a practical proposition, you drive the sott mass into the hole, whether it is irregular or otherwise.

Q. Some reference has been made here today about conditions of the two heads of various rivets on these pieces of metal. Look for example at exhibit 5-Y: In your opinion can the present condition of those rivet heads, both heads, have been caused by the heat of a fire, or the lapse of time and their exposure to the elements for four years since the fire?

A. Oh most certainly. They are in excellent alignment, this particular sample that you give me, and there is nothing that any man could tell by looking at those rivets that wouldn't indicate that they were absolutely straight holes; with this sample. This edge of the rivets, or the side of the rivets; would indicate that the corrosion has set in here, and possibly a quarter of the top of the metal, as the result of intense heat that they were probably exposed to.

Q. You have indicated the outside, the rivets on the outside of the vertical side plate of Exhibit 5-Y?

A. Yes.

Q. Now Mr. Gibbs, from your experience will you tell us whether or not those rivets are properly in line, as work of that character goes?

A. That particular sample, they are quite well in line.

Q. Look at the other three, please, the other three segments from the bottoms of the tanks.

A. They are pretty well in line here.

Mr. Matteson:

That is referring to 5-X?

A. The alignment is not so good on section two.

Mr. Botts:

That is 5-Z.

A. It is about the same in 6-A as it is in the other one that I just read.

Mr. Underwood:

5-Z.

A. Yes.

Q. Now Mr. Gibbs, in your opinion, is exposure to fire a competent producing cause of cracking of the rivet heads?

A. Oh yes.

Q. And is exposure to fire a competent producing cause of expanded seams in tanks of this sort? Can fire do that?

A. Fire can warp tanks, or metal shapes, completely out of shape; which it has done in the case of this particular tank, where the knife was stuck.

Q. You refer to Number Two tank?

A. Yes, sir; if you will recall, while I was witnessing this examination, had laid a straight edge on the tank itself, and this not only was dished in as though a belt had been drawn around the tank; but it caused the outer edge of the top of the plates to bulge out like an hourglass.

Q. Now Mr. Gibbs, will you examine again the exposed edges of the plate in evidence, or segment, from the bottoms of the tanks, and tell us whether or not in your opinion they indicate the existence of a gasoline tight seam?

A. Every one of them is as perfect a demonstration as I can conceive of, of an absolutely gas tight seam, under pressures many many times greater than any pressure that these tanks could ever have been exposed to. I can look down the edge of the outer plate on any of them, and that enters the point of contact, tangent with the curve; there being no razor edge or projection to the plate, where I look. That proves to me that an extension of this line, coming tangent to the head of the tank, would give me a true picture of the joint in the tank, showing that the head and sides of the tank are pressed together, perhaps at this time, with tremendous pressure, but certainly enough to resist any leak under perhaps one hundred or

maybe two hundred pounds pressure, as far is that is concerned. And that goes for the whole four,—for each of the four.

Q. Now Mr. Gibbs, you did observe some leaks on Saturday afternoon, in the side seams of these tanks above the point where the solder was?

A. I did, and I was not the least bit surprised.

Q. My next question is, in your opinion, is the existence of those leaks any criterion by which fairly to judge the tightness of the tanks four years ago before they passed through a fire?

A. Why most certainly not. I think it would be a miracle if the tank would go through what they had gone through. The tank had been robbed of its principal element of tightness, by fire. I would think it would be quite wonderful if they would not leak.

Q. Now from your general observation of these tanks Saturday afternoon and Monday evening with the Court, and this morning, will you tell us whether or not in your opinion they were adequate and proper tanks for gasoline in such a vessel as the Seminole?

A. Well my opinion expressed when I first testified, regarding these tanks, has been confirmed by my observations of the tanks recently. I stated that the tanks were good for many, many times the pressure for which they were intended. I also stated that the one point described, by other witnesses as a danger point, a point subject to terrific corrosion, a corrosion which would destroy the rivets and render the tanks quite leaky, they stated that those points would be found in terrific condition, due to certain reasons. My examination of the tanks would indicate that perhaps the most protected point in the thing was the point they described as the weak point of the tank.

Q. Do you refer to the V in the bottom?

A. Refer to the so-called wedge shaped section of the tank, which would grab the salts and the acids and the other things that would tend to get down and eat the rivets

off. I looked for this point that I had claimed would be covered with water which would be almost distilled. I found bits of zinc down in there; I found a condition as near perfect as it could be, regardless of the fact that the tanks had been exposed to the very briny waters of this section of the country, as well as the tremendous heat that they must have suffered during the fire. The last three or four years they have not had the benefit of the galvanizing that they normally would have in use; neither have they had the benefit of protection from wind and water, that those tanks have suffered, with the tide rising and falling each day into them. In spite of that fact, in many places the tanks show what would almost be mill-scale. There is no formation of anything; the tank looks almost like the day it left the racks of the mill supply house. 5-X is a very excellent example; the zinc can be found,—traces of it, and where this acetylene cutting torch has burned that away, you have practically the original line as it went into the galvanizing, with no loss whatever of the plate. I did not know exactly how the tanks were built until we got them apart. As an examination of 5-X, which is identical in all the tanks, it can be found that the heads go almost straight to the walls of the tanks.

Q. You mean, the bottoms,—the bottom crown?

A. The bottom crown,—that it goes almost in a straight curve, or uniform curve, to the shell of the tank, from there, with a long lip, they go to the area where the rivet holes are punched. There is a great distance from the rivet holes to the point where the crown leaves the shell plate.

Q. In your opinion, is the lap of sufficient length?

A. It is of quite sufficient length. In my opinion, if every other rivet fell out, those tanks would still be tight enough to hold many times the pressure that they are called upon to hold.

Q. When you say that, you mean pressure such as these tanks might be subjected to, filled with gasoline?

A. That is right; and I also mean to say that there is a great surplus of fastenings,—of rivets fastenings, between the heads and the sides of the plates. The tanks, gasoline tanks of course are very much heavier, than the normal tank used in the average boat.

Mr. Underwood:
That is all.

Cross Examination.

By Mr. Matteson:

Q. Is the steel in these samples that you have from the tanks, a good quality of steel?

A. I would say that from what they have had to take, that it would be a good quality of steel. I have put them through no physical test, it is just a guess; but the state of preservation would indicate to me that it was a very good quality of steel.

Q. What grade of steel is that?

A. I would call that,—no way for me to say, except by analyzing it or putting it to various tests. But I would think it was mild steel.

Q. What is mild steel used for?

A. Building tanks.

Q. Anything else?

A. Oh yes, we use it for nearly everything.

Q. Use it for boilers?

A. No—with some boilers; but boilers, it depends entirely upon what the use of the boiler is. We have a tested steel, it has to have inspectors or Government test, as a rule.

Q. You have to have a Government test for a boiler?

A. For whatever the purpose is. We even use it for a lot of ships we build.

Q. In other words I take it that tanks constructed as these, would be adequate for boilers of some sort?

A. I don't know what this steel is: and there is no connection whatever between the building of this tank to hold a cold fluid, and building of a boiler to hold a high pressure and heat,—various degrees of expansion. There is no similarity, except they are both riveted, and certain laws,—expansion of joints and so forth, contained in both types of construction.

Q. Well without referring to specifications that you might have to meet, as a practical matter, are the tanks constructed of steel like this, and riveted like this, suitable for some types of steam boilers?

A. Not necessarily. I would have to find out the specifications of the boiler; and from the mill, I would get the sheet showing the characteristics of the steel,—its properties.

Q. You were suggesting at one stage in your testimony that these tanks might be used for a purpose much more strenuous than the confining of gasoline. Would you consider the use as some type of a boiler, perhaps a low pressure boiler, would be one of those uses?

A. No, sir.

Q. Why not?

A. For the reason that a low pressure boiler is subject to many things. It is subject to heat, expansion, all kinds of strains; the strains of heat, and also the water—continuous changing of water; boiler scale; terrific corrosion; various kinds of strains,—but particularly to tremendous tensile stresses, that—

Q. Why wouldn't steel like this be suitable for use in a low pressure boiler, if that boiler were otherwise designed properly?

A. As far as I know, that might be the finest boiler steel in the world; I don't know what this is. But a steel that had a tensile strength,—that was uniform in strength, in its texture.

Q. Have you any doubt that that steel would answer that description?

A. None whatever.

Q. Then, Mr. Gibbs, do I understand you to say that nevertheless this steel has been subject to distortion as the result of application of fire, in this fire?

A. Oh yes.

Q. Will you point out to me some evidence of that?

A. Well I would have to take you out, I think, to the tanks, to show you where the distortion is.

Q. You can't show us the distortion on any of these samples?

A. Well I don't know that it would show up here. But it is quite possible that the bulge there might have been due to heat.

Q. You are speaking about the plate, not the rivets, are you not?

A. Well I mean, if you will take a straight edge—

Mr. Underwood:

The plate from Number Three tank.

A. That apparently rolled. The tops of the tanks—

Mr. Underwood:

Indicating an apparent concavity in the side plating of the exhibit 6-A.

A. If you will see this one, that does not show it at all.

Mr. Underwood:

Indicating Exhibit 5-X as not showing it at all.

Q. Now of course a distortion such as you indicate there could have been caused in manufacture, could it not?

A. Not likely. It would be a most expensive thing to run that in a machine just to make it crooked.

Q. Now do you say that this distortion in the bottom, just above the line of rivets, on Exhibit 6-A, was due to heat?

A. Might have been.

Q. Well I mean, is that your suggestion?

A. It is my suggestion. Of course it is possible—

Q. How hot would the plate have to be heated before it would distort in that fashion?

A. Well what would actually happen there, it could be the whole thing could be heated, and a jet of water could be thrown right across there, and could immediately contract, and with this one perhaps the other part hot; I don't say that that was done right in here; but what throws things all out of shape and warps them, is the ununiform application of heat.

Q. Yes, but now in order to accomplish that, in a plate like that, the plate would have to be heated somewhere between cherry red and white hot, would it not?

A. There is no question but what those tanks were heated cherry red, maybe white hot. However you wouldn't have to heat them in order to distort them, much more than a very dull red.

Q. Now you say that in your opinion all of these sections were heated between cherry red and white hot?

A. No. In my opinion, I don't think that but one of those sections was heated very hot. I can't tell that; I don't know just what the conditions of the fire were. But it is my opinion that at least three of these tanks were fairly cold.

Q. Well now referring to this one that you suggest was heated, as I understand it:

A. No I didn't suggest that, I said that that might have been some heat distortion.

Q. Well what I am getting at is this; you can't distort cold steel very readily, like that, can you?

A. It would take something to distort it.

Q. Well your suggestion is that this curvature in the Exhibit 6-A was produced as the result of its being heated to—

A. Not necessarily; I didn't mean to do that. I meant to show you what distortion by heat would be. That exists in a marked degree in the upper portions of the tank; it could have been the cause of this. I don't say that heat did distort that; it could have done it.

Q. Just let's talk about that hypothesis. If it could have been, it would have been necessary first to have been heated red hot, would it not?

A. If that was the cause of that thing going out of shape there?

Q. Yes.

A. It would have been necessary for some material heat, yes.

Q. It would have been necessary—you can't bend steel of this thickness, readily without its being heated at least red hot, can you?

A. Oh you can bend steel cold. That would be a very difficult section to bend, to the curvature.

Q. It would be very difficult to bend it cold?

A. That is right.

Q. So if we assume that it was bent in the fire—

A. I am not assuming that that was bent in the fire.

Q. I am.

A. Oh, I see.

Q. I am assuming for the minute that it was bent in the fire, and the point that I make is that if it was bent in the fire, it would have been heated red hot, or so?

A. I think it would have been pretty warm.

Q. Well it would have been—you would have had to get it red hot to produce that curvature through heat, wouldn't you?

A. It would have to be pretty hot to have stayed there, —to have remained.

Q. Which tank did this tank come from? (Referring to Exhibit 6-A.)

Mr. Underwood:
Number Three.

Q. If the bottom section of that tank was heated red hot, you couldn't imagine solder staying on it, could you?

A. No, if that was heated red hot.

Q. Now Mr. Gibbs, you examined these tanks up on the Seminole did you not, at Nuta's yard, before they were removed to DesRocher's?

A. In a way. I looked at the tops of them, that is about all I could see. I think I saw through the hole.

Q. Did you see any evidences of heat distortion, up there?

A. I didn't—yes, they looked to me like the tanks had been pretty badly burned.

Q. Well did you at that time have any opinion as to whether they had been distorted by the fire or damaged by the fire?

A. I had a very marked opinion, very decided opinion, that they had been damaged by the fire.

Q. And you examined the Number Four tank up there did you not?

A. Oh yes; that was the one they tested?

Q. The Number Four tank was the one that was lying on deck. You don't know anything about any test?

A. There was one tank taken out of the—there were four tanks in the boat, one tank was removed from the boat. I examined all of them.

Q. Did you examine all of them up at Nuta's?

A. Yes, just looked at them.

Q. And up there, did you see any evidences of distortion by heat?

A. I didn't look for it. I only looked for the—I only saw that they were very badly burned, from the condition of the outside.

Q. Well having regard for the construction of the tanks, and the fact that they had been through a hot fire, at that

time did you have an opinion that they had probably been damaged by the heat?

A. Oh yes. I have seen a great many burned tanks.

Q. Well now, if the bottom section of these tanks had been greatly heated, placed as they were in the Seminole, where would that heat have come from?

A. I don't know.

Q. It would necessarily have come from underneath them, would it not?

A. If the bottom were heated; there was evidently heat around the bottom of that tank.

Q. You noticed the condition of the wooden stringers on which the tanks rested up there, did you not?

A. Yes; you mean the stanchions, the vertical pieces?

Q. No, I mean the horizontal pieces that were in the trays.

A. That is the one that I saw.

Q. And that I think you testified was not even charred?

A. Yes; showed no signs of heat.

Q. Whose suggestion was it that these tanks be brought down to Warriner's for the work that was done down there?

A. I don't know.

Q. Did you have anything to do with that?

A. Nothing at all.

Q. If these tanks showed evidence of fire damage, likely to have affected their integrity, while they were up at Nuta's, can you suggest the reason why they should be brought to DesRocher's or to Warriner's and placed under an air test?

A. I am employed as an expert witness in this case; the reasons for the method of conducting the case, I have no interest.

Q. Possibly you could suggest a reason

A. A reason for what?

Q. For making an air test under these conditions.

A. Well I suggested the air test instead of a water test.

Q. When did you suggest that?

A. When they started to test them.

Q. Do you mean to tell me, Mr. Gibbs, that as close as you have been on this case, you have never been consulted about the advisability of moving these tanks down to Warriner's and placing them under test?

A. Absolutely; on the contrary, I had all kinds of suggestions that I am ashamed of, and was told to do my work and the lawyers would do theirs. I have been very reluctant to make any suggestions to them at all, except in connection with the—

Q. When did you first know that a test was contemplated?

A. A very few minutes before I was asked to go to Warriner's,—if that is the name of the place.

Q. You didn't know that the tanks were being brought down there?

A. Well I did know, on the way, what we would have to do; but a very short time, I could say, minutes; might have been half an hour.

Q. I understand you are the one that suggested an air test down at Warriner's?

A. Yes, sir.

Q. And did the tanks show evidence of damage from the fire, at that time?

A. They didn't leak as bad as I had expected; but the air test was done with a view to saving a lot of time. When I saw the soldered seam, that I hadn't observed, and realized just exactly how the things were made, I saw that this solder was completely burned off of these tanks; and I predicted that each tank would leak very much more than it did. I suggested that we save time by putting this air test on them.

Q. I see; you had no expectation that it would be successful?

A. The minute I saw the tanks, I had very little idea that it would, but I wanted to be sure; otherwise we never

would have put air on them; because that is not a safe way to test a tank,—that is, up to any appreciable pressures.

Q. Well now then as I understand it, although you didn't expect the test would be successful, you did suggest the test on Number One, Two and Three tanks?

A. Well that was only when I had actually seen the tanks.

Q. Was there any difference between their appearance at that time, and when you had seen them before?

A. Well I had actually put an air test on one tank, you see, and had the opportunity to examine the seams.

Q. Which tank was that?

A. It was the first tank tested,—that we tested; I don't know it by number.

Q. Well what test was that?

A. We put a small—an air test of five pounds.

Q. When was that?

A. And then perhaps a little better.

Q. When was that?

A. The first tank we tested.

Q. You are talking about last Saturday?

A. Yes, sir.

Q. Well now it was you that suggested the test on the three tanks?

A. The air.—No, no, I didn't suggest that the tanks be tested at all, but when I found they were being tested—

Q. Now just listen; it was you that suggested the air test, I understand you to say?

A. Yes, sir.

Q. Why did you not suggest an air test with respect to Number Four tank?

A. Number Four tank had been tested, and what we needed from Number Four tank was a knowledge of whether our prediction of the condition of the tank was accurate, or whether the prediction of the other experts, on—

the other side of the case, was accurate. And the principal thing that we desired was actual knowledge of the physical condition of the tanks; because we had been told of the horrible corroded condition of these tanks, that we had been given every scientific reason, with the benefit of experience of experts of years.

Q. Now if you please, Mr. Gibbs,—I don't want to cut you off, but please confine yourself as nearly as possible to answering the question.—What was the question we asked?

(The preceding testimony was read by the reporter.)

Q. We are getting pretty far away from Number Four tank, you realize that?

A. Mr. Matteson, I just wanted to tell you what I understood the purpose of getting those tanks there, was.

Q. All right. Now you realized, did you not, that the prior test that had been made of Number Four tank, was in some respects unsatisfactory?

A. None whatever. I was not here. My criticism of that test was that having gotten two or three times the working pressures, that it was ridiculous to run it up any higher; and that was most satisfactory.

Q. So you knew that no air test had been previously applied to Number Four tank, did you not?

A. Well I don't think they had any equipment to make it.

Q. Well regardless of that, you knew that no air test had been made of Number Four tank?

A. No I had never heard that it had been.

Q. You were present in Court when Mr. Munroe gave his testimony?

A. Yes, but I heard of no air test.

Q. You knew of no prior air test on Number Four tank?

A. No.

Q. Then what was the purpose of eliminating Number Four tank when you were testing the others with air?

A. It had been tested.

Q. Now when the Number One, Two and Three tanks showed leaks under air pressure of five pounds, didn't that suggest to you the advisability of determining what the condition of Number Four tank might be under similar conditions?

A. No; unless I wanted to dispute the testimony of Mr. Munroe. And I don't recall now whether we had already cut that tank up, or not. But my idea of the whole tank business was to have before the Court, sections of the tank, to actually,—we had the test of Number Four; but to have the actual—the sections of the tank, to show the condition of every single portion of that tank, to the Court, without any more speculation. And I still think that that is ninety-eight percent of the purpose for the removal of the tanks to the place where they could do that.

Q. Did it cause you any surprise that the other tanks gave way under five pounds pressure,—air pressure, when the other tank had stood up under forty pounds pressure? Can you account for that?

Mr. Underwood:

I object to whether he was surprised; object to the form of the question.

Mr. Matteson:

Well I will rephrase it.

Q. You realized, did you not, that when the three tanks showed leaks under five pounds air pressure, that there was a very considerable discrepancy between that result, and the supposed result of the first test, when the tanks are said to have stood forty pounds pressure,—did you not?

Mr. Underwood:

Just a minute; may I have that question read, please?

(The last question was read by the reporter.)

A. Not necessarily. I have built a very great number of tanks, and have had two tanks that looked exactly alike, and one of them will leak and the other one will not. Since the time that Munroe made the test of his tank, to the time that this tank was tested, some different conditions have set in with the tanks. In the first place the boat, those tanks were in a fixed position in the water; well they have been handled some; and that handling might have accounted for very small leaks that did show up; because these little bubbles were not very large.

Q. Then you suggest now that the opening of the seams of One, Two and Three tanks was not due to the fire, but to handling, is that it?

A. Oh no; it was due to the fire, and the fire of course loosened up all the—getting the solder away from them, melting the zinc, and, perhaps putting strains on the tanks.

Q. Well now if the only purpose of bringing the tanks to Warriner's was to cut out sections to be brought to Court, why did you suggest air tests?

A. You mean when they got to Warriner's?

Q. Yes.

A. Well that was a quick method, what we usually do to the tanks, we will take a tank that is just finished, and rather than fill it full of kerosene oil and then have to take that out,—that is a hard job; we usually shoot small—a very small amount of air to it, and then if that shows a leak, we can instantly repair it. When it shows no leaks under air, then it is safe to put your test later, under oil.

Q. You don't think your purpose would have been sufficiently served after cutting out the sections, without performing an air test first?

A. No, I saw no—my purpose in taking the tests, of testing the other tanks, they seemed to be exactly alike, and if Munroe had run the test and got those things, I saw no purpose in testing the other three. I don't know what Mr. Underwood had in mind; he didn't tell me. But I thought myself that these sections were vital, that they would eliminate further argument respecting the tanks.

Q. Will you describe to us the caulking that you saw on these tanks?

A. The caulking was such caulking as would be done on a tank of this kind; with the knowledge of the completed product.

Q. Now I didn't ask you to tell me that, Mr. Gibbs; I asked you to describe the caulking that you saw on these tanks.

A. That is a description of it, sir.

Q. Well it doesn't mean anything to us, because we are not familiar with what you may be familiar with. Please give me a physical description of the caulking that you saw on the tanks.

A. All right, sir. It was a small trench between the plate and—one of the plates and the edge of the plate that was fastened to it,—made by a tool.

Q. You saw an opening there?

A. No, sir, a trench, where the metal—the edge of the metal was mashed in the plate.

Q. And what was the width of this trench?

A. I would say that it was about, oh somewhere between a thirty-second and sixteenth.

Q. Did it go all the way down the vertical seams?

A. It went pretty generally everywhere; it doesn't always have to be even.

Q. You say then that it wasn't everywhere even?

A. I say it does not necessarily,—a caulked seam can be absolutely something you can't see. You have a big tool, you press the whole end of your plate.

Q. Then do I understand that you saw what you considered evidence of caulking, in places, and assumed that it continued in other places?

A. No, no.

Q. Well do you say that you saw—

A. I saw evidence of caulking all over the tanks, except the top crown.

Q. And where was that caulking that you saw?

A. Between the plate and the plate to which it was attached.

Q. Was there any caulking on the outside of the seam?

A. Yes.

Q. On all the tanks?

A. Yes, sir.

Q. Unfortunately the light doesn't show too well here, but can you show us any evidence of caulking?

A. Couldn't on that picture.

Q. Was it caulked there?

A. Yes, sir.

Q. Was it caulked in the way of this irregularity in the shear, that appears?

A. Yes, sir.

Q. I am referring now to Libelants' Exhibit 154.

A. Yes, sir.

Q. Now what you observed, I take it, was an opening between the outer plate and the inner plate, which you call the trench; is that it?

A. Yes; there was some places I can't tell you just which tank it was, where it was; right under the plate.

Mr. Botts:

An illustration here doesn't get into the record, and takes up useless time; the Judge won't understand it, and even if we all understood it, it wouldn't help. I didn't want to stop you, but you can see the point I make.

A. Yes, sir. May I build this tank for you and show you just how it is caulked?

Q. I don't want you to build this tank, but I want you to describe this caulking that you saw.

A. All right. When the two plates are riveted together, they may or may not cut at the edges, depending upon how flat those plates are, and how thoroughly, firmly, they are drawn together. An iron that is flat on the ends, is pressed against the edge, with a view to crimping or mashing the metal to a point where it touches.

Q. All right, now that trench, or whatever it is, is filled as I understand it with the crushed metal?

A. Yes, and it does not necessarily have to show as a trench.

Q. All right.

A. I could make a drawing of that if you would like to see it.

Q. Well as I understand it, where that caulking appears, you have what appears to be an opening between the plates, but it is really the result of metal being crushed down from the outer plate, and between the plates, making a seal, is that right?

A. Yes. I will make a drawing—

Q. No I think we have got it all right. Well if that were true, if a knife were inserted into such an opening, it would necessarily strike the surface of the caulking, would it not?

A. No, if the knife was inserted, it would indicate that some forces,—heat or quenching, had buckled the whole plate away and torn the caulked edge away from the plate it was supposed to be caulked to; the breaking of a rivet, the release of the tension that draws a plate together, will take a caulked edge and pull it away so that a knife can be put underneath it.

Q. I understand you to say these tanks were caulked in all their seams, at least all their side seams; is that right?

A. I said, I found evidence.

Q. And is that your opinion, that they were all caulked?

A. Yes.

Q. How can you suggest any reason why, if they were caulked, they should also be soldered?

A. Because they were supposed to hold gasoline, and because it is the usual way to build tanks of this kind.

Q. Do I understand you to say that caulking alone is not sufficient to hold gasoline?

A. Caulking might be done in a heavier tank than this, in a way that would hold gasoline; but with this gauge, the caulking is done to minimize the—to increase the strength of the tank and the tightness of the tank; and that, in connection with solder, makes a most excellent job, which is usually done.

Q. Well have you built tanks in your yard?

A. A great many.

Q. And do you always caulk and solder them?

A. Almost universally, with a tank of this kind. This is a pretty heavy gauge tank for gasoline.

Q. This is a heavy gauge tank?

A. A very heavy gauge tank.

Q. And yet you say it is not heavy enough for caulking?

A. What is that?

Q. You say it is not heavy enough for caulking?

A. I say it comes in between,—if it were a sheet metal, for instance, we wouldn't caulk it at all, we would put rivets very close together and do what you call, tin all the seams.

Q. By sheet metal—

A. I mean thinner gauge,—I would say twelve gauge or ten gauge.

Q. What does twelve or ten gauge mean?

A. Somewhere around an eighth of an inch. When I said, ten gauge,—ten gauge and thinner, I mean a higher gauge; ten towards twenty.

(Following discussion as to meeting between counsel and witnesses at 8:30 o'clock A. M. on the following day, at Warriner and DesRocher's, at 9:46 o'clock P. M., hearing was adjourned to be resumed at 9:30 o'clock P. M. on the following day, to-wit, November 22nd, 1939.)

Wednesday, November 22, 1939, 9:54 o'clock a. m.

Hearing was reconvened pursuant to adjournment of the previous evening.

Mr. Botts:

I am going to make a statement, and if it is not in accordance with agreed facts, let's get it changed. This is with reference to these new pieces cut out, so as to get them marked. The segment of metal marked in red paint, 4-A is a segment from the side wall, including one of the side seams, of Tank Four, cut from about two feet below the top head, and was cut out at a point marked by Mr. Gibbs.—That the segment 4-B was also cut from Tank Number Four, at a point on the side seam opposite the seam from which segment 4-A was cut, and was cut at a point starting approximately sixteen to eighteen inches above the bottom of the tank.— That segment 4-C is a part of the side wall and crown sheet, crown piece, of Tank number Four, and was cut out including the rivet hole from which one of the rivets marked in evidence was driven, and is one of the rivet holes concerning which testimony was previously given.—That segment 4-D was cut from near the bottom of the side wall of Tank number Four, and includes that part of the side wall, including the seam, that runs down to within approximately an inch to two inches of the bottom of Tank number Four.—That segment 2-A is a segment cut from the side wall of Tank number Two, and includes the segment of side wall of Tank number Two which is shown in Libelants' Exhibit 154, but includes some area in addition to that shown by Exhibit 154.

Mr. Underwood:

You will have to count the rivets to be sure of that, Mr. Botts; I don't know.

Mr. Botts: (Continuing):

Eighteen; there are eighteen rivets; and there are (counting)—eighteen rivets here.

Mr. Matteson:

That is, eighteen rivets shown in the photograph, and eighteen rivets shown on 2-A?

Mr. Botts:

Yes; but you can see that the—

Mr. Underwood:

You don't need to tie it up with the photograph, so it is the same general portion.

Mr. Botts:

All right, and instead of "is the same";—includes the same general area of the tank that was exhibited by Exhibit 154; because it goes further this way, and not so far this way.—Let 4-A be marked 156; 4-B, 157; 4-C, 158; 4-D, 159; and 2-A, 160.

(The said sections of metal were admitted in evidence and filed as Libelants' Exhibits 156, 157, 158, 159, and 160, respectively.)

4456 Thereupon: MR. GEORGE W. GIBBS resumed the witness stand and further testified as follows upon continued:

Cross Examination.

By Mr. Matteson:

Q. Mr. Gibbs, we have had some discussion here about caulking. Will you describe for us briefly your idea of what caulking is?

A. Caulking is a means of drawing the edges of plates together, in a riveted vessel, metal vessel—of various degrees, depending upon the purpose of the caulking and the ultimate product of which caulking is part.

Q. See if I understand you: if you have two plates that are riveted together, and you want to caulk them, you take a caulking tool, which is something like a chisel, with a broad, sharp edge—is that right?

A. Usually a square edge; various kinds of caulking edges.

Q. And in order to caulk, you take the outside edge of an exposed plate and—you apply the caulking process to the exposed end, or the end of the outside plate?

A. To the point between the two plates, at the line where the two plates should touch.

Q. Well of course if you inserted a wedge between the two plates you would pry them apart, wouldn't you?

A. Depending upon the nature of your iron. Most irons are made square, without any taper to them, to prevent just that. But often you will drive the edge of one of the plates right down into the crack.

Q. That is what I am getting at. The caulking process is applied to the edge of the outside plate, and the effect of it is to force a part of that edge down against the other plate and into the crack; is that right?

A. Against the other plate. It may not be into the crack at all. You may have a perfectly flat plate up against another plate, in which case you will drive the entire edge of the plate—foreshorten it or spread it, mushroom it, so that the entire edge is widened, and therefore made of a size which causes it to touch the other; depending upon the pressure to be held, which method was used.

Q. Well then, let me see if I get this right: Do you sometimes use a caulking tool that is the full width of the exposed—or full thickness of the outside of the exposed edge?

A. It wouldn't make much difference about the tool. If you were doing that kind of caulking, it would be best to have a tool as wide as the edge of the plate; sometimes it is wider; but it would depend upon the thickness of the plate, of course. A half inch plate, you wouldn't have a tool that wide.

Q. Well let's talk about a 3/16ths plate; and I am asking you now, in the light of your experience as a shipbuilder, in caulking that plate, would you take a tool that was the full width of the plate?

A. You mean, on these tanks?

Q. Iron work, and these tanks.

A. You might do it, but it wouldn't be necessary. While it appears to the eye as the mashing of the entire plate, it is often just a portion of the entire plate. I can draw a picture, and would like to do it, to show you.

Q. Will you do that—illustrating the caulking, and apply it to a 3/16ths plate?

A. (Drawing) That sketch shows the condition of the plate, ready to caulk.

Q. That is the upper?

A. The upper.

Q. Just mark that with the letter A opposite it, so we won't have any doubt about it.

Mr. Botts:

Draw an arrow.

Mr. Underwood:

You may as well mark the other, B, now.

Q. Mark the other one, B. Now what does B represent?

A. P represents the plate when it has been caulked.

Q. And where is the point of contact as produced by the caulking? Just draw an arrow indicating that.

Mr. Botts:
C.

Mr. Underwood:
Mark it C.

Q. Now how is the change between the two positions of the caulked plate, brought about? Will you illustrate that?

A. Metal that was in this section —

Mr. Botts:
Mark that D.

Mr. Underwood:
Just etch it first; shade it, or something. Draw an arrow to that and mark it D:

A. The shaded section, marked D. The metal between the shaded line and the full line has been pushed over to where it assumes this shape.

Mr. Underwood:
Indicating the point C. May it be understood, before we go farther, that this is not to scale, and perhaps is exaggerated?

A. That is exaggerated.

Q. What does that you have just drawn, illustrate?

A. This is a section.

Mr. Botts:
Referring to E.

A. E is a section, FG.

Q. Well A is also a section, is it not?

A. On A—these are the same sketches; one is after caulking, the other is before caulking. This is an ex-

aggerated view of the way the plates might lay together when they would head caulking.

Mr. Underwood:

Referring to E.

Q. Referring to E?

A. Yes. This is only one rivet; there would be others.

Q. What I don't understand is what you mean to illustrate by E that is not already in A.

A. You would necessarily get these if you take it, to make a good sketch of it. (Drawing additional rivets) That is a highly exaggerated picture of why the caulking is necessary at all; where the edges of the plates do not lay down. For instance at point Q, the plates are in contact; at point N they are not in contact. It is such a point as this, only on the edge of one of the plates, that there is no contact such as is shown at D in Sketch A. At such a point that end of the plate would be—could be mashed in and made to assume such contour as shown in Sketch B, causing the point C to come in very firm contact with the bottom plate.

Q. Mr. Gibbs, before we lose this point, it is because conditions such as you have illustrated in Sketch E, where the plates do not lie absolutely tight together, are frequently found, that you use the caulking process; is that it?

A. It is because plates do not—are not theoretically plane surfaces, and therefore subject to leaks; and because you are able to put a terrific pressure, or seal, by the use of the caulking iron, that the caulking iron is used. You have the strength of your rivet and your beam action of your plates, and on top of that you put, with a terrific pressure in a very small point, a seal that tends to almost knit the metals together. You might have two perfectly plane plates that would fit together; you might

draw them together with rivets; but if you had a sufficient pressure, it would be advantageous to seal at this point.

Q. And it is because—

Mr. Botts:

At 'this point', referring to point C.

A. To point C.

Q. And it is because these conditions illustrated by Sketch E are apt to occur, that you use caulking to make tanks tight; is that right?

A. Not only that; it is because you are desirous of having at some sealed edge, a metal pressure point, which might be considered a gasket, integral with one of the plates.

Q. Something you can depend on to make the seam tight?

A. Well it is like a rubber gasket, or a gasket on an automobile head, or anything of the kind. You want continuous, around the area of the leak, point of contact, a pressure higher than the pressure would be if you distribute it over the entire joint.

Q. I get it.—Now will you mark this sketch.

(Said sketch was admitted in evidence and filed as Libelants' Exhibit 161.)

Q. Now you are familiar with the term 'butt' as applied to caulking, are you not?

A. I am familiar with the term, butt, as applied to boiler making and tank making.

Q. Well, put it this way: you are familiar with the term 'crease in the butt' as applied to caulking, are you not?

A. I know what crease in a butt, is.

Q. Let me put it this way. I gather from this sketch, that this shaded area which you have indicated on Sketch

A—and before I go any further, will you just draw an arrow so we will know where it begins; just draw an arrow indicating the upper limit of this displaced metal.

A. (Witness marks.)

Q. And we will mark that X; the metal is displaced from. Down to the bottom of the plate, is that right?

A. Yes, sir.

Q. And that on a 3/16ths plate would be about half the thickness of the plate, would it?

A. It depends upon the pressures that it is to hold; depends on several things, as to what you would do.

Q. Well I am talking about tanks.

A. The ones that we were looking at?

Q. Tanks constructed for that purpose. That area from X to the bottom plate would be about half the width of the plate—about half the thickness of the plate?

A. Not necessarily.

Q. Well you are familiar—

A. In this particular thing, in that sketch it is shown, it would undoubtedly go as high as X, and might go all the way to the top of the plate. It would depend upon the amount of metal that we would need, and that would be determined by the caulker's judgment. He may go all the way to the top; or if the plates practically touch each other, it would only be necessary to displace a small amount of metal at the lower corner of the plate.

Q. Well now I take it that when a plate is caulked, an area such as you have indicated by the shaded area on Sketch A, on the side of the plate which is caulked, the metal is displaced and forced downward toward the other plate.

A. That is true, and I have shown it in a way that it could be done without defacing, to the eye, the appearance of the end; and there are other ways to do it: that is one way.

Q. Well now the area where that metal is displaced and forced over against the other plate; is usually called the crease of the butt, in caulking, is it not?

A. You might—I think what you referred to there, the crease, is where you actually get both; taking some of your metal out of this plate, it is possible to do—

Mr. Underwood:

Indicating the lower plate on Figure A.

A. Without putting this on the record, if you like—

Mr. Underwood:

No.

Q. Let's keep as close as we can. Well the area in which the metal is displaced, is sometimes referred to as a crease, is it not?

A. You could call that a crease; I never heard it called a crease.

Q. And it is called a crease because the metal is displaced, making a depression, is it not?

A. I have never heard it called a crease.

Q. Have you ever built a ship to Lloyd's Specifications?

A. Not that I remember.

Q. Have you ever repaired ships subject to Lloyd's Specifications?

A. I have repaired them, with a Lloyd's inspector present; but whether the repairs were Lloyd's specifications or not, I don't know.

Q. Well you have repaired to the specifications of the American Bureau, haven't you?

A. Not entirely; I have repaired them under the instructions of the American Bureau inspector, but not to American Bureau specifications to my knowledge. I have built them to American Bureau specifications—wooden ships.

Q. Well then you are familiar, I take it, with this provision in the American Bureau Rules with respect to caulking water-tight work, which reads: Caulking of

water-tight work must be thorough; light or superficial caulking will not be accepted; the score or crease in butts is to be of ample width and well set in.—Are you familiar with that provision?

A. I don't call that a provision at all. It simply states that the work must be well done, and there is nothing specific about it at all.

Q. When it says, Crease of the butts is to be of ample width and well set in,—what does that mean?

A. I regard 'ample width' as an indeterminate term.

Q. What does 'well set in' mean?

A. That is still an indeterminate term.

Q. What does 'set in' mean?

A. Set in—it means, driven tight.

Q. 'Set in' would mean that the edge of the plate must show a proper depression, isn't that right?

A. If driven strong enough, it will. It would depend entirely upon the purpose of the caulking. For the building of an American Bureau ship, that is probably true; but building of a solder-edge tank, the purpose of caulking has another purpose.

Q. Will you draw us on this sheet, a picture of a caulking tool?

A. I would like to state that when this edge goes in here, it might go quite firmly enough to actually depress this plate.

Mr. Underwood:

Indicating the lower plate on Exhibit 161, at the point C.

A. Might embed itself at point C: but the thing that holds it tight is its pressure.

Q. Will you draw us a picture of a caulking tool?

A. There are many caulking tools.

Q. Now will you explain what you have drawn for us?

A. That is a picture of one form of caulking tool, and this edge is rectangular, it is tilted slightly back, and brought away from the tank—as applied to the tank.

Mr. Underwood:
Indicate that; just mark it A.

Q. You have two sketches of the tool; mark one A and one B.
A. This is plan, and this is elevation.

Mr. Underwood:
How about marking that, drawing an arrow to that?

Q. Indicate the caulking edge on the sketch.
A. Well the caulking edge is here.

Mr. Underwood:
Just mark 'caulking edge' between those two arrows.

A. Put that A; maybe I can describe it better,—A and B.
Q. The caulking edge on the elevation—
A. As A to B; and the lower one.

Mr. Botts:
Suppose you mark the caulking edges on the plan.
A. That's the same.
Q. Now just write 'caulking edge' underneath those lines, so any one looking at it will know the meaning. Caulking edge down there, isn't it?—Now Mr. Gibbs, the caulking edge in the elevation, as applied to any particular plate, you would use a tool less than the thickness of the plate, would you not?
A. You might; you might not.
Q. Well I am talking about the usual shipyard practice, with which I take it you are familiar; caulking a plate

for a tank, such as the Seminole, would you use a tool less than the thickness of the plate?

A. Less than the thickness of the plate? You might. You have several tools where you build your tanks; you might have a large tool, it might be bigger than that, that could bring about what you want.

Q. Well now may I ask you this; if you were to look at—you had better mark that.

(Said sketch was admitted in evidence and filed as Libelants' Exhibit No. 162.)

Q. If you were to examine the seam between two plates for the purpose of determining whether it had been caulked or not, what would you expect to observe as evidence of caulking?

A. I would observe—I would want to know several things. One is the history of the plate, since it was caulked.

Q. Well I am asking you, Mr. Gibbs, Mr. Gibbs, this: You look at a piece of work that you never have seen before, and you don't know anything about the history of it; how would you determine whether it had been caulked or not?

A. By examining it, and the first thing I would look for would be the edges of the plate.

Q. What do you mean by that?

A. I would look for the edge of the plate where it touched the other plate, and if I found that it did, to a marked degree, I would look further for evidences of the use of an iron. Failing to find it, however, would not permit me to say that the plate had not been caulked.

Q. Well—.

A. I would then look to see if the edge of the plate was vertical, or normal, to the plate that it touched; if I found that it bent inward, that line, it would be very good evidence to me that it had been caulked.

Q. Well let me put it to you this way. It is a fact, is it not, that caulking by its very definition involves deformation of the original edge of the plate that has been caulked?

A. Quite true, sir.

Q. And what is the deformation?

A. It depends upon its original formation. It is a change in form. You might put a plate that was actually cut on a slant, and your caulking iron might leave it vertical; it has been deformed from its original place, but it would be impossible to state—looking at the plate, that its condition at the time you look at it was not a deformed condition of the plate.

Q. Mr. Gibbs, will you explain to us at some length, your experience in shipbuilding?—Do I understand you to say that in looking at a piece of work, you would not be able to say, in view of all your experience, definitely whether it has been caulked or not?

A. I think that in nearly every case, that I could; but there was a case down there today, when half of the people that looked at it, said it hadn't been caulked, and I am willing to swear that it has been caulked: a piece of work that has nothing to do with this. One half of them looked at it: and it was due to the fact that there were no scars left by the caulking iron.

Q. You are referring to something entirely unconnected with the Seminole, now?

A. Just as unconnected with shipbuilding in general, as unconnected with this.

Q. Let's get to these exhibits. Exhibit 4-A:

Mr. Botts:

That is 152, isn't it?

Q. You will recall, Mr. Gibbs, I believe, that I asked you to point out and mark with chalk a section on the inside seam of tank number four, as it laid in Warriner's

yard, this morning, where you were willing to state that the inside seam had been caulked. That is correct, is it not?

A. I think you did; yes.

Q. And you did point out and mark such a seam, did you not?

A. I did take at random, without light, a section of the inside of the seam. I was under the impression from what I had seen that the entire seam had been caulked.

Q. Well now the purpose of our visit down there this morning was so that you would point out and show to us a seam which you said had been caulked; and under those circumstances you did point out to us and mark, a section of the inside seam of tank number four, did you not?

A. Umh hmh.

Q. Is that right?

A. Well, I did—

Q. Please answer me Yes or No, and if you want to qualify it you can, afterward.—Will you read the question?

(Fourth question on this page, read by reporter.)

A. Yes.

Q. And this Exhibit 4-A, or rather 156, is that section of the inside seam of tank number four, cut out as marked by you, is it not?

A. I would say that this seam has been caulked.

Q. Well now that was not my question.

(Preceding question read by reporter.)

A. Yes, sir.

Q. And before you indicated the seam, you used a wire brush to clean if so that you could get a good view of it, did you not?

A. Yes, sir.

Q. And you don't suggest that you didn't have every facility for picking out what you wanted to pick out, do you?

A. Well I could have had the lights if I had called for them; but I did not have when I picked that out.

Q. You were satisfied with the seam?

A. Yes.

Q. Now the inside seam is on the side of the plate where the heads of the rivets are quite round, is it not?

A. That's right.

Q. Now do you say that inside seam has been caulked?

A. Yes, sir.

Q. Will you point out to us what evidence there is on that inside seam, of caulking?

A. Give me a rule. The plate, in spite of the fire and the corrosion of the heat of this morning, after I clean it, shows very close adhesion at the point—shows that that point is extremely close, the lower edge of this plate is extremely close, to the wrapping plate. It also shows that it is not level, but apparently there is metal gone, and it has been pushed in, as is shown by my sketch over there.

Q. Of course you are dealing with a curved plate, there?

A. Oh yes; with my eye I make allowance for that.

Q. Then as I take it, the only evidence that you can point out to us on the inside seam of this plate, that the seam has been caulked, is that the two plates are very close together, and that you say—

A. They are dished in.

Q. And you say the angle of the edge of the overlapping plate is not perfectly perpendicular to the tangent of the cylinder? Is that what you say?

A. Yes, sir; and that is quite marked.

Q. Now I will ask you to look at this outside seam, the reverse of the same Exhibit; tell me whether that has been caulked.

A. I think it is quite evident that this has been caulked, with a different kind of iron.

Q. Well now point out to me—

A. There is evidence of what has been described in your questions as a trench.

Q. Now will you point that out to me?

A. Right at the point where the lower edge of the enwrapping plate is marked—as traced by this lead pencil.

Q. Well couldn't that be, Mr. Gibbs, that the plates are simply not closely in contact at that edge?

A. I did not think so; because that is a normal process or step in the manufacture of that gasoline tank.

Q. Well then if this plate were cut apart very carefully, you would find very clearly on the under side, a deformity of the outside edge, would you?

A. I don't think you would have to cut it apart to see; I think that shows with the naked eye.

Q. If it were cut apart, it would show very clearly, would it not?

A. It would show perfectly clear there; it wouldn't show any clearer than it does right there.

Q. You say there is a mark of a caulking tool here?

A. I think so, sir; that is with a finer cutting edge than the other.

Q. And what would you estimate to be the width of the crease on this edge?

A. About a 32nd.

Q. Then that would have to be made with a tool a 32nd —with an edge of a 32nd of an inch thick, would it not?

A. Certainly not.

Q. Why not?

A. It could be made with one—with the proper angle—

Q. It might be made with that one right there?

Mr. Underwood:

Indicating 162.

A. Made with a portion of the distance from A. to B., in Exhibit 162.

Q. All right, let's pass to the next exhibit, 137. I think you have testified, or you told me this morning, that the entire outside seam of the number four tank had been caulked, in your opinion; is that right?

A. Yes, sir.

Q. And you recognize this exhibit 157 as a piece cut out along that seam which you said had been caulked, is that right?

A. Let's see. (Witness goes to window.) (The question was read by the reporter.) Yes, sir.

Q. And do you now say that the outside edge of the seam which appears here in 157 has been caulked?

A. Yes, sir.

Q. What evidence do you see of that?

A. The evidence, just as the evidence on the other plate. The close contact with the outside plate to the lower plate, in spite of the effect of the fire, and erosion of the elements; and what appears to my eye to be the actual marks of a caulking iron; and also the fact that the plate seems longer at the top, the enveloping plate seems longer at the top than it does from a fixed point at the bottom, or the edge, which touches the plate which it envelopes.

Q. Now on this Exhibit 157 I think you cited as evidence of caulking, the opening between the seams, did you not?

A. No, it was the V-shaped place I think that was caulked with a different kind of caulking iron.

Q. Now these are similar seams from the same tank. You say that different caulking irons were used on these two seams?

A. Entirely possible, that two workmen worked on the tank; I expect six or seven worked on the tank, and each one would take his own tool and caulk in his own way.

Q. You would have six or seven caulkers on one tank?

A. I didn't say that; I said probably six or seven men worked on those tanks.

Q. Well I don't want to be unfair in any way, but my impression was that you cited on Exhibit 156, the opening between the *tanks* as indicating caulking. Now on 157 you cite the fact—

A. I didn't say, the openings.

Q. That the plates are close together, as evidence of caulking. Am I wrong about that?

A. Yes, sir.

Q. Anyway, you are prepared to swear now that Exhibit 157 has been caulked on the outer seam?

A. To the best of my knowledge.

Q. Now as to 158, you recognize this as a section from the top of tank Number Four, including the portion where one of the rivets, which has been referred to in evidence, was cut out?

A. Yes, sir.

Q. And do you say that that seam has been caulked either inside or out?

(Witness goes to the window.)

A. I do not think that this piece has been caulked. If you will recall, this piece was taken out to show a rivet, and I did not look at the place.

Q. Well now will you point out to us what difference there is between the inside seam on this Exhibit 158, and the outside seam of 157—or rather, strike 157, and say the inside seam on 156, which shows the difference?

A. Yes, sir. In the first place the running down of the caulking iron down that edge tends to true up the seam, to knock out the high points, and make that appear to be a straight line, as you will find it in these other exhibits. In this particular exhibit you will find that it is most irregular, and there is no indication that a straight edge,

such as the edge of a caulking tool for practical purposes is, could have actually gone over the edge of this plate without tending to true up the noticeable irregularities in that edge, due to the shear.

Q. Mr. Gibbs, you did examine the inside circumference of that seam, and you did find a place on that seam which you considered was caulked, did you not?

A. Yes, sir, several places, and I assumed the whole business was caulked.

Q. Well is it your testimony now that the inside seam of the upper part of the circumference of tank Number Four was caulked in some positions and not in others?

A. It is possible that it is caulked where it was apparent that the caulking was required. It is subsequent, it may be even possible that some caulking was done here since; but since I've viewed the inside circle, there has been some heating applied in the taking of that off; and there is another thing that caused me not to see that at all, when they drove that rivet up they deformed the inside plate, stretching it in length, tending the whole thing to draw at that point and make it draw away from the shell.

Q. Well granting that there has been some displacement in the way of a hole, and possibly as far as the rivets on each side, the distance of the two rivets on each side, there has been no effect from driving out that rivet, has there?

A. I can't tell you just how far that would go back, without—because I took no measurements of it. But there is unquestionably an effect on the whole seam by the driving of that plate away from its other position.

Q. Well now let me be clear about this: you did observe that a part of the seam from which this Exhibit 158 was taken, had been caulked, did you?

A. Yes, sir, in my opinion it had been caulked.

Q. And in your opinion, this section of 158 had not been caulked?—Answer it yes or no.

A. I will answer yes or no, when I look at it again.

Q. You looked at it once.

A. Where's that magnifying glass you had?—looking at it through that glass, I wish to state that there is evidence that that was caulked.

Q. Well a moment ago you said it wasn't; you have changed your opinion now?

A. I have.

Q. What do you see that is evidence of caulking on that plate?

A. I see evidence of a caulking iron on the lower half of the plate, which shows up under the magnifying glass.

Q. Will you just show us where that is?

A. Right here.

Q. Now you are marking the arrow within an inch of the righthand side of the plate, when you looked at it from the inside, with the crown at the top?

A. That's right.

Q. Now is that the only place you see any evidence of an iron?

A. No, I see it elsewhere on the edge of the plate, even where the edge of the plate was torn away by the heat and drift.

Q. Where do you see it in the place where the plate has been torn away by the heat and the drift?

A. You see that point there, the point there; to where the heat was torn away—there, there and there.

Mr. Underwood:

Opposite the third, fifth and sixth rivets from the right-hand end.

Q. You see those plainly with your naked eye, do you?

A. Yes, sir; I wouldn't have discovered them if I hadn't looked through the glass.

Q. Now you say you see them with the naked eye, but you say you didn't discover them without a magnifying glass; how do you explain that?

A. Due to the fact that this has had doubly bad treatment; first the original fire, with the action of the elements; and the treatment at the Warriner shop, with the straining here, and the heat that was applied there.

Q. Now you are prepared to swear the plate was caulked; is that right?

A. Yes.

Q. Now we refer to this section, Exhibit 160, which I think you recognize as having been cut from the side seam of tank Number Two; is that right?

A. Yes, sir.

Q. Now I ask you to look at this outside seam and tell me whether that has been caulked or not?

A. Yes, sir; I think with my eye that I would say that has been caulked; and also the use of a knife; it had been caulked with a different kind of a caulking iron.

Q. And what would you say was the width of the crease in that caulking?

A. About a thirty-second of an inch.

Q. If this is three-sixteenths plate, a thirty-second would be one-sixth of the width of the plate; is that right?

A. Yes, sir.

Q. And do you say that a caulking tool with an edge a thirty-second of an inch, was used?

A. No, I would say that the edge is a tapering edge, probably with a toe ground on it, to drive in that and fill that—tap that up and fill that so the solder would not run.

Q. Can you tell us whether the inside seam was caulked?

A. I can't see anything on that, without a thorough cleaning.

(Mr. Matteson cleans joints with pocket knife.)

Q. Now can you see it?

(Witness goes to window.)

A. In my opinion that was caulked.

Q. And what do you see to indicate that?

A. I see a very great deal of injury due to the element of fire, but I distinctly see the close connection between the lower edge of the plate and the envelopping plate, except where it might be accounted for by the distortion by flame,—by fire. It seems to me that it is smoother, considerably smoother on the contact edge, and that that has receded in position from the outer edge of that seam—that plate.

Q. Now here is Exhibit 159, which is a section cut from the side of tank Number Four, a part of that tank which had been previously cut off prior to this morning. Do you recognize this as a section that was cut out of the bottom part of that tank, bottom part of the side of that tank,—at your request, was it?

A. It may be; I think it was Mr. Munroe's request, but it might have been mine,—or Mr. Underwood's or mine. I don't recall.

Q. Well I call your attention to the inside seam on this section of the plate; do you say that that has been caulked?

A. Yes, sir, very definitely, this being cold, as evidenced by the solder—traces where a caulking iron are much more pronounced.

Q. Referring again to Exhibit 158, you notice this segment of iron is parted from the shape of the crown just below the rivet hole; that is very evidently an error in shearing, is it not?

A. Yes I think that is.

(Brief informal recess was had.)

Q. Mr. Gibbs, do you say that the bottom seam of the tanks was caulked?

A. I don't think I could determine that. There has been no testimony that I remember on the caulking of the bottom seams.

Q. Well can you say whether the bottom seam was caulked or not?

A. Have we got one?

Q. I will show you one in just a minute. First I want to ask you whether you can say—

A. No, sir.

Q. Then I will show you Exhibit 5-Z and ask you whether the bottom seam there is caulked?

A. I would have to have the solder off of it.

Q. Could you determine by the under section?

A. There is too much solder in there now.

Q. Well the solder can be cut out if necessary.

A. Burn it out.

Q. As a matter of fact I think it has been entirely removed from this end. Now do you say that this end section to which I call your attention, is obscured by solder?

A. I wouldn't—I wouldn't want to say anything about that. Cutting that solder with a knife—from what you can see, from the small amount exposed by your knife, I think it is quite evident that that seam is caulked.

Q. That it was caulked?

A. Yes, sir, I think that is quite evident.

Q. Just show me what the evidence of caulking is, there.

A. The evidence is that when the iron went in between the edges of the plate, that it actually bent that plate outward. This runs in a straight line and suddenly turns out. The other evidence is that it seems to be trenched right down there, where the caulking iron actually has gone in there.

Q. Well let's see if we can get it clear.

Mr. Underwood:

Indicating the right angle between the bottom of the side plate and the bottom crown of the tank.

Q. Just so we will be definite about it, I am holding this exhibit in really what is an upside-down position, so

that the rivets are at the top, and the bottom of the tank is at the top; and I am referring to the right-hand edge as we look at it in that position: and here at the right-hand edge where the solder has been recently well cleared away, you say you see that there is evidence of a trench made by a caulking tool at that point?

A. Yes, sir.

Q. If you look at it under the end section exclusively, you don't see that, do you?

A. Well that may be the solder, Mr. Matteson. (Witness goes to window.) The fact is you see the knife would run right down there. A tool will make a trench.

Q. You can make a trench in steel?

A. That is true; I don't want to cut it, but I could cut that place; apparently the knife ran right into it. If you burn that off I can really give you an idea of what the appearance is. You don't have to heat it too hot, just enough to melt the solder.

Q. All right. Now there were two rivets that were burned out of tank Number Four under your supervision were there not?

A. Yes, sir.

Q. And the rivets toward the lower part of the seam on that tank, when it was cut out—when it was forced out, made quite a belly in the iron at that point?

A. Yes, sir.

Q. Now the other rivet, was that cut out to your satisfaction?

A. No, sir.

Q. What was wrong with the cutting out of the other rivet?

A. It was an improvement over the original try; of the outfit who did the cutting; but their flame, the single flame was a wider flame than would be used in that particular job. And at no time would we dream of cutting a rivet out of that end of the tank, unless the other end of the tank

had been removed; so that we might have gotten under there to put some brace under the material,—under that head.

Q. Well the tank—the other end had been removed, hadn't it?

A. What is that?

Q. The other end had been removed, had it not, when that rivet was cut out?

A. It might have been. What we were trying—I was trying to illustrate to Mr. Underwood at the time, was the fact that the acetylene torch could take from the rivet all of its strength without even destroying the edge of the rivet. I was trying to show him that a hole could be cut down in the center of the rivet, right through the head, without even injuring the rivet itself.

Q. And did you do that?

A. Not to my satisfaction, because the man, although he became more proficient, apparently had never done anything of that kind.

Q. In other words, you say the man at Warriner's yard, that you employed for this, was unskillful; is that it?

A. In the removal of rivets I would say that he was unskilled in that particular thing. I think he could have been skilled in thirty minutes of practice with the tool.

Q. Will you describe to us the cutting out of the rivet at the top of the tank?

A. Well, do you mean, what happened at that procedure?

Q. Yes.

A. He took, without putting anybody under, inside of the tank, with any brace, he simply took his hot torch, and even before adjusting it for the fineness of the flame, he played it on the top of the rivet. It soon came into adjustment and drilled a hole, or burned a small hole right into the rivet. Then he took a hammer,—a drift pin, while the whole mass was still warm, and drove it; and when he

drove it, it was picked up from the other side of the tank, —the head fell right off. He might have knocked the head off with the hammer; I don't recall whether it fell off or whether he knocked it off with his drift.

Q. Well it wasn't necessary to strike a very heavy blow to knock the rivet out, was it?

A. Well it was a pretty fair blow that he had to strike on that rivet. He hadn't gone into it enough to collapse it; he hadn't gone as much as I wished him to.

Q. Did you tell him to go into it further?

A. No. I think we got a sample that would illustrate to the Court what our purpose was in stating that rivets could be turned out without injuring the *rivet*.

Q. Your purpose was to show they could be driven out efficiently without injuring the plate, wasn't it?

A. Yes, not at that head, though; it was the head that you would have to take out in order to get into the tank.

Q. Now in doing it; you did injure the plate, didn't you?

A. What is that?

Q. In doing it, you did injure the plate, didn't you?

A. That? I think that that existed. We never claimed that t..se rivets were the rivets that—

Q. I just asked you to point out—

A. That is injured by the process that we used, yes, sir.

Q. Now you do say, as I understand it, that the steel that was used in this tank could have been used in the construction of a boiler of some type, do you not?

A. At no time—

Q. We had some discussion on boilers yesterday, but we got off of it.

A. I said it was entirely possible that the steel was of a quality that would be satisfactory for a boiler. But I did not have the history of the plate, —or the certificates.

Q. And if it were used for a boiler, and considerable heat were applied under it, as is necessary in the case of

a boiler, you wouldn't expect the plates to distort, would you?

A. Read that question.

(The question was read by the reporter.)

A. I would not expect these plates to distort—become distorted, if used in the manufacture of a boiler, if heat were applied to them as it is intended to be applied in a boiler.

Q. Now in this Exhibit 158, where the crown plate has been distorted by the driving out of the rivet, will you look down through the seam where it is opened there, and see if you agree with me that there is evidence of rusting and corrosion there?

(Witness goes to window.)

A. Impossible to say that unless you remove this, and then I would be handicapped by the fact that the heating torch might not only have affected it, but it is heated quite hot.

Q. As you look through that crack that has opened up there, isn't it a fact, through the crack, that you can see rust?

A. What I see is something the color of silver, indicating to me that the galvanizing is still there. (Witness goes to window.) It is whitish in its color.

Q. Do you notice the offsetting of the rivet holes in the two plates there?

A. Yes, sir.

Q. Do you notice some marks where a drift pin has been used, down at the bottom?

A. Well I wouldn't know which drift pin had made those marks; whether the drift pin used by the man who knocked that rivet out, or whether the original rivet.

Mr. Matteson:

That is all.

By Mr. Botts:

Q. But there is evidence of a drift pin distorting those holes, is there, Mr. Gibbs?

A. Well, holes are not round.

Q. How is that?

A. The holes are not round, and some drift pins distorted that hole.

Q. When you used a drift pin to back up these rivets,—and I show you two rivets, one of which came out of there, the drift pin went inside the drilled or burned out hole in the end of the rivet, didn't it?

A. No, not necessarily. It crushed it; it held the head off here, the head went off, and the drift pin, probably the point went in there; I think that it did.

Q. The point went into that?

A. I think that it did. I don't know. It looks very much like it.

Q. If inserted here, it would have crushed the sides, wouldn't it, if you had been driving against these?

A. Unless the top of the head was in there; but unquestionably some pressure went in there.

Q. Then the point the drift pin was smaller than the rivet hole, was it not?

A. It may have been.

Q. Wasn't it, as a matter of fact?

A. I think it was.

Q. All right. Now then when you drove that rivet out—when the rivet came out, then the drift pin went on into this hole didn't it?

A. It might have.

Q. After the drift pin went into this hole, did you continue driving on that drift pin?

A. I wouldn't assume that he did.

Q. Well you know as a matter of fact he didn't, don't you? You were there.

A. When a machinist would hit that thing, and when he first hits it if it doesn't come out he hits it a harder lick, in which case the drift pin does all of its harm at that moment; she goes on through, and he has to jerk it out.

Q. And do you think that the blow on the drift pin that drove this rivet out, and at the same time that it drove the rivet out, drove the drift pin into the hole, that the one blow would have been sufficient to show the distortion that there is apparent in that hole?

A. I don't regard that as any great distortion, and I wasn't particularly interested in how far he drove the pin in that, and I am in no condition to testify about it.

Q. The drift pin came in from the top, didn't it?

A. Oh yes.

Q. Then if the drift pin came in from the top and distorted this hole, lengthened it out, could that same drift pin have distorted it on the bottom at the same time, and with this one single blow?

A. Certainly.

Q. Oh, it could? All right.—Mr. Gibbs, it is apparent, is it not, that the holes in the two plates,—that is the side plate and the crown plate, were not lined up exactly?

A. Those two, yes, sir.

Q. Now then would it have in your judgment been possible to have inserted that rivet in the first place until the holes on the side wall and the crown plate had been distorted by a drift pin?

A. Why I think unquestionably a drift was used in the manufacture of that tank, at that point.

Q. Then wouldn't you say now, in all fairness, wouldn't you say that the probabilities are that the distortion in that hole was caused by the drift pin prior to the first insertion of the rivet, rather than by the single blow of the drift pin—

A. Absolutely, yes, sir.

Q. All right, that is what I wanted to get at; that while the drift pin, in drifting out the rivet, might have distorted to a small amount, the main distortion was caused prior to the insertion of the original rivet; is that it?

A. I think that is unquestionably true, but I don't know.

Q. Now then, Mr. Gibbs, I call your attention now to the two rivets that have been filed in evidence. Do you observe that those rivets, the shanks are twisted at an angle from the head; in other words, that the shanks are not at right angles to the plane of the head?

A. Yes, sir.

Q. And that would be such a distortion as would be caused by going through two holes which were not in line, such as is the case in Exhibit 158?

A. Yes, sir, that's right.

Q. When you punched down those two rivets, they were just taken more or less haphazard in the tank, isn't that true?

A. One was knocked out, and more or less out of curiosity of the man, to demonstrate a prediction that he made that if you tried to take a rivet out of that seam and went to heat it, that the whole tank would give away, you couldn't take the rivet out of the tank unless you had the other head there.

Q. These two particular rivets were not selected by looking at them in advance, and thinking whether the taking of those rivets would illustrate any particular point, were they?

A. No.

Q. They were more or less haphazardedly? In other words, for the purpose you are trying to illustrate, the adjoining rivet would have illustrated just as well as the ones you actually selected, wouldn't it?

A. Oh that is probable.

Q. Then from your observation of these rivets, and the fact that two selected at haphazard, both illustrated the fact that the holes in the two plates that had been riveted together, were not exactly in line, would you say that that lack of alignment of holes is typical of the holes throughout the tank?

A. No, no.

Q. All right. Calling your attention to Exhibit 6-A, and as I hold that exhibit with the riveted head of the rivet, or the outside wall of the tank, toward me, and the rivets upward, do you observe the rivets numbered one and two, counting from the left to the right?

A. I would say those were out of line.

Q. Those were much worse out of line than the two that were taken out, aren't they?

A. I can't tell you.

Q. Well let's take rivet number one, is that out of line?

A. Not much.

Q. A little?

A. Very little.

Q. All right. Now then referring to Exhibit 159:

Mr. Underwood:

158.

Q. One five eight, is it?—And the fact that the rivet hole has been elongated or made oval by the use of drift pin, would you say that the shank of the rivet would fill that elongated hole?

A. I would say that if it was put in hot, that it could fill it, or if drawn tight to the head, it could be made perfectly tight.

Q. Do you notice any distortion in the roundness of the rivet shank near the—I believe what is called the snap-head; do you notice any distortion to make that of an ova shape such as would fit and fill the elongated rivet hole?

A. Well I don't know that that is the rivet that came out of this hole.

Q. All right, take either one of them, it is your choice. Is there any oval shape of either of those rivets near the snap-head, which would be—

A. This one is oval.

Q. At the head?

A. Yes, sir, that is oval; it has actual twisting in that shape that makes the cylinder become an ecllipse.

Q. And you are now—or are you willing now to express the opinion that either one of those shanks of the rivets, up near the snap-head, is sufficiently elongated or distorted in an oval shape, that it would have filled the oval shape of the hole from which it came?

A. I don't know that that would have tilted, and I don't know that it would not.

Q. Well you are pretty well satisfied that it would not, by looking at it, aren't you?

A. No.

Q. Oh, you are not; all right; we will leave it that way.

A. In the first place, Mr. Botts, permit me to say, this portion of the rivet—you don't want to know about—which has been burned out, this came on the bottom. You are asking me to base an opinion on something you haven't given me; I haven't got that.

Q. I have given you the rivets that came out of that hole.

A. But you haven't the part that goes—unless you say it didn't. This part, assuming this is the rivet, maybe was one of these, but the part that filled has been crushed and destroyed; the part that would go in here, we haven't got that.

Q. But what about the part that would come on the inside of the tank?

A. You are talking about this hole?

Q. That is what I tried to explain to you that I was referring to the shank of the rivet up near the head that would come into the hole on the inside.

A. This is not oval at all.

Q. Oh, it isn't?

A. No, sir.

Q. Gosh, have I been born blind, all these years?

A. I kind of suspected it. (Witness goes to window.) It is almost, according to my eye, a true circle.

Mr. Underwood:

Let me look; I haven't been on the witness stand yet.

(By Mr. Botts):

Q. Now since we are unable to see it eye to eye, as to the shape of that hole, and your theory that it is round, I am going to ask you to indulge in an assumption: assuming that the hole was elongated or rendered oval in shape, and the rivet head was round, then the rivet head would not fill the elongated hole? That would be true wouldn't it?

A. It might. You must take into consideration—

Mr. Underwood:

I will stipulate it is a round peg in a square hole that is stretched by pulling apart.

Q. What was the answer?

A. Read the question please.

(The question was read by the reporter.)

A. No, sir.

Q. And in such an instance, the tightness of that hole would depend entirely upon the steel caused by the rivet snap-head on one side, and the riveted head on the other, would it not?

A. No, sir.

Q. You mean to say that if you had a round rivet shank in an oval shaped hole, that there wouldn't be an opening in there that would leak?

A. Leak where?

Q. Well—

A. If it leaked around the shank—leak around one-half of the shank.

Q. Then at the point where it leaked around one-half of the shank, the seal of the snap-head on one side and the riveted head on the other, would be all that would prevent the hole from leaking, wouldn't it?

A. No; the seal of the shank on the other side, and the tightness of the fit of one plate, would then—they would then be tight.

Q. Now then taking Exhibit 6-A again, and the two rivets at the left-hand side, to which we referred a moment ago, and which you asserted were—pass through the plate out of line; I will ask you whether or not in your judgment the shank of that rivet made a tight seal within the hole?

A. It could.

Q. You think it could?

A. Oh, yes sir, if it was driven in there hot, you could have mashed the rivet up in the entire void.

Q. Then the rivet shank would have—would necessarily have been distorted in shape and put into an oval shape in order to do that?

A. To have filled, it would have to fill the shape of the two holes.

Q. I call your attention to Exhibit 5-Z, and the middle rivet of the five in there, and I will ask you if that does not appear that that rivet passes through in a slightly less than a right angle direction?

A. Assuming that these heads are symmetrical, it does.

Q. Then assuming that there is a slight variation from the vertical, in the direction of that rivet, and that the

holes in the two plates were correspondingly out of line, until lined up with a drift pin; then, I am going to ask you to assume this: that as the rivet passed through the shank —in riveting, the shank was not distorted, but remained in a round condition; then isn't it true that the riveted head of the contact or seal of the riveted head on one side, and the snap-head on the other, would be the effective seal of that hole?

A. Against leakage of gasoline?

Q. Yes.

A. No, absolutely not.

Q. Well how would the shank—how would that round shank have filled the full hole caused by lining up those holes with a drift pin?

A. If it were hot enough and long enough it could have filled it; but just assuming that it didn't fill it—

Q. I am asking you to assume that it was not distorted out of round, in the riveting process.

A. Then you would have two places to overcome, and only two, on the assumption—rather, three, plugging a leak. If gasoline reached the void created by a round hole in—a round pin in an elliptical hole, that could have reached the head of either rivet. If those rivet heads were tight against the plate, no leaks could have occurred there. But no leaks could ever have got to the rivet hole, or near it, as the purpose served by those rivets was to clamp the shell plate to the lower crown, and to create a tight joint with the—

Q. Now then assuming that a condition which you have illustrated in Exhibit 161, existed in that plate, so that the rivets did not draw the plates together with absolute tightness, then there would be a leaking down to the rivet shank, wouldn't there,—or might be?

A. If those two plates—there was a void, a crack between these two plates, and the void created by a round shank in an oblong hole, then the protection against a leak

would be the tightness of the heads of the rivets against the outside of the two plates.

(The foregoing answer was read by the reporter.)

Q. Now I understand from your testimony, at the time when you were repairing Exhibit 161, that that condition does occur sometimes, and that the caulking is to guard against that very situation; is that right?

A. What condition occurs?

Q. The condition where the rivets do not pull the plates absolutely tightly together.

A. Well that is where it is suspected the plates are not drawn tightly together, caulking is resorted to.

Q. And you concede that that does occur on occasions, do you not?

A. The tests show; they show up hydrostatic test.

Q. Now then one of these rivets came out of a side seam didn't it?

A. It was my impression, we got several rivets, two or three I think.

Q. Two is all.

A. I think there were more than two, but which ones are which, I don't know.

Q. One of them—I don't know which, one of them came out of the side seam, and one came out of a head seam, didn't it?

A. I believe that is entirely possible.

Q. Then the condition of non-alignment of the two plates being riveted, occurred in the side seams as well as the top and bottom seams, did it not?

Mr. Underwood:

I object to that; asking the witness to draw an inference from the fact—based upon what the question assumes to be the condition of the two rivets.

Mr. Botts:

He is here as an expert, and experts are allowed to draw conclusions; and I am asking him to draw one.

(The question objected to was read.)

A. Read the last part of it.

(The question was reread by the reporter.)

A. With respect to that particular hole,—all other rivets may have been in line, some of them may have been out of line; but those—the alignment of those two holes,—they were not concentric,—didn't have the same axes.

Q. Then a condition of non-alignment occurred in rivet holes from which both of these rivets were taken; that is true is it not?

A. I think that is true.

Q. And one of them came from a side wall didn't it?

A. As I have said before, I don't know.

Q. Well it is stipulated in the testimony that it did. I call your attention to Exhibit 160. You were present there yesterday morning when that tank was rolled over, were you not, and the photograph was taken of that general location?

A. Yes, sir.

Q. And you observed, did you not, that at that particular time, that particular seam, in that location, was leaking, did you not?

Mr. Underwood:

May I have that question?

(The question was read by the reporter.)

A. I have no recollection of having had my attention called to any leaks at that time.

Q. Well did you observe that at that time, with the tank when it was rolled up, that there were beads of water coming out through that seam, along it at various points, in this particular segment of that seam?

A. I couldn't say that, Mr. Botts. I don't like to go around your word.

Q. Didn't you look at that while we were taking the picture?

A. I saw a camera man there, but at the time it was snapped—

Q. You thought we were very secret about the condition of that?

A. No, you told me what you were trying to do.

Q. And you didn't see any leaks coming out of the side seam of that tank, any water leaks?

A. I didn't go close enough to make that investigation.

Q. All right. Did you see water leaks coming out of the side seams of any of those tanks, at any time, whether I was there, you were there, or you and God was there?

A. It seems to me that I did see water rolling out of a seam, whether it was that seam or another one I can't say. It seems to me that I saw water coming from a seam, with no head greater than the head of the water in the tank, which I think would have had some twelve inches or less of a head. It seems to me that I saw it.

Q. Now then are you able to observe that the rivet heads on the inside of Exhibit 160 are not in line?

A. They are slightly out, very slightly off.

Q. And on the outside, that is also true?

A. Yes.

Q. More out of line on the outside than they are on the inside, aren't they?

A. I couldn't say that at all.

Q. You wouldn't?

A. No.

Q. You observe do you not that the rivet heats on the outside, that is the riveted heads, in a number of instances

seem to be drawn away from the plate or to have raised from the plate, if they were ever against it?

A. The outside heads don't seem to have been put down with a set. They seem to be driven, but not have been set.

Q. In other words they weren't tightened down as tightly as they might have been?

A. I wouldn't say that at all.

Q. Well just what do you mean then?

A. I mean just what I have said.

Q. Explain it.

A. That they apparently were not put down with a set.

Q. What do you mean by that?

A. A set is a nicely rounded smooth caulking, that when you drive a rivet with a hammer, drive it up tight, you take a set and then twirl your set and drive it, and it tends to flush the head the throw the edges down. In my opinion, you can get a tighter joint possibly with that kind of rivet, before your set gets to work on it.

Q. The edge of that rivet, then, will you tell me your impression as to that, whether the edge of the rivet—and I refer to rivet number six from the left-hand side of the plate, reading as I hold it with the figure 2 and the letter A right side up; I will ask you whether or not in your opinion the edge of that rivet is slightly cocked up or drawn away from the metal of the plate?

A. The edge of it, all the way around, is away from the plate.

Q. Now then do I understand you to say that in your judgment that is a desirable manner in which to leave a rivet, or is it better to draw the heads down close?

A. It is not a neat job at all, and what I think, it has the appearance of having been pulled out, and set from the shank out, rather than on this edge.

Q. Now then taking this particular plate in the side wall, since one rivet hole was out of line in the side wall, I will ask you to assume with me that this rivet number six

to which I have referred, in Exhibit 160, counting from the left-hand side as I hold it with the figures 2 and A right side up to me,—I am going to ask you to assume just for the purpose of a hypothetical question, that that particular rivet passed through the plate in other than a right angled direction; in other words, that the two holes were somewhat out of line.

A. A void between the shank and the hole, in both plates?

Q. Yes; then it would be true that in the side wall the entire seal of that hole would be accomplished by the snap-head—by the contact of the snap-head on one side and the riveted head on the oth ; that would be true wouldn't it?

A. And the pressure of the plate drawing down, the contact to the other plate, in which case you can't get your gasoline through the hole.

Q. Now wait a minute; we will assume for the time being that there is no leak between the two plates. I mean we will assume for the purpose of this, something that appears to be contrary to the fact, because we saw the leaks coming out of there. But assume that there was no leak between the plates, and that the situation was exactly as if you had drilled a hole in a solid portion of this plate, and then put a rivet in there:

A. And the hole was bigger than the shank?

Q. And the hole was bigger than the shank. Then the entire seal would be accomplished by the contact of the snap-head on one side, and the riveted head on the other. That would be true wouldn't it?

A. That is right.

Q. And that is true irrespective of whether it goes through one plate or two, isn't it?

A. Yes, sir.

Q. And if the fact that is passes through two plates, causes an appreciable number of the rivets to go through

at an angle, there would be an appreciable number of holes in which there was only a seal created by the contact of the snap-head and riveted head: isn't that true?

A. That's on the assumption that there is—that the shank of the rivet, contrary to any possible condition, does not touch the hole at any point at all.

(Thereupon at 12:26 o'clock P. M., hearing was recessed until 1:15 o'clock P. M. of the same day, to-wit, November 22, 1939.)

Afternoon Session.

November 22nd, 1939; 1:25 o'clock P. M.

(Hearing was reconvened pursuant to the noon recess, and the witness GEORGE W. GIBBS resumed the stand upon continued cross examination:)

By Mr. Botts:

Q. Mr. Gibbs, what character of rivet is in your opinion best suited for water tight or liquid tight riveting?

A. A hot rivet.

Q. Well I don't mean with reference to its manner of use, but with reference to its—

A. Metallurgy?

Q. To its kind. There are different kinds of rivets, aren't there? Aren't there different types of rivets in respect to their shape prior to their use?

A. Yes, sir.

Q. What are those types if you recall?

A. There are so many types; a bonnet-head rivet that I would consider most suitable for gasoline tanks.

Q. What kind?

A. A bonnet-head.

Q. Is that this kind?

A. Yes, sir.

Q. That is the kind that Mr. Thompson referred to as a snap-head rivet?

A. I don't know what he called it.

Q. What is the difference between a counter-sunk rivet, a swell neck, and a plain shank rivet?

A. The counter-sunk rivet would fill where the metal would go in there.

Q. And a swell neck rivet, what is that?

A. A rivet that is somewhat tapered as it goes in; got a wide neck, and the rivet would hold, not only the head would hold, but the whole rivet.

Q. You mean up toward the head, the rivet is somewhat larger than it is toward the end? Is that what you mean?

A. It means that it has a sort of a taper.

Q. Well the shank or shaft tapers?

A. That is right.

Q. And a plain rivet—

A. You didn't say, swell head, did you?

Q. No, swell neck. And then a plain shank rivet would be one that the shank was the same size all the way through its length?

A. Yes.

Q. Now then which type of rivet, in your judgment, is preferable in making tanks to hold liquids such as gasoline?

A. Well I would want a rivet with a head exactly like that.

Q. And so far as the neck, what kind?

A. I would want a good fit on the neck in the hole.

Q. And would you want a plain neck or a swell neck rivet? A plain rivet or a swell neck rivet?

A. Well I think I would take a plain rivet on that.

Q. Why?

A. For the reason that it is a punched hole, and the hole is supposed to be in line; or I assume it is a punched hole, it looks like that.

Q. The hole into which the rivet is placed, is ordinarily slightly larger than the shank or shaft of the rivet, is it not?

A. Oh, yes.

Q. So that the rivet can be inserted?

A. Yes.

Q. Now then wouldn't a—if the rivet was swell neck, as it was pulled tight, wouldn't it tend to fill that hole and make a tighter joint?

A. Well on these tanks—

Q. Let's—

A. Didn't you ask me about this tank?

Q. No, I am referring to a general question at the moment; we will consider the application later.

A. I understand that is a different question from the one you have asked me.

Q. We will get to the specific application in just a moment.—Would you please read the question?

(The third question preceding, was read by the reporter.)

Mr. Underwood:

I object to that unless the type of material being riveted is specified in the question.

Mr. Botts:

Well I am not going to specify any more.

Mr. Underwood:

I think the witness is entitled to be told then that if there are any assumptions he needs to make, beyond those included in the question, he is entitled to state them.

A. On the assumption that you have a round hole, and a comparatively short hole, to place the rivet together, there would be no great thickness, there would be some

advantage in having your material wedge itself into the hole. If you had a very long hole, with two very thick plates, in order to get the taper you would have very little to head up, if you jam it on the other side of the hole, with your swell neck rivet.

Q. Then as I understand it, where the plates are relatively thin, a swell neck rivet is better than a plain shaft rivet; and where the plates are relatively thick, a plain neck rather than a swell neck is preferable; is that the distinction?

A. That might not be the general rule, but there are other factors entering into it. If the holes are in perfect line, a swell neck rivet will probably take less work in setting it up, and save considerable in labor, with two thin plates.

Q. In your judgment, where the plates are relatively thin, would good practice require the use of swell neck rivets?

A. Certainly.

Q. You think either would be suitable?

A. Oh, yes.

Q. But the swell neck would be somewhat better, is that it?

A. If the plates are relatively thin, and if they are made as most tanks are, where they don't necessarily register, the swell neck rivet would not lend itself to the filling of both sides as readily as the straight shank.

Q. In other words, "if the holes didn't jibe"—that is what you mean by not registering?

A. Yes, sir.

Q. That if the holes don't register or come exactly opposite each other, then you think a plain neck rivet would be the superior?

A. Yes, sir.

Q. I will ask you to examine the two rivets that have been filed in evidence, and ask you to state whether or not they are plain neck or swell neck rivets?

A. They appear to me to be plain neck rivets.

Q. Now I call your attention to Exhibit 6-A, and particularly the two rivets at the right, concerning which you have previously testified that the rivet did not pass through the holes at right angles, but that there was a slanting, due to the fact that the holes didn't, to use your term, register; and I will ask you to look at the riveted side of those two rivets, and particularly the second rivet from the left-hand side, and ask you if you observe at this time any defect or imperfection in the condition of the riveted head and the rivet, in connection with the hole?

A. These heads are practically corroded away, and some corrosion has taken place down in the cracks.

Q. Now then, in addition to the fact that the holes were not in register, there has, in your judgment, been a substantial loss of efficiency by reason of rust; is that right?

A. Well I would say that they still had a tremendous amount of binding power, in the rivets, but that some efficiency had been lost by the loss of a portion of the head; but exactly what, at the time, I don't know.

Q. Well at any rate, you testify that there is from some cause a loss of efficiency in the riveted head side of that rivet, is that correct?—The interpretation of your last answer?

A. What I mean to say is, it is not as strong as it would have been with the head.

Q. Now did I understand you to say that there appeared to have been a corroding of the head,—of the riveted head, I will put it?

A. That looks to me like corrosion, that causes that. I couldn't say what it was.

Q. Now Mr. Gibbs, I don't want my question to appear in a vein of sarcasm, but it may sound that way when I call your attention to a point that I would like to have you clear up. My understanding was, from your

testimony when first on the stand, that you stated that a film of rust constitutes a protective film of metal.

A. That, under certain conditions.

Q. Well then you did not intend that statement to apply with any generality; it would be in particular conditions, is that right?

A. Oh, yes. I said that a film of rust that was protected by an air tight case, was—such as oil.

Q. Then do I understand you now to say that normally, where a rivet as in Exhibit 6-A, the head and—the snap-head and the riveted head are both open to atmospheric action, that in such case would a rust form and constitute a protective film?

A. I would think that the rust is subject to moisture, all of which is present in the atmosphere, that it is of no great advantage; but if the rust is covered as with an oil, that that constitutes something to fill the voids with rust, it constitutes a splendid form of protection. In other words the oxide,—the rust will resist further rust, but there must be something to prevent moisture, laden with oxygen, crawling in it by capillary attraction, in the void. The void must be filled.

Q. In other words as I understand it, rust might be used as a pigment, combined with oil or some other substance which would form a protective film, excluding atmospheric action, and in such case, such a film would be a protection?

A. Would block the capillary attraction of a void.

Q. But if a rust film forms on the outside of a ferrous object and continued to be open to atmospheric action, that rust film would not constitute a protection, would it?

A. It may not; on the other hand it may form in such a compact state that there are no voids.

Q. Well generally speaking, isn't it true, Mr. Gibbs, that where a ferrous object is open to atmospheric contact which induces the commencement of the formation

of rust, and it continues subject to the same conditions which induced the formation of the first form of rust, that the rust will continue to form indefinitely? Isn't that, generally speaking, true?

A. It is true in some cases. I know of cannon that have rusted, in the Fort at St. Augustine, Florida, when I was a little child, and they are in the same condition now, with no increase of rust; three or four hundred years old.

Q. The rivet head on this rivet in Exhibit 6-A, the second rivet from the left particularly, that riveted head has practically rusted away, hasn't it?

A. A good part of it has gone.

Q. Well is it, from your observation and in your opinion, a fair assumption, either that the head never was properly riveted, and never was a proper riveted head there, or that it has rusted away? Is one of those two assumptions a fair assumption?

A. In order to answer that question I must know whether you mean, on this tank.

Q. I am speaking of the conditions as you see it there on Exhibit 6-A.

A. In the making of this tank?

Q. For the use to which it was put.

A. Why I think that is tight, for the holding of gasoline in that tank.

Q. Do I understand you to say that you consider that second rivet from the left in Exhibit 6-A, in good, satisfactory condition?

A. For the purpose—that it was sufficient for the purpose for which it was intended.

Q. Are you able to tell from examination of that, or to express an opinion whether or not there was ever a complete riveted head there, or whether the head has been destroyed or taken away in part by corrosive action?

A. I think that the head was there, that it was under considerable tension. I think that when corrosion came

in there and got to working on it during the years, that it was stuck in the mud, the salt, I think it made a crevice in there, and its own tension snapped the head off and it dropped out of the hole. These are pure surmises.

Q. All right, sir. Now then—

A. Excuse me; the period I refer to is the period that the boat was sunk.

Q. I want you to tell us a little bit more about the actual experience upon which you have predicated certain of your answers. You were, as I understand it, are the executive and directing head of your business, is that correct?

A. Yes.

Q. And I am wondering if in the early inception, or at the commencement of this business, while it was small, you engaged in manual construction work or operations yourself?

A. You mean, whether I drove rivets?

Q. Yes, or put on planking, or what not; did you ever do that?

A. Yes, I have driven rivets; I have pulled bolts. The institution I graduated from, I served in all branches of the trade; foundry, woodworking, and so forth; and since that time I have, my business being a small business, I have a total of as high as some thirteen or fourteen million dollars only in its existence; but I have had to know in detail a great deal of the quality of the workmen that were employed; and I have had to examine designs, and watch work particularly in connection with the building of tanks; because practically all the work we did for the government, it had the most rigid tests on tanks.

Q. I still have to ask this: now then what I want you to tell me is this; how much time have you actually spent in the actual month operations, by the use of your

own hands, of putting in rivets in steel tanks, or connecting steel plates?

A. Very little of my time has been spent in the muscle work of driving rivets.

Q. I assumed that was true, but could you tell me as best you can, how many hours or days have you ever spent, if any, in actually, by your own muscular effort, putting in or assisting in the installation of rivets?

A. Well I have bucked some rivets; I have stopped men making rivets,—doing riveting work, and shown them how to do it. I have jerked rivets out to show them why they had to buck the rivets continuously, and as they hesitated one minute, that the heads snapped back and they had an imperfect job. I have directed workmen over a period of years, and drilled them in the theory of the work, in order that they understood what they were doing; passed on to them that knowledge that I have accumulated in my lifetime as an engineer,—mechanical engineer.

Q. I understand that you think, and so far as I know you may actually know, all about riveting. What I am trying to find out is the basis for what you believe to be your knowledge, and I am starting in with a question now, and the question I asked you was not how much you know or think you know about the process,—and I am not criticising your knowledge; but I am trying to develop, upon what you base that assumed knowledge. And the question I asked you was, how many hours or days do you think you have spent in the actual manual application of rivets?

A. Well if you will apply hours or days, if you mean by that the time I have spent in thinking about them, and working with them:

Q. Now Mr. Gibbs—

A. As I stated before, I have spent very little time with a hammer actually applying my muscle to the job.

Q. Now I am trying to find out, and I think the question is clear,—how many hours make up that 'very little', that you refer to?

A. Oh, it would be hard to say, but very few hours.

Q. Ten hours, twenty hours, thirty hours do you suppose?

A. Oh, not that much.

Q. Not that much. All right, now we have got somewhere. Now then have you ever spent a single minute caulking a riveted seam?

A. Oh, yes.

Q. All right, how many minutes, hours or days, would you say?

A. It would be, if I would take a caulking iron out of a man's hand, say, "Now watch me, this is what I am doing"; I imagine that I hit five blows, and it would take four seconds to hit those five blows. I would take I believe fifteen different bits of instruction for each minute, and that would be sixty times fifteen such bits of instruction, in order to make one hour. Usually when I am disastisfied with what is going on, if the foreman can't show what I want shown, in such an event I might do that. There would be many other people watching as a rule. But that doesn't constitute many hours of time.

Q. It is a fair assumption that you spent no more hours in caulking than you have in riveting?

A. Quite true, sir.

Q. Then your knowledge of the processes of riveting and caulking is theoretical rather than practical, is that true?

A. By no means.

Q. How did you learn to know so much and become a competent instructor, without actually performing the operation yourself?

A. That is a question, isn't it, that I may answer?

Q. Yes, sir.

A. All right. I learned about rivets, first, in the first grade of the grammar school, and from then on into the engineering institute that I became a part of and graduated in. I learned about rivets in the chemical department, where I took not only a course in chemistry, but an extra course in analysis. I learned about rivets in the study of metallurgy. I learned about rivets in the study of physics. I learned about rivets in the drafting room. I learned about rivets from engineers in the Westinghouse Company. I learned about rivets in the shop of the Bessemer-Cooper Corporation. I learned about rivets in the study of the science called strength of materials, where I was taught to solve stresses of all kinds by the use of applied mathematics. I learned about rivets in the study of analytical mechanics, and further analysis of stresses. I learned about rivets as no man never having understood those subjects that I was required to learn, in order to become a graduate of the engineering institute that I attended. By actual application in the manufacturing business, of tanks, such as we built in some quantities,—large tanks, small tanks, gasoline tanks, tanks for gas producers; of heavy plate and thin plate. I learned about rivets in knowing that in order to solve a problem you must know all facts connected with the problem, and must solve each problem based on its merits. I learned about rivets by observation of failures, due to the improper use of rivets. I learned about rivets by discussing their use, their kinds, and in various different positions,—boilers, et cetera.

Q. Now then in the course of all this extended study, did you ever learn that it was extremely—or were you ever told that it was extremely bad practice to let rivets go through at an angle in—through a drifted hole as we have in Exhibit 6-A? Did anyone ever tell you that that was just about the worst practice you could have in making tanks?

Mr. Underwood:

I object to the question.

A. No one ever told me that that was the worst practice that you would ever have. In making tanks, I was introduced to the drift pin and given a head to fasten to a tank, and told that the process of bringing those holes,—averaging up to get them as near registering as could be.

Q. Did anyone ever tell you it was bad practice,—whether the worst practice or not, that it was very bad practice to have holes brought into line by a drift pin, and a rivet passed through those two holes at an angle? Did anyone ever tell you it was bad practice?

Mr. Underwood:

I object to the question unless the type of construction involved is included in the question.

Mr. Botts:

I am not including anything more in that question, and I am requiring an answer to it.

A. I have been told that that was very bad practice in a high pressure steam boiler, but standard practice in the manufacturing of a tank of this type.

Q. Then you consider that practice as good practice, in the construction of a gasoline tank, do you?

A. I consider that practice—

Q. Answer the question yes or no and then explain if you wish.

Mr. Underwood:

There isn't any Court here to instruct this witness, and I object to Mr. Botts instructing the witness. If he can't answer the question yes or no—

Mr. Botts:

I will ask it a thousand times, until I get a yes or no answer, and if we stay here until next year, I will get a yes or no answer; I just put you on notice.

Mr. Underwood:

We will go across the hall and see the Judge, right this minute.

Mr. Botts:

I am not going anywhere; I am standing here until I get an answer to that question, right here.

Mr. Underwood:

Come on, we will go see the Judge.

Mr. Botts:

I am not going anywhere.

Mr. Anderson:

Tell the witness not to answer it unless he wants to answer it in his own way.

Mr. Underwood:

Put this in the record: Mr. Gibbs, for the present, at least until the Judge makes some contrary ruling, you don't need to answer that question yes or no, unless in your opinion you can give a fair answer to it yes or no.

A. Of course I can't give any yes or no answer to that question.

Mr. Botts:

Read the question, Mr. Reporter.

(Question read: "Did anyone ever tell you it was bad practice,—whether the worst practice or not, that it was very bad practice to have holes brought into line by a

drift pin, and a rivet passed through those two holes at an angle? Did anyone ever tell you it was bad practice?")

Mr. Botts:

If that question isn't susceptible of yes or no, I don't know it.

Q. Did anyone ever tell you that that practice that I have described, was bad practice?

A. You have just given half of the question.

Q. I ask you now, did anyone ever tell you that the practice which I have just described, was bad practice?

A. My reason for refusing to give—stating that I could not give a yes or no answer to that, is this: that it is good practice, it is standard practice, in some kinds of work, and the wrong practice in other classes of work. If that were not true, there wouldn't be such a thing as a drift pin that were known in business.

Q. Did anyone ever tell you that in the construction of tanks for the retention and storage of gasoline, it was bad practice to line holes by the use of a drift pin, and put in rivets at an angle?

A. That question still cannot be answered by yes or no, unless you state—acquaint me with the design of the tanks; and state whether they are to be soldered, for instance, or that they are not to be soldered; also the number and spacing of the rivets; if you tell us rivets are so many, that half the tension is enough, if you tell me the rivets are so few, you need a cross section of riveting in order to make it, that is still another factor.

Mr. Botts:

Now Mr. Reporter will you read the question again. I will have the question read all afternoon without change until I get an answer; we will be here for the next week.

I promise you that. You can't dodge a yes or no answer that way, not with me.

(The last question above,—for convenience referred to at this point and in the following discussion before the Court, as the basic question,—was read by the reporter.)

A. I won't answer that question, because it is just a part of a question, unless you let me state—I will tell you when you can do it and when you can't, and what is good practice and what is bad, as I know it. But I am not going to tell you that certain—answer you yes or no, and have my answer misconstrued as a statement that I have never been properly instructed or trained in my profession.

Q. I have no objection, after you have answered the question one way or the other, for you to make any explanation that you want to. I ask you whether you have ever been told that it was good practice or bad practice; I didn't ask you whether it was your opinion; I asked you whether you had ever been told it was good practice or bad practice.

A. I have been told what was allowable work to use, in which the holes could be drifted together, and the class of work that you could do that with; and I have been told the class of work that you should not do that with; and I can now tell you which is which.

Mr. Botts:

The class of work I refer to is clearly shown in the question. Would you mind reading that question again?

(The basic question was re-read by the reporter.)

A. Am I required to say yes or no, to that question?

Mr. Underwood:

Not unless you can do so in fairness to your understanding of the facts.

A. Well I regard the question as incomplete. No yes or no answer would suffice to answer the question. I have been instructed on the general principles of riveting, and those principles apply in this case. I have been instructed in the manner which would let me state whether I think drifting of the holes in this particular job, was good practice. I can answer that question.

Mr. Botts:

Now would you mind reading the question to him?

Mr. Underwood:

I object to reading him that question, or the propounding of that question.

Mr. Botts:

I don't care whether you object or not.

Mr. Underwood:

Mr. Anderson, let's go in and see the Judge.

(Mr. Underwood and Mr. Anderson retired, and thereafter returned.)

Mr. Anderson:

I suggest we just adjourn, Mr. Commissioner.

Mr. Botts:

All right with me; I live here.

(Following discussion, informal recess was had. At 2:17 o'clock P. M., Mr. Botts, retiring, stated:)

Mr. Botts:
I will be back in about fifteen minutes.

(At 2:26 o'clock P. M. Mr. Botts re-entered the hearing room, and at 2:34 P. M. stated:)

Mr. Botts:
I am going down the street; I will be back by three o'clock, perhaps sooner.

(At 2:55 o'clock P. M., Mr. Botts returned.)

At 3:30 o'clock P. M., November 22nd, 1939, counsel and witnesses were received for hearing before the Court; and thereupon:

Mr. Underwood:
Judge, we have reached an impasse on a question on cross examination by Mr. Botts, one to which I objected, and which the witness has indicated that he cannot answer yes or no; and one which Mr. Botts stated he would put all afternoon, or a thousand times, until he gets an answer yes or no. Now I think that I have been very patient in the examination of these witnesses; the case has gone on very, very long; it covers a lot of ground, much more than once; and it is well-known that not only we but Mr. Matteson are anxious to get back. And I have raised this issue because I think it is a serious one. I have no question of Mr. Botts' good faith in his cross examination, but cross examination has been so extensive and about so many points that don't seem to me to have any vital bearing on the case, that I would like to get a ruling on this particular question, and some advice from the Court, to all of us, as to just how we are to proceed. To that end I would like to have the reporter read the last half dozen questions and answers, so there may be a decision on the point.

The Court:

Is that your idea?

Mr. Botts:

I disagree, to this extent. The witness did not indicate that he couldn't answer that question, until that situation was suggested by Mr. Underwood. And I think clearly, in view of the questions immediately preceding, that this question is capable of being answered by a direct answer, yes or no, and then with any explanation he may want to make. I concede that after the witness has given a categorical answer, yes, no, I don't know, I don't remember,—that he can go ahead and make an explanation. But I submit that this question is susceptible of that answer. There was no objection to it on the ground that the general subject matter is not competent; it is just a question of whether or not this question as put is susceptible of an answer categorical in character, either with or without a supplemental explanation. And I think, unless we have a considerable amount of the previous testimony read, that the applicability and propriety cannot be determined.

The Court:

Will you agree on some point to which you want to go back?

Mr. Botts:

I think the last dozen questions and answers, approximately.

The Court:

Suppose Mr. Bryant reads that far.

Mr. Botts:

Mr. Bryant, if you would go back to the point where Mr. Gibbs was questioned and gave that five minutes or

so answer, as to his experience, and how he acquired his knowledge of welding,—back to that point I think is sufficient, whether that is included within the half dozen questions or not.

Mr. Underwood:

If your Honor please, I think one further question presents itself, in the merit of this particular question; that is, whether Mr. Botts is to be permitted to take possession of this hearing to the extent that he has attempted to do, in saying that he will put this question a thousand times, or all afternoon, until he gets a yes or no answer. That is one of the things that I should like to have instruction upon.

Mr. Botts:

And right along the same line, is Mr. Underwood to be permitted to tell the witness on cross examination, not to answer a question, and then stop the hearing until it is? That is as long as it is broad. If the question is proper, I had a right to have it answered. I submit that the proper procedure would be for the witness to answer, and then if the question is not proper, the Court can take care of that, on the hearing. And I submit that that is the proper way to proceed before a Commissioner,—to let the questions go in and be answered, and then if the questions are not proper, the propriety can be tested. But Mr. Underwood took it on himself to tell the witness not to answer my question, and I won't submit to any such procedure. If I am wrong, I will let the Court say so; but I conceive that the question was proper; and for him to just simply say, "Mr. Witness, don't answer that question"—I am not going to have him interfering with my examination in that manner.

Mr. Anderson:
Let's have it read.

Mr. Underwood:
If your Honor please, I gave no such instructions to the witness, as I think you will understand from the testimony as it is read.

(The last testimony given before the Commissioner, was read, commencing with the question: "Then your knowledge of the processes of riveting and caulking is theoretical rather than practical, is that true?")

Mr. Botts:
If the Court please, I would like to state my position on that question.

The Court:
All right.

Mr. Botts:
I was testing the knowledge of the witness, and the source—

The Court:
Do you want this in the record,—this argument?

Mr. Botts:
I don't care whether it is or not.

The Court:
I have got to read it some time.

Mr. Botts:
All right, don't take it down, then.

(Discussion was had off the record.)

The Court:

Well it is unfortunate that the hearing has had to proceed this way, and we didn't have the benefit of either the Court or the Commissioner who could rule on evidence; and I realize these gentlemen are laboring under some disadvantage in conducting the hearing now. Here is the thought I have in mind; the witness is being examined, not with respect to the particular tanks in question, but is being examined generally.

Mr. Botts:

As to his expert knowledge; right; testing his knowledge.

The Court:

Now the unfortunate part about it is that the witness has stated that he was told so and so, in connection with his answer to your question as to what his experience and education were.

Mr. Botts:

And he predicted his expert knowledge on it.

The Court:

Just let me conclude my thought: Now when he says in answer to a cross question, that "I have been told so and so", that is not his experience. He might have said, "I have been told that so and so is good practice", but that isn't evidence. What he is told was good practice, if his evidence is favorable to the side producing Mr. Gibbs,—the Respondents', that isn't binding; because that witness who told him that is not before the Court to be examined; so I regard that as really surplusage. The question is, with all that he has been told, with all that he had learned, the education that he had gotten, what is his opinion about rivets. That's the question. So I don't

think that these matters,—his voluntary statement in answer to the question as to what he had been told, I don't think that is binding on either side. Because if you are going by what somebody tells you, that is hearsay evidence, in the first place; and in the second place that person is not subject to cross examination. So it isn't what he was told, it is "What experience you have had". So that being the primary consideration, and if that problem is settled, I think the whole thing unravels itself. When he says what is surplusage, and you are inquiring about what his education and training is, why then it is not a theoretical question. So if he does not state properly in the beginning, and his voluntary statement as to what he is told, is not binding, then it applies to this cross examination. If what he has been told is not binding one way, what he hasn't been told, or whether he has been told that such and such is bad practice,—is inapplicable. So I think your question is too broad, I might term it,—or it is inapplicable; it is immaterial, because it is directed to an examination which is not proper evidence.

Mr. Botts:

Now let me go back to the inception of this line of questioning. I asked him for his practical experience, and he said he hadn't done as much as thirty hours menial work of either kind. Then I—

Mr. Anderson:

Manual, not menial.

Mr. Botts:

Then I propound the interrogatory, I said, "Your knowledge of riveting and caulking is theoretical rather than practical?" and he denied that, and went on for about five minutes giving his experience, showing these other things from which he had derived his knowledge.

The Court:

Well, with all of that, if that is part of his experience, that is subject to cross examination, as to what experience he has had, what he has stated. You might ask him, "Have you stated so and so?" you might do that. But to ask him a question as to whether this is bad practice, which is based upon the hypothesis that what he has stated was good practice, then when your hypothesis falls, then your question falls.

Mr. Botts:

But the basis of his knowledge is based upon all these things that he says people have told him. Now then, if this question is not allowable, it seems to me that his whole answer back there should be stricken.

The Court:

You make a motion to strike. I say it is unfortunate to have no one there to rule on it; but I will have to rule on it subject to motion.

Mr. Botts:

When you are going through an examination like this, —I felt when the witness answered that question, that it wasn't responsive; but that is in there, and what can I do about it? I can't stop him.

The Court:

But I think you can make your observations at the conclusion of his answer, that you move to strike so and so, on certain grounds.

Mr. Botts:

When he does that, I don't know how the Court is going to rule. If the Court leaves that in, and I don't cross on it, then I am prejudiced by it; and the only practical way

is for me to go ahead and examine him on the basis of these things that are in the record, until the Court strikes them out. If I am not permitted to do that,—if all of his testimony, including that answer, is stricken out, why then I would have no objection. And if it is going to go out, I wouldn't have ever asked this question in that form, but for what he had already put in the record. Now when he puts it in the record, how can I protect myself? We can't keep running to the Court to pass on every question, whether or not I conceive that they are admissible. So I say, from a practical standpoint, that the only thing I can do is to go ahead on the predicate that the answers of the witness will be left in; then all of it that is stricken out, it just goes out of the record, and no harm done.

The Court:

I think I can cover that. I think the best way to do it from now on, is for no objections to be made to questions before they are answered, and then let the witness answer them, and after the answers are in, let any motion be made on the record.

Mr. Botts:

If they want it put down that way, and with reference to this particular question, I am willing to let it go in in that way.

The Court:

If the witness says he needs some other elements in the question, you may do it.

Mr. Botts:

If the observation had not been made by counsel, we wouldn't have been here; because I never have yet tried to ask a witness a question that would embarrass him.

(Discussion was had off the record.)

The Court:

I have understood the position, and the more we bring this out and argue it, the more we have to say here. I understand the position with regard to that. I have understood from the first, what you have objected to, with reference to counsel interposing an objection; and I think the proper way to do it is as I have indicated.—Are there any remarks of counsel on that indicated course?

Mr. Underwood:

I would like to be instructed on one point, and have the witness instructed. If there is anything improper in the form of my objections, in the colloquy that has been read to you, I would like to be told about it now. Referring to my experience, my objections were properly stated, and were not suggestive, although Mr. Botts seems to find something suggestive in them.

Mr. Botts:

I certainly do.

Mr. Underwood:

If there is anything improper in the form of my objections, I would appreciate being told about it now. The other point is this; the witness said that he was unable to answer the question yes or no. I would like the Court to instruct the witness as to what his rights are in that situation.

The Court:

All right, sir.

Mr. Botts:

I would be glad, when the Court instructs the witness, but I don't like to have counsel instructing the witness.

That's my point that I have been making all the time. I am not particularly concerned with this particular question. I have said all along that this particular question is more or less innocuous; it is the principle of having counsel interrupt me when I am trying to get in evidence that I want shown. So far as this particular question is concerned, when we go back out there, without the Court's ruling, I am going to withdraw that question and propound another. But I am interested in my rights, and not having counsel come in with indirect suggestions, as I conceive them to be, to the witness.

The Court:

Well it seems to me another unfortunate situation, that which has naturally come about; I think the course that I have outlined would be the proper course, which I announced in the beginning.

Mr. Botts:

I will withdraw that particular question now, so you won't have to rule on it; but I am going to ask some others.

The Court:

Generally speaking, I concede the position of both counsel; that, not knowing whether you are going to insist on objections or not, I can see that Mr. Underwood would naturally make an objection before the witness would answer the question; so I think he was within his rights in making a formal objection. Of course you gentlemen differ as to whether it was suggestive to the witness; but technically speaking I think that, since there was no announced ruling as to how the examination should proceed, I think it would be very natural and proper for Mr. Underwood to make the objection. Now that covers that.

Mr. Botts:

As I understand it, in the future, the question will be answered and then the objection will follow that?

Mr. Underwood:

If your Honor please, do I understand that I am not allowed to object to a question before it is answered?

The Court:

I think if you incorporate your objection to the answer when it was made, it would be much better, Mr. Underwood.

Mr. Underwood:

I have never been put in that position before. My experience has been quite the reverse; that, unless I make my objection before the answer is given, I waive my rights. I have taken thousands of pages of testimony without the presence of any tribunal to rule on objections, and that has been the universal practice; and I will be flat-footed if I am not allowed to proceed in that way, which I think is the right way.

The Court:

That is an established rule, that the Court states that you may proceed that way. You are not waiving any rights if you incorporate your objection in the motion.

Mr. Underwood:

I think the Statute says, as I recall it, that testimony by deposition—which this is, shall be taken in the same manner as in open Court; that is my recollection of it. Of course if the question is propounded in open Court and the answer given before objection is made, I waive my rights to object; my only right is to strike out as not responsive. That is the situation.

The Court:

I think you can incorporate more in your motion to strike, than "Not responsive"; and that which you would present as an objection to the question itself.

Mr. Underwood:

Furthermore, I see no basis whatever, in the character of any objection that I have made, for such a ruling.

The Court:

Well my observation is more in the line of outline of the policy to allow this matter to go on without the Court. I know you want to get back to New York and get through with this case, and you want to prevent the examination from being so prolonged. I am trying to work out something that will meet the situation we have here.

Mr. Underwood:

The situation will be equally met if I am permitted to make my objections in a proper way. If I make improper suggestions, it is time enough to enjoin me from making my objections until after the answer has been given. But I have been guilty of making no improper objections; I haven't led this witness. In the first place, he is an intelligent expert, knows a lot more about it than I do. I think my objections, made in the colloquy that has been read to the Court just now, were scrupulously proper.

The Court:

Well as I recall the general policy that I was following, Mr. Underwood, it was that on cross examination of a witness offered as an expert, that the absence of any essential elements which the witnesses want to have in the question, should be suggested by them and not by counsel.

Mr. Underwood:

I didn't suggest the elements, your Honor, that might properly be included in the question.

The Court:

Did you suggest an absence of elements?

Mr. Underwood:

I suggested an absence of elements, yes; I didn't suggest what was absent. I have to give the ground of my objection.

The Court:

Well it is hard to look forward and cover every kind of an objection. I can conceive of objections that really properly would be made before the witness answered the question. But on this one phase of it, the thought as to the absence of some elements that should be incorporated, or should be in the mind of the witness, I believe that that ruling would cover this particular one question.

Mr. Botts:

Let me make this observation: I have a question, counsel does not want it answered. This witness is not only a friendly witness, but a particularly partisan witness, who has been sitting in here advising expertly. Now, a question that counsel does not want answered, and he rises and says, "Mr. Witness, you don't have to answer this question if there are elements in it that you don't understand, or if there are added features that you want". And the witness immediately is conscious that counsel does not want it answered in that form, and so he says, "I can't answer it in that form"; and there you have the indirect suggestion.

(Discussion was had off the record.)

(The fifth question, with the objection following, in the testimony and proceedings previously read by the Commissioner to the Court, were again read.)

The Court:

I think that objection comes within the general rule that I have endeavored to follow on cross examination, especially in the latter part of the hearing of this case. I remember that pointedly came to my mind, that that was a good rule to adopt, as being a correct principle of law and evidence to apply here. So I think that following that, our *objection*, was not in line with that which I had heretofore followed; and I think that hereafter that ruling should control. So if the objection is a matter of non-incorporation of elements which counsel think the witness ought to have in mind, if that arises on the cross examination of an expert, I think the witness should voluntarily state what he thinks is lacking in the question. Now generally speaking, I realize Mr. Underwood's position is well taken, and is a departure from his general method of taking depositions; so probably I had better not attempt to rule on something generally, because that is pretty difficult to do. Outside of this one situation, this character of situation we have here, if Mr. Underwood thinks that he ought to object and that he would be prejudiced in any way by relegating his grounds of objection to a motion, why then I will withdraw what I stated as the general rule to follow in regard to that.

Mr. Botts:

Let me ask if this would be a proper procedure to follow: in the case that they conceive a question to be objectionable, to simply say, "I object", and then let the answer come in, and then the ground of objection be put in afterwards, applicable, so that the witness won't have the benefit of the suggestions.

Mr. Anderson:

I would rather say, that the objection shan't be couched in terms as would put that in the mind of the witness; otherwise matters of law would be objected to as in any other case.

The Court:

Can you all agree on that?

Mr. Botts:

I can agree, if proper.

The Court:

Can you agree on that as a method?

Mr. Underwood:

I will follow your Honor's direction, of course.

The Court:

All right.. Now with regard to the second request of Mr. Underwood, with reference to instructions to the witness; Mr. Gibbs is the only witness here; if you arrive at any other witness, you can read these instructions to the witness. If in the examination, you, Mr. Gibbs, as an expert witness offered by Respondent, on cross examination,—if you think that any question is incapable of a yes or no answer because you think some other elements should be incorporated, why then you call those to counsel's attention and state that those facts should be, and ask that they be, incorporated in the question.

Mr. Botts:

May I suggest there, you said, "Mr. Gibbs". If we say, "You, Mr. Witness", it will apply to any witness.

The Court:

Yes—an expert witness.

Mr. Underwood:

Does that mean, your Honor, then, that counsel is not to insist upon a yes or no answer if he has to propound the question a thousand times.

The Court:

As to this question?

Mr. Underwood:

As to any question.

The Court:

Yes, that is my idea about that. If the witness in answer to a cross question, says "I think there ought to be some other elements incorporated in there", then those elements are sought to be injected by the examiner, and if the witness still continues to be of the opinion that he can't answer that yes or no, I rather think that the Court ought to judge as to the quality of his answer, and so forth, rather than for an insistence being made as to a yes or no answer.

Mr. Botts:

I thoroughly agree, if the suggestion comes from the witness we won't have any trouble along that line.

Mr. Gibbs:

May I ask the Judge a question?

The Court:

All right.

Mr. Gibbs:

Where I am examined by counsel, and where I am repeatedly told that what I said was something entirely different from what I said, question after question, where

an admission by myself means a statement in the record of something that isn't a fact; such as a statement that I said that I had not had more than a certain number of hours of practical experience in the business of riveting, when I actually said that I had practically put in all of my life in business connected with riveting, but that I had not actually driven rivets, with a hammer, for as much as thirty hours; or, where I had not used a drift pin, or done the manual work: where I made such statements, and where those statements are repeated to me as though I had said them in a way that I am supposed to admit them, merely mixing the word "manual" with "practical", which completely changes the sense and puts me down as a witness without training, and as practically a fraud: I ask you, sir, if I may not refuse to answer a question by the word, yes or no? A question which, taken in itself, alone, would allow the counsel to state that I have stated that an act would be improper, with a certain sized plate,—would be generally improper.

The Court:

I think I understand your position, Mr. Gibbs. The whole matter has to be decided from this principle, if it is to be recognized, and which if I were sitting there I would try to apply, and that is, there must not be any arguing with the witness on his examination. If counsel conceives that what you have answered is inconsistent with some others answers you have given, why I think the proper method is to ask you, "I understood you to say; now did you state in your other testimony, this:" and you can answer yes or no. If it is incorrectly stated in the question, whether you stated that, naturally your answer would be "No, I didn't state that". If you want to go along and state what you did state, and repeat your testimony, you can do that.

Mr. Botts:

No dispcsition on my part to trap the witness, or to prevent the witness from protecting himself. If I misquoted his previous statement, I certainly want him to tell me so.

The Court:

Well the Court I think is the one to judge as to whether there was any inconsistency. That is a matter of argument and conclusion, as to whether you think that any statement given by the witness at this time, is different from any that he has stated theretofore; not to argue with him, but to ask him the direct question, "Did I understand your testimony heretofore to be so and so?" Yes, or no. If yes, yes; if no, no: If the witness wants to go on and reiterate what he has stated theretofore, why that incumbers the record with another answer, but attracts it forcibly to the Court, at that time, what he did state. Following that, while I don't think there ought to be any argument with the witness, I think you could ask the question, "If you stated this at that time, and I conceive your present answer to be so and so, which is I think inconsistent with that,——I think that is inconsistent; I think that does not follow. Do you maintain, Mr. Witness, that that is consistent?" I think you can ask a question like that.—Does that cover it?.

Mr. Gibbs:

Yes, sir. There are times when yes or no, or, I don't know—

Mr. Botts:

Don't cover.

Mr. Gibbs:

Do not cover.

Mr. Botts:

And if you think I am asking such a question, stop me and try to explain why, and I will try and make it so we can get along. If you don't understand the question, you try to make it plain, and I will try to clear it up, between you and me.

Mr. Gibbs:

When you ask me a question, if I ask you to give me the complete data about the hypothetical problem, before asking me to say yes or no, we will have no trouble; but if you insist on an answer, yes or no, knowing that you have left the important factor out of it, I can't give an answer.

Mr. Botts:

That's right, I wouldn't expect you to.

Mr. Gibbs:

That's the whole question.

Mr. Botts:

You tell me when I have done that, and I will fix it up.

Mr. Matteson:

Your Honor, would this be a convenient time to discuss what we do next after taking this testimony?

The Court:

Yes, it would be, because I hope you gentlemen will get through with this, this week; and if you do, why you will have completed it and I won't be here, because I will be away until next Monday.

Mr. Botts:

We are still hoping to get away tonight; we have lost two hours over this.

The Court:

If you get through now, I think the record of course will be written up and submitted to me; and as I understand it, you are going to brief it and submit briefs, after the exchange of same; and as I recall the general understanding we have, there would be no oral argument, but I do have this faint idea, that it was suggested that if I wanted oral argument after the study of briefs, why then I would so indicate.

Mr. Botts:

I would like very much oral argument. I didn't understand we were not to have oral argument.

Mr. Matteson:

That suggestion has not been made in my presence.

Mr. Botts:

I would certainly like to have oral argument if possible.

The Court:

I always welcome oral argument.

Mr. Botts:

Unless the Court rules to the contrary, I certainly want oral argument.

Mr. Underwood:

I think the question was, as to the time and character of argument.

(Discussion was had off the record.)

(Review and discussion before the Court was concluded, and at 4:25 o'clock P. M., taking of testimony was resumed

before the Commissioner; the witness GEORGE W. GIBBS resuming the stand upon continued cross examination.)

By Mr. Botts:

Q. Mr. Gibbs, in your opinion, where a tank is being constructed for the purpose of the retention, transportation or storage of gasoline, is it proper in the construction of that tank to bring the holes designed for the entry of the rivets, into line, by means of a drift pin, where the holes otherwise would not be in line; and to rivet the plates together, where the holes had been brought into line in that manner, and the rivet passes through the two plates at other than a right angle.

A. All of them, or just one of them?

Q. A single rivet.

A. Would you mind leaving the question of transportation,—referring to trucks or something of that kind, out? That is a very special case.

Q. All right, I will put it in this way; in the question I will ask you to consider only such retention, storage or transportation of gasoline as might be involved in such transportation as would occur in gasoline tanks of a vessel such as the Seminole.

A. Well on the assumption that the rivets were close enough, that there would be no objection to that, it would be quite adequate fastening.

Q. You think under the circumstances stated in the question, supplemented by your addenda—

A. Where it is close enough, that would be adequate.

Q. You think then that such would be good practice?

A. Yes, sir, standard practice.

Q. Now then in the process of caulking, will you tell me whether it is or is not necessary, by the use of the caulking tool or iron, and the force applied to it, to bend, drive or push the metal of one plate up against the metal of the other plate?

A. It would be good practice to do that, to caulk it.

Q. I don't think I asked you that question; will you read the question?

(The question was read by the reporter.)

A. It is not necessary; it is not essential to do it, if the tank can be made adequately strong without that.

Q. But I say, when it is caulked, the process of caulking involves the driving or pushing the metal over, of one plate over against the other, or the pushing of the metal of the two plates together, doesn't it?

A. Yes, sir, that is what caulking is.

Q. Now then in so doing, is it possible in your judgment to accomplish that result without leaving a mark of the caulking iron upon the metal?

A. Yes, sir.

Q. Now do I understand you correctly to say that it is possible to drive that metal over, and still leave no mark of the iron?

A. Yes, sir.

Q. Now then would you tell me how it is possible to do that, without leaving a mark of the iron?

A. It merely takes a neat workman. My sketch—

Q. Which exhibit? That is Exhibit 161, is it?

Mr. Anderson:

Yes.

Q. All right.

A. My exhibit, 161, I have sketched a plate that is caulked, that would show an extremely small trace of the caulking iron. If we had dressed this plate back, that could have been brought down vertical, no space whatever. I can show you a great many tanks where you cannot tell they have been caulked, but they have been; a very great number.

Q. Now in referring to your sketch, as I understood you, you stated that as illustrated by this sketch, this could be done with little trace of the caulking iron. I understood you to say that?

A. It could be done with little or no trace; it would probably be more tedious.

Q. Then your assertion is that it can be done and leave no trace?

A. Yes, sir.

Q. In this process of caulking as illustrated by your sketch, Exhibit 161, and explained verbally, you take a metal, and probably a steel caulking iron, and place that against the seam to be caulked, at the point where it is to be caulked, and then strike on the other end of it with a hammer; is that the process?

A. Not necessarily against the seam at all times. It winds up against the seam, but you spread the end of the plate at an area between the enveloping plate and the middle of the—or seam section of the enveloping plate.

Q. And the force of this caulking iron then, driving against the end of one plate, spreads the metal of it?

A. Yes, sir.

Q. And do I understand you to say that that metal can be struck with sufficient force to spread it?

A. Yes, sir.

Q. And without leaving the slightest mark of that caulking iron?

A. Yes, sir.

Q. The metal of the end where the caulking iron is applied, is to some extent, displaced or transferred in location, is it not?

A. Yes, sir.

Q. And you say that that can be done by the force of a blow applied to it, through the medium of a caulking iron, and leave no mark whatever?

A. Yes, sir. There may be many blows.

Q. And those blows push the metal from one place to another, and leave no mark of the iron there?

A. Yes, sir.

Q. Then your testimony is, if I understand you correctly, that a seam could be caulked its entire length and leave no mark of the caulking iron?

A. A smooth seam can be, yes, sir.

Q. You are familiar with a metal shear; I don't know whether I use the proper term or not, but it is a metal device that shears through iron?

A. Familiar with a great many forms of it; they are quite varied.

Q. Is the metal shear—is that the proper term? A shear, do they call it?

A. Yes, sir, a shear.

Q. Now then when metal is sheared, how is that—will you tell me how that is done with the metal shear?

A. Yes, sir. The shear is a knife, which is somewhat like the edge of a table,—of this desk. Another knife, like the edge of another table, comes down and just grazes it. As the plate projects over the bottom knife, the other knife comes down and puts a pressure on the plate. The plate gives way, between the two, under what is known as shear, and the plate falls. Most shears work straight this way, and continue the shearing, first one edge, and then they go to the other; one form of shear.

Q. Is that the usual form of shear that would be used for cutting metal such as is used for a tank of this kind?

A. Well that is the element of most shears. There are other kinds of shears.

Q. Now then does not this shear leave at least microscopic marks across the edge of the sheared metal—or the sheared edge of the metal, I would say?

A. Well you can cut a plate with no—it may be the microscope will show it, but the eye could never detect

it, if it was done well; and the way it is once started, it practically holds its alignment so it is very difficult to change it from a straight line, or such a line as is fixed. One plate—

Q. The metal that is being sheared is held in a clamp of some sort so it is held firmly, is it?

A. I don't think these are—that is a form of shear; there is a clamp that comes down like this, you can screw it as strongly or as firmly or as loosely as you like. The usual practice, it comes down to where it is fairly loose.

(Discussion was had off the record.)

The Witness:

You asked me to describe the shearing process?.

Q. Yes, and I was merely suggesting that if you had in mind, in answering that question, to put it in a form so that the Court can understand the technical features of it, if you want to add anything I would be glad to have you do it, otherwise I am satisfied to leave it as it is. It is with you.

A. Would you mind telling me which shear it is you want me to describe?

Q. Well I would suggest that you describe such a type of metal shear as in your judgment would be customarily used to cut metal such as was used in the tanks of the Seminole; I think that might be well.

A. It is my opinion that the tank of the Seminole was built in a small shop. If they were built in a large shop, a plate would come down—a clamp would come down on the plate and it would be sheared with one stroke, straight, and it would be in a perfectly straight line—that is, each plate. Those dished pads were probably made by some concern specializing in making heads; they were either punched as discs, or cut on a rotary

shear. The rotary shear, the square plate or the piece of steel is put in a clamp, and there are two rollers, one rolling just by the other, set in motion, and the plate was whirled and that cut the heads out in the form of discs. These were put in presses and were pressed into the shape that we saw them in these tanks.

Q. I was going to ask, when would—in what stage would the holes be punched?

A. The holes would be punched in the heads after the discs were made—after the discs were pressed.

Q. In other words, after they were pressed into their shape—

A. They would be punched.

Q. Then they would be later punched?

A. Punched or drilled, but in this case I think, punched.

Q. Now then the side seams in these tanks, can you give us any ideas as to how those were cut or formed?

A. They would be cut in a large shop with a straight shear; in a small shop, with what is known as a punching shear, which is a very rapid working tool, which cuts it about anywhere from four to ten inches at a time. As the plate comes under the discs—

Q. The plate is fed into the machine and it cuts it in more than one stroke?

A. Yes, sir; that is, if it is a small shop machine. (Illustrating.)

Q. Now then in that sort of a cutting, isn't a rather rough edge left where it is cut?

A. That is not necessarily. The plate that hangs down, acts as a guide against the edge of the plate that remains stationary,—the edge of the knife that remains stationary.

Q. But wouldn't there, in looking at that edge where it had been cut, wouldn't there be evidence in places of the knife's edge in cutting through? Wouldn't there be marks?

A. With any kind of a proper shear that would never occur; it wouldn't occur—it would be unusual.

Q. Do I understand it that these tanks, such as were in the Seminole, that if the plates were cut in some such manner as you have indicated, that in your opinion these plates could have been caulked and no evidence whatever of the impact of the caulking iron left on the plates?

A. I think that would have been a possibility.

Q. Now then I believe you have testified that in your judgment all of the seams of the Seminole—I will say the vertical seams of the Seminole tanks were caulked both inside and out; is that correct?

A. Yes.

Q. Can you point out on any of the samples that we have here, which would be 156, 157, 159 and 160,—can you point out on those seams any place where you can say beyond any question of doubt, that a mark is there which was the mark of a caulking iron and could not be the mark of anything else? Can you find one such point?

A. I can't say that any caulking iron mark could not have been made by something else. I can say—

Q. Can you point out what you say is a caulking iron mark?

A. I will say, this first plate I pick up—

Mr. Underwood:

One fifty six.

Q. Yes, right; one fifty six. Now then, will you take my pencil and point on that plate to some place that there is a mark of a caulking iron? You say, the entire seam?

A. Yes.

Mr. Underwood:

Witness indicates the length of the lower edge of the upper piece of plate, viewed from the convex side.

Mr. Botts:

I think, if I understand what you mean, why I think that is correct.

Q. At any rate, the figures 4-A in red on Exhibit 156; are on the outside walls of that tank,—of that segment of tank; is that correct?

A. Yes, sir.

Q. Now the plate in which the riveted head shows from the outside, I will call the upper plate; and it overlaps on what I will call the lower plate, reading so that the figures 4 and "a" are upright. And the place where you say the caulking iron shows, as I understand it, is in the lower edge of the upper plate adjacent to where the plate comes closest to the lower plate; is that correct?

A. Yes, sir.

Q. Now the purpose of caulking as I understand it, is to close the metal of the two plates together, so that if by inadvertence the rivets have not pulled them completely together, the caulking will do so; is that right?

A. That is one of the purposes, the usual purpose.

Q. Now then in the case of the plate, 4-A.

Mr. Dyer:

Exhibit 156.

Q. I should say, 156; I call your attention to the fact that at the fourth full rivet from the right-hand side—from the left hand side, I can insert my knife point an appreciable distance under the plate; and in a number of other plates along there I can insert my knife point under the plate. Would you say that in the particular case of caulking, if it was caulked, that the caulking was effective to produce the desired results?

A. I cannot tell you, because this has gone under a damaging process since it was caulked; the weather and the very terrific fire; the evidence of tremendous heat.

Q. Well let's get that point of tremendous heat; just a minute. Referring to Exhibit 5-W, my understanding

from your testimony yesterday was that by this terrific heat, the major portion of the galvanizing had been burned or feathered or melted off of the inside of that plate; is that a correct recollection of your testimony?

A. My testimony related in general to an inspection of all of the tanks. Some of them were very much more damaged than others. I don't know which tank this was, but this shows evidence of some deterioration from the elements.

Q. Look at that memorandum, see if that—

A. That is tank Four, which I think is one of the best tanks that we had,—or that which suffered least from fire.

Q. And can you tell me what part of the tank that was cut from?

A. Yes, sir; this is a part that was cut, with very little heat.

Q. This is cut two and a half feet above the bottom, was it not?

A. Yes, sir.

Q. I call your attention to Exhibit 5-V; would you say that there was more or less applied to 5-V than there was to 5-W?

A. Oh yes, there was very much more heat applied to this plate, because you can see the galvanizing is not only crazed, warped, but destroyed,—melted away.

Q. Then in 5-V your testimony is 5-V was subjected to a very much more severe heat than 5-W?

A. Yes, sir.

Q. And that the galvanizing on 5-V has been practically destroyed?

A. Well it has been destroyed in quite a number of instances. There is still some on there.

Q. Still some on there, but not much?

A. Yes, sir.

Mr. Underwood:
Is that question about the exterior surface?

Mr. Botts:
Both.

A. This is tank Four.

(By Mr. Botts):
Q. I call your attention to Exhibit 160 and I will ask you to look on the inside of it, and ask you if the galvanizing is still on the inside of that tank,—of that segment of the tank, I should say?
A. Yes, sir; there is some galvanizing here.
Q. I will ask you whether or not there is more galvanizing, in your judgment, on 5-V, 5-W, or 160?
A. I would say that these two are about the same.

Mr. Underwood:
Indicating 5-W and 160.

Q. Is there any more galvanizing, in your judgment, on 5-W or on 160?
A. I don't think I could answer that, Mr. Botts.
Q. You wouldn't want to express an opinion on it?
A. No, sir; this has recently had some particular scale that has pulled off of it; looks extremely bright, but how thick that is I don't know; or whether the nature of this compound that seems to have protected it here, and been totally absent in protective effects over here.
Q. All right, that gets to the next question I was going to ask. About three or four inches above the seam, or to one side of the seam, on the inside, there appears to be a very substantial amount of the galvanizing left; isn't that true?
A. No; I don't know how thick that is. Whatever it is, it has only recently been exposed to the atmosphere.

due to cracking here. On this side it does not seem to be galvanized at all; black iron. It may be at that spot; most of that black is a stain, I think; I don't know what it is.

Q. What do you say, at the point you have scraped off, is that galvanizing left there?

A. It looks like the zinc, to me.

Q. Now then will you scrape down between the rivets and see if there is any galvanizing there. It is steel?

A. It is steel, but it doesn't show up like the rest of it. I am inclined to think that that is a very thin coat of galvanizing there; it is apparently pressing right against steel, when you try to cut it.

Q. I will ask you to take the surface of 5-X, and on what would be the inside,—on what would have been as I understand it, the inside of the bottom of the tank, and I will ask you to examine that surface for the remainder of galvanizing.

A. I think there is very little galvanizing there.

Q. In other words your opinion is that on 160 there is appreciably more galvanizing than there is on 5-X, is that right?

A. Possibly.

Q. Well, give me your opinion now. You have stated there was considerable on one and very little on the other. Is it your opinion that plate 160 has more galvanizing than 5-X?

A. I didn't state there was considerable; I said in my opinion there was an extremely well-knit, very thin coat of zinc on it.

Q. Now I am asking you if you will make a comparison, in your opinion—

A. I think there is more here than here, per square inch. Per square inch, I think there is more.

Q. Eliminating rusted portions near the seam, as I understand your testimony, there is more galvanizing on one sixty than there is on 5-X?

A. Yes, sir.

Q. 5-X came from the bottom of some one of the tanks, I don't know which tank.

A. I think that's Number Four.

Mr. Anderson:

That's right, that is the one that wasn't painted.

Q. Have you got which one came from the bottom of tank Two? Let's see, here. I will ask you to scrape the shell on 5-Z and tell me, is there more zinc on 5-Z per square inch than on 160,—more or less?

A. There is less on this, and this; less on 5-Z.

Q. There is less zinc per square inch on 5-Z than there is on 160?

A. Yes, sir.

Q. Now then 5-Z came from the extreme bottom of tank Number Two, didn't it?

A. Yes, sir; I don't know about that. It is so marked.

Q. And 160 came from in the middle of tank Two, did it not—from the middle of the side wall?

A. I don't know what tank it came from.

Q. Well you saw it cut this morning.

Mr. Matteson:

What number?

Mr. Botts:

One sixty; 2-A came from that tank outside.

Q. Then as I understood your testimony yesterday, you accounted for the absence of zinc on these plates by the very great heat to which they had been subjected; is that right?

A. I may have said that that had something to do with the absence of zinc, but there were other things that took the zinc off. Much of that zinc has been taken off—whatever the number of that is.

Q. What else besides heat took that zinc off, in your judgment?

A. In my judgment? Corrosion elements operating over a period of years.

Q. Then will you offer your explanation as to why the side wall of the tank, half-way up, on tank Two, has considerably more zinc on it than the bottom member of the same tank? Was it heat that caused the difference, or what? You name it.

A. I could study that problem, but I have no explanation for it.

Q. You have no explanation for it at this time?

A. The fact that it has apparently more zinc.

Q. Am I correct in my recollection that on yesterday you accounted for the absence of zinc on the side walls of these tanks, by fire, and in support of that theory you stated that you found molten zinc in the bottom of the tank?

A. Yes, that is true.

Q. All right, then is it true that on yesterday your substantial explanation of the absence of zinc, on these tanks was predicated upon the heat which had been applied to them?

A. Yes.

Q. All right. Then assuming that your answer yesterday was correct, how do you explain—is there any explanation, as to less zinc on 5-X than on 2-A, other than the fact that 5-X was subjected to greater heat than 2-A—I mean 160?

A. One should know the complete history. It is entirely possible for instance that this tank, for a long period of years, had a liquid in it that was corrosive, and that the top of the tank did not have. There are many things that might have happened. The fact, however, that the zinc is not gone from that tank, we know definitely that one reason it isn't gone is because the heat

was not as intense as it was on the tank that is all mottled and burned off. It was probably not as intense on that as on the other tanks.

Q. Then the probabilities are that for some local reason, Exhibit 160 was subjected to less heat than the other tanks; is that right?

A. It may have been. Or it may have been that these plates were even made up, coming out of the mill supply house, had a different quality of zinc,—a different method of galvanizing. We often have stuff returned to us to do over, and in all galvanizing plants. I think we have the only galvanizing plant in the state.

Q. In your judgment, was plate 160 subjected to a very high degree of heat such as you have referred to, with reference to other portions of other tanks?

A. Where did this come from?

Q. This was the one that was cut out of that side in the middle,—the one the picture was taken of.

A. I think it was subjected to a very high degree of heat.

Q. You think that was subjected to a very high degree of heat?

A. Yes, sir.

Q. And yet the galvanizing was not taken off?

A. I don't see that the point at which every bit of the galvanizing is taken off, is necessarily so very much greater than that at which it does not melt. The melting point,—which is illustrated in—

Q. All right, is there more galvanizing on 5-W or on 160, referring to the inside walls?

A. They seem to be pretty much the same.

Q. You think they are about the same?

A. They look like.

Q. Would you say there was any appreciable difference between the two?

A. Not a very great deal.

Q. Well is there any, in your judgment?

A. As an indication of heat?

Q. No; I am asking you now for the quantity of galvanizing that is left.

A. I think that this plate, the middle plate, had quite as much.

Q. 160 has as much or more?

A. That's right.

Q. Probably if there is any difference, there is more on 160, isn't that true?

A. Yes.

Q. And yet 5-W came from towards the bottom of the tank?

A. Of a different tank.

Q. Of a different tank, yes; and 5-X came from the bottom of the same tank, and there is less galvanizing on that?

A. Yes, sir.

Q. Then is it true, from your observation, that towards the bottom of the tanks, irrespective of an assumed less heat being applied there, how do you explain that more galvanizing is absent?

A. It is a very simple explanation; that that there is every degree of galvanizing in the world; hot pressed; the hot system, which all of these are; the hot dip system; and the amount of galvanizing varies tremendously. You could put four ounces to the square foot, where you would probably run up to sixteen ounces to the square foot. The amount of galvanizing on this plate would have to be known before you could—

Q. Take Exhibit 5-X and look at the segment of the side wall of 5-X, and tell me how the galvanizing stands up there, if there is any?

A. There may be none left there.

Q. You are aware that in tank Two the side walls were made of two segments, aren't you,—riveted together?

A. Two plates.

Q. Two plates?

A. I think all of the tanks were made that way.

Q. Then the side wall segment of 5-X must have come from one or the other plate of which a segment appears in Exhibit 160, is that true?

A. Do you mean, these are from the same tank?

Q. Umh hmh.

Mr. Underwood:

That is Four, Mr. Botts, and this is Number Two.

Mr. Botts:

A minute ago they told me 5-X was from tank—all right.

Q. We will take 5-Z, then, they tell me now; I will ask you to examine the side wall segment in 5-Z for galvanizing, if you don't mind. The side wall there of 5-Z, examine it, if you don't mind, for galvanizing. Is there more or less galvanizing on the side wall segment of 5-Z or the segments of 160?

A. There is less on this lower section.

Q. There is less on this lower section. Now you will concede that this lower section must be cut from the same piece of steel that either one or the other of these segments in 160 were?

A. Yes, sir; I think so.

Q. And yet the lower section has less galvanizing on it than the upper section?

A. Yes, sir.

Q. Notwithstanding the fact you say the upper section was subjected to terrific heat?

A. Quite true.

Q. How do you explain that?

A. Because the one that has taken this off—

Q. You refer to the side wall of 5-Z?

A. That is right, is perhaps one agent or cause; other than heat.

Q. Will you please explain what theory you have as to what agent that was?

A. That might have been some corrosive elements that would tend to absorb the zinc.

Q. Then you propound the theory now with reference to that, that there was some corrosive force at work on the bottom of these tanks that did not operate high on the wall, is that it?

A. No.

Q. Then what was the corrosive force that took the galvanizing off the bottom portion of tank Number Two?

A. The time they were laid up, they might have been left empty; there was probably some moisture down in there, I think the water that would be left in there; and as the air would come in and out, it might have first worked on the full water up to here, up to the crown of the tank, and then as it evaporated it dropped lower and lower and gave what we call wind and water; and we might have had the forces that would have worked on this section of the tank. Eventually it might have all dried out. It might have been during the many years that that boat was laid up.

Q. Now I will ask you to take this segment, 160, and, eliminating the heat that was applied to the edges in burning it out, I will ask you to point out to me any evidence, if you can, that extreme heat was applied to that plate, or that portion of the plate.

A. Those rivets appear to me as rivets that have been in a very hot fire, and then left to the elements.

Q. Why?

A. The appearance is similar to other matters that have been through fire, that I have detected.

Q. In what respect?

A. In roughness, and in the general appearance.

Q. And why would not that roughness in general appearance apply equally to the inside wall of the plate?

A. This is the inside wall of the plate.

Q. All right, you referred to the rivets, with the evidence of fire; as I understood it, it was that the rivets had this roughness. Now wouldn't that extreme heat have been applied to the side wall adjacent to the rivet, as well as to the rivet?

A. I think there is a lot of evidence that there was heat applied there, because this galvanized plate was probably just prior to the fire,—is now covered with some compound which probably was the result of heat.

Q. Now you are propounding a theory that the scale on the inside of this is the result of heat?

A. Yes, sir.

Q. As an expert, if you propound that theory you must know the basis of some theory that would produce that scale as the result of heat. Will you tell us what that is?

A. I have not been proposed as a chemical expert. I have seen hundreds of fires where tanks that were galvanized and tanks that were examined have looked like one great white snow storm, and the same type of thing that you see there.

Q. Then you don't know in that case whether it was caused by heat or not, do you,—in this case?

A. It has the appearance of similar bits of metal that I have seen exposed to very intense heat.

Q. Now you are talking about the scale that was produced by heat. I want you to tell me why you think it was produced by heat?

A. I would not suggest any specific chemical reaction.

Q. Then your hypothesis in that respect was a mere guess, was it?

A. I don't think it was a mere guess.

Q. Well if you can't give the reason,—I want you to try to give me a reason based upon your expert knowl-

edge as to why heat would cause that,—or, admit that it was a guess. I would like you to do one or the other, if you can.

A. I stated that that is similar to many other metal tanks that I have seen exposed to very hot fires, and therefore makes me believe that that is the result of heat.

Q. And you think that this scale on the inside, then, is a deposit as the result of heat, and not from other causes?

A. Yes.

Q. Now that being true, I call your attention to Exhibit 5:

Mr. Botts:

Mr. Underwood, those are your letters; what is that,—5 what?

Mr. Underwood:

5-Y.

Q. 5-Y; and I will ask you if there isn't a similar scale on the side walls of 5-Y; having in mind the fact that the testimony is that that was cleaned with a metal brush?

A. That seems to me to be quite different.

Q. You say that that greyish brown scale on 5-Y is different in kind from the scale on 160; having in mind the fact that 5-Y had been cleaned with a wire brush, you say those are different?

A. Well you would have to clean this with a wire brush, then I could tell you. I just can't guess at it.

Q. You say now that they are different, do you?

A. They appear to me to be different, from what I can see.

Q. Now I call your attention to 4-B and I will ask you if there is a substantial difference between the scale

or covering, whatever you call it, on Exhibit 157, and on 160?

A. This that you see here is undoubtedly the mud of the river.

Mr. Underwood:
Indicating Exhibit 157.

Q. And you think there is a substantial difference between 157 and 160?

A. In these two?

Q. Yes.

A. Yes, sir; this seems to be mostly mud.

Mr. Underwood:
Indicating 157.

Q. Now you saw the two segments cut this morning, and you are aware, are you not, that one five seven was cut quite as high if not higher up on tank Number One than—on tank Number Four, than 160 was on tank Two, aren't you?

A. I don't know how high this came up.

Q. Well you saw it cut?

A. No, I didn't.

Q. You mean to say you weren't there when that was cut?

A. I was there, all over the place.

Q. You didn't see them when they were cutting that segment out?

A. Not to identify this plate. I would be willing to take your word for it, though, if you tell me where it came from.

Q. Now I call your attention to segment 4-A, Exhibt 156. Is there the same evidence of the same character of scale on 156 and 160?

A. That's different.

Q. It's different?

A. Yes.

Q. Then you say that segment 156 was not subjected to the heat to which segment 160 was subjected; is that right?

A. Possibly. This could go through a pretty terrific fire and still have—come out with that kind of a scale, I think; but those are matters, Mr. Botts, for a chemist,—for chemical analysis.

Q. The point I am trying to develop is, do you know that the scale on the inside of 160 was caused by fire, and the scale on 156 was not caused by fire; or do you know anything about it?

A. I merely stated I have seen metal tanks that have gone through fires and have come out looking similar to that.

Q. And you don't know whether the scale on the inside was caused by the fire, or what, do you?

A. No more than to tell you I have seen tanks come out with that kind of scale, that had been in intense heat.

Q. Do you know, Mr. Gibbs, that the scale on 160, or any other tank that you have seen, was caused by fire?

A. I do know that in other tanks it was, because they were perfectly bright before the fire, and were white after the fire.

Q. White; but this isn't white, is it?

A. Well, greyish.

Q. Now then do you know that the scale on 160 was caused by fire?

Mr. Underwood:

May I interpose an objection, on the ground it is repetitious.

Q. You may answer the question.

A. I merely state that in my opinion it was caused by fire.

Q. But you don't know, and you are not a chemist, don't know it from a chemical standpoint, do you? You are not a chemist are you? Don't pose as an expert chemist?

A. No.

Q. Then from a chemical standpoint you don't know whether that could be or was caused by fire?

A. From a chemical standpoint, no analysis has been made to make any proof.

Q. And from a chemical standpoint you don't know that that scale was caused by heat, do you?

A. It is my opinion it was, based on my observation of other tanks exposed to heat; galvanized tanks exposed to heat.

Q. Mr. Gibbs, I don't think you have answered the question. Would you read the question to him and see if that is—if he feels that he has answered that particular question?

(Preceding testimony was read, including the question, "And from a chemical standpoint you don't know that that scale was caused by heat, do you"?)

A. No.

Q. Then your hypothesis in that connection was not based upon any scientific knowledge, was it?

A. Why it was based on scientific knowledge.

Q. As a chemist?

A. No.

Q. As a metallurgist?

A. As one who has studied metallurgy, but not as a metallurgy expert; not as an expert in metallurgy.

Q. You don't pose as an expert in metallurgy, do you?

A. No, but I do pose as having a general knowledge of metallurgy; I have studied it.

Q. Then from your general knowledge of metallurgy, do you predicate your assumption that this scale was caused by heat,—on your knowledge of metallurgy?

A. Yes.

Q. And what theory of metallurgy do you refer to?

A. The theory that in a conflagration of this kind, certain elements under intense heat form certain scales.

Q. All right. Now then, do you have any knowledge as a metallurgist that heat applied to a galvanized surface will cause the character of scale that we have here? As a metallurgist; do you have any knowledge of any such theory?

A. Oh, I have a general knowledge. I have seen many salts formed from zinc, with the by-acids,—as a metallurgist; which have the same color as those.

Q. Is this, in your opinion as a metallurgist—is this a salt that appears as a result of heat?

A. I have no opinion as a metallurgist; but my knowledge of metallurgy leads me to believe that that is a scale that is caused by the action of heat and other elements.

Q. Well then as a metallurgist you are not prepared to state by what reaction that heat was caused, are you?

A. Not without consulting a chemist or attempting to analyze that myself.

Q. And as a chemist you can't propound the theory on which that scale would arise, can you?

A. With such knowledge as a mechanical engineer has of chemistry, causes me to feel that that scale which has formed on other materials, could form there.

Q. Now from your knowledge as a mechanical engineer, do you refer to your knowledge of chemistry?

A. I said, such chemical knowledge as a mechanical engineer has.

Q. All right. Now what is the chemical knowledge to which you refer in connection with that scale?

A. That which I have already told you; that zinc, for instance, there are certain salts that have—

Q. What salts; don't say, certain salts.

A. I don't remember; I am a mechanical engineer. But I do remember that there are certain salts.

Q. I am trying to find out whether you are testifying as an expert who knows the chemical reaction, or whether you are risking a guess that this might be, that any unexpert person might make?

A. I am not risking any guess; I am giving you the benefit of an opinion based on my experience.

Q. All right. Then your opinion is not as a chemist, nor as a metallurgist, but on experience?

A. As a mechanical engineer.

Q. Then your answer is not predicated in any way upon your expert engineering education, but upon what you have seen from a practical standpoint, that a high school student might have observed; is that right?

A. Not at all.

Q. I want you to point out to me wherein your expert knowledge tells you that, if all you know is that you have seen it on other tanks?

A. I cannot add to the information that I have given you on that subject.

Q. Well now then, so far as I recall, you didn't give me any opinion except a guess. Now will you tell me what information you have given me on that subject? Just repeat what information you have given me that was not a pure guess.

A. I have stated that as a mechanical engineer I have come in contact with fires, where tanks covered with zinc have been subjected to great heat; that I have seen colors which are quite similar to those; that those colors are regarded by me as normal, because in my studies

I have learned that certain reagents bring about certain colors, with zinc. What those reagents are, I do not remember; but I, being a mechanical engineer, having gone through those courses, I can state that scientifically they can be accounted for.

Q. Now you mean to propound the theory that you know as an expert, by reason of your study of metallurgy and chemistry, that fire applied to a zinc——a galvanized plate, will produce a scale such as we have on plate 160?

A. I did not say that

Q. Well then wherein does your expert knowledge give you any advantage over what you might have observed had you not had that experience? If you can't give the reaction, how do you know that it was caused by a reaction?

A. Because I have seen the reaction repeatedly; but because I do not remember the exact reagent, does not mean that I cannot swear that such a thing—a reaction, has not been caused on that plate.

Q. Then to get down to simple words, you don't know what caused it, do you?

A. I do know.

Q. Well then, tell us.

A. I have told you, that in my opinion that was caused by great heat; and I have given you my reasons. I can give you no more.

Q. All right; I thought so.

(Following discussion as to further procedure, at 5:58 o'clock P. M., recessed until 6:15 P. M. of the same day, to-wit, November 22nd, 1939.)

Evening Session.

November 22nd, 1939, 6:28 o'clock p. m.

Hearing was reconvened pursuant to recess, and the witness GEORGE W. GIBBS resumed the stand and further testified as follows upon continued cross examination.

By Mr. Botts:

Q. Mr. Gibbs, referring to Exhibit 159, which is the exhibit, the inside edge of the plate, you testified was in your opinion caulked its entire length; am I right?

A. I think that one, the record will have to show; I can't say now.

Q. That is true?

A. That is one; yes, sir.

Q. In caulking that plate, the caulking iron such as you have described, would be placed against the edge of the plate, and tapped with a hammer, and moved to successive locations; is that right?

A. It would be an iron with a greater angle edge than the one on Exhibit 162.

Q. Well irrespective of the size or character of the caulking iron, the end of the caulking iron would be placed against the edge of the plate?

A. Yes, sir.

Q. And struck with a hammer, and moved along to successive locations, so it would cover the entire length of the plate?

A. Yes, sir; that is right.

Q. Now will you please explain whether or not in your opinion the outside seam of Exhibit 160, as shown, was caulked?

A. Yes, sir, with an iron quite similar to the one that the plate you have just exhibited to me was caulked with.

Q. Now then the edge of the seam was not in that instance closed down, was it?

A. Yes, sir; it was.

Q. Now can you see the mark of the caulking iron along the edge of the outside seam in Exhibit 160?

A. This is 160?

Q. Yes.

A. The outside one.

Q. Can you see the marks of the caulking iron along that seam?

A. Yes, sir; just as in the last one.

Q. And it was moved along successively from end to end?

A. Yes, sir.

Q. When it got to the offset at the edge—

A. It draws right in and tended to mash a place from here to here; and this thing is cocked up, and confirms my opinion.

Q. Then that iron was driven along.

A. It was driven along to the place which has the appearance of a slip with the shear, and lifted that particular place up.

Q. You observe, do you not that the upper plate is lifted away from the lower plate?

A. Yes, sir.

Q. If that plate was caulked, how do you account for that condition?

A. Well I think where the end of the iron, it was down to the—the rivets held it down and that did bring the contact, and that the heat is the thing that has caused this condition now—he heat and the action of the elements.

Mr. Botts:

That is all.

By Mr. Matteson:

Q. Mr. Gibbs, you have heard of chipping of steel vessels, have you not?

A. Yes, sir.

Q. And that is done in preparation for painting, is it not?

A. Yes, sir.

Q. And the chipping is to take the rust off, is it not?

A. Yes, sir.

Q. Well why would that be necessary, if rust when covered by paint is a protective seal?

A. I don't claim that rust is a protective seal at all times. But it would be particularly necessary to take the rust off there, because the rust is subjected to moisture,—moisture of the sea.

Q. If it were covered with paint, it would not be so?

A. The rust? Well there would be the moisture inside; it may be that you could put a coat of oil on the—in fact that has been done, to some extent, with a certain kind of new oil that has come out; it is put into the rust. It hasn't been in use long enough for me to tell you the results.

Q. Will you tell me what that oil is?

A. It is made of a fish oil; where you paint right through the rust.

Q. What is the name of it?

A. I don't know, sir. A salesman came to us with it.

Q. Do you mean to tell us that that sort of paint is put on over rust?

A. I say, experiments are being made with it. There are very few experiments, Mr. Matteson; the man who is making an expensive ship, at a big cost of scaling and painting, in the actual handling of the ship,—the matter of using for protective coat in connection with oil, hasn't been in general practice.

Q. Then I gather that you agree that until quite recently, that this fish oil you speak of has come on the

market, that it has been the universal practice to chip and remove the rust from steel vessels before they are painted?

A. Yes, sir; that is true; I think it is due to the fact that the moisture is there, and the fact that rust is a very rough thing, and that the smoothness of the ship is in dollars and cents.

Q. Well if rust were smoothly covered over with paint, so that it made a protective seal, there would only be a limited quantity of moisture underneath, wouldn't there?

A. It might be done, but on a ship you couldn't depend on a protective area, because they are subject to scraping, the whole bottom will come up, a channel may touch the bottom. I don't think that that would be practical on a ship.

Q. Well it is just as customary to chip the interior part of a ship before painting, as it is the exterior, isn't it?

A. Yes, it is.

Q. And there is no danger of such contacts there?

A. No, there wouldn't be. I say it is not customary; whether it would be good or not. But it is not customary.

Q. It is not customary to what?

A. It is not customary to leave rust on a ship anywhere.

Q. And the reason it is taken off before painting is to prevent further corrosion, is it not?

A. Well yes, that is one of the methods of preventing it; the principal method in use.

Mr. Matteson:

That is all.

Re-Direct Examination.

By Mr. Underwood:

Q. Mr. Gibbs, you were asked about the effect of heat on boiler plate as compared to the effect of heat on the plates of these tanks. Do you have some further explanation you would like to make as to the difference, if any, between the two?

A. Yes, sir. Heat applied to a boiler is applied in a very special way, through the fire-box; sometimes protected with fire brick, or water-cooled furnaces, or one thing or another depending on the design of the boiler. Inside of the boiler there is water, which prevents the temperatures from ever reaching the boiler—that portion of the boiler that this would be made of—that would be made of this material, from reaching a temperature higher than the temperature of the water at the pressure to which it is heated.

Q. Have you ever seen a boiler that has been subjected to fire without water in it?

A. Yes, sir.

Q. Will you tell us whether or not that resembled these plates?

A. It is usually a wreck.

Q. Does it resemble in any way the remains of the Seminole's tanks?

A. Yes, sir; the plates would be warped and distorted, and if the heat were great enough the tops would fail out of it.

Q. The reason for that is what?

A. Due to the fact that the temperatures had been raised to a very high degree in a fire, and where—and due to the fact that this same boiler was designed to be subjected to temperatures no greater than the temperature of the water at the pressure in which it was designed to work. I do not refer, however, to certain sections of the fire-box or smokestack.

Q. Mr. Gibbs, I call your attention to the rivet heads on sections of the tanks, from the bottom of number two, and number three, Exhibits 5-Z and 6-A respectively. You observe that difference in the heads?

A. Yes, sir; I do.

Q. Can you express with reasonable certainty any opinion as to whether or not the heads of the rivets from number three tank were ever in the same condition as to size, as the heads of rivets in the other?

A. In number four tank?

Q. The one with Four on it; it is number three tank.

A. I think these were ones the same as these.

Q. You mean that the rivets—heads of the rivets in number three, were the ones the same as the other?

A. I think they popped off.

Q. Due to what?

A. Due to the heat, and some corrosion which has—but principally to the period when they were actually exposed to the—to some condition which caused the corrosion under the heads, or in the crevice of the head. I notice some of these rivets have been—this for instance showed fissures in here.

Q. Did you notice—

A. I think when they were cut down over here, the person who put them in, the rivets swelled, as it was, and the rivet was cut down over here, perhaps not a seal, and that the fissure—corrosion set in there and the tension of the rivet caused that head to pop off when the compression of the head was resisted by the tension at this point, pushing it away when that section was released.

Q. Did you observe any other indications—

A. Or reduced to a point where it could not hold.

Q. Did you observe any other indications on the tanks as to the comparative effect of fire, between number three tank and the others?

A. There seemed to be a mark on all the tanks that would indicate very different treatment had been administered to the tanks by the elements; fire principally.

Q. Did you note the comparative height of the remaining solder on the side seams of the tanks?

A. It seemed to be about the same in all, and the presence of solder in a perfect condition would indicate that very low temperatures had always been present in the lower part of that tank.

Q. I just want to shorten this as much as I can, Mr. Gibbs. Did you notice the comparative height of the remaining solder on the side seams of the tanks, as between number three tank on the one hand, and the other tanks on the other hand?

A. It was about the same.

Q. Do you remember how high the solder went up?

A. I think about twenty inches.

Q. And what is your recollection as to how high it went on number three tank?

A. I think there was very—only traces of solder, as I recall.

Q. In the side seam?

A. Yes, sir.

Q. Well does that have any bearing on your answer as to the effect of the fire on the rivet heads of number three tank, and the temperature, as compared with the rivet heads on the other tanks?

A. Yes, I would understand from that, that number three tank had been subject to the same heat at the top as the other tanks had been subject to; and that had been the one tank that was not protected by whatever did hold the temperature down on the other three tanks, as evidenced by the solder, with a known melting point.

Q. You were asked something about the difference between plain necked rivets and rivets with taper necks. In your opinion, were rivets with plain necks, adequate for tanks of this type?—for such use?

A. I would have thought that a preferable rivet for this particular job, in my opinion.

Q. Several aspects of these tanks have been called to your attention; for example, instances where the rivets are said to be in holes that are not concentric, and other such things. Will you tell us, in your opinion, from all that you have seen of these tanks, including the cutting of the pieces out of them today, and your examination of the pieces, whether in your opinion they were reasonably adequate for the purpose, before the fire?

A. I should say they were entirely adequate and perfectly safe.

Mr. Underwood:

That is all.

Re-Cross Examination.

By Mr. Botts:

Q. There is one question that I forgot to ask. I dislike to get back to this scale with Mr. Gibbs, on 160. My understanding is from you that you propound the theory that the scale that appears on the inside of this Exhibit 160, was a scale caused by some chemical reaction due to the combination of the fire and the galvanized surface of that tank; is that correct?

A. Yes, sir.

Q. Now then in your judgment, the heat—I mean the scale, would not have occurred but for the heat; is that correct?

A. That is my opinion.

Q. And that the scale would not have occurred but for the galvanizing; is that correct?

A. Not entirely, although I think—I believe that that was the way it was done; that the zinc had a very—probably was the responsible agent.

Q. Then you definitely propound as your expert opinion, that this particular scale on those galvanized surfaces is the result of a combination of the existence of that galvanized surface, plus the adding of heat; is that right?

A. Yes, sir; not as a metallurgist, but as an engineer who has spent a great deal of time around machinery.

Q. Well that is the theory you propound; you don't pretend to know what the chemical reaction was that created it; is that right?

A. No, sir, I am only suspicious of it.

Q. I think you will concede that the same or greater heat was applied on the inside—that the same or greater heat was applied on the outside of that tank, that was applied on the inside, wouldn't you, at the same point?

A. I could not tell that, sir; because on the outside you had radiation coming to your aid, and on the inside you did not.

Q. Do you mean to say that at this point the inside of that tank was hotter than it was on the outside just opposite that?

A. It depends upon where the fire might have been at on this side of the tank.

Q. But this is the inside of the tank.

A. That is a factor handicapping the coolness of it, and that is a factor that is not subject—cannot be regulated.

Q. Do you assert that the inside wall of that tank might have been hotter than the outside immediately opposite to it?

A. The inside might have been hotter; yes, sir.

Q. You think that is possible?

A. Very possible. Heat could get there by conduction; it would go through the entire plate.

Q. Wouldn't the heat in this 3/16ths inch plate—wouldn't the difference in the temperature on one side of the 3/16ths plate and the exactly opposite point on the outside,—wouldn't the difference in temperature be impossible to gauge?

A. No.

Q. You think there could be a difference, an appreciable difference in that temperature, one side of the plate over the other?

A. Yes, sir; there could.

Q. In a plate 3/16ths inch thick?

A. Yes, sir.

Q. Now will you explain to us, if that heat was applied and that scale was caused by heat plus the galvanized surface, why there is none of that scale on the outside of that same plate?

A. Yes, sir; very gladly tell you. This opinion is based on my general knowledge as an engineer. There may have been all kinds of reaction to the enclosed tank, that wouldn't have existed on the outside of the tank. One of your principal reagents is oxygen, and the elements of the air, which might not have existed to the proper extent inside of the tank. Also there may have been gases inside of the tank that were not outside of the tank.

Q. Well then I was very careful to get you to propound your theory that it was caused by heat plus galvanized surface, and you gave nothing else. Now then when I call your attention to the fact that the same reaction didn't occur on the outside galvanizing of that same plate, is that the first time this added chemical reagent has occurred to you?

A. I have learned a great deal of chemistry from you, sir.

Q. You will do well if you learn chemistry from me, because I don't propose to know any.

A. But my general knowledge as a mechanical engineer shows me that one reaction would happen inside of a cauldron and another one outside; that the important factors in any reaction are the constituents of the mixture, or the reagents.

Q. Then you want to add now to the reagents which operated on the side of the tank, the gas that was inside of the tank?

A. No, Mr. Botts, I wish to state clearly that I am not a chemist, and that I only know that the answer to exactly what is on the inside of that, can only be gotten accurately, chemically, by a chemist; and that the sole statement that I have to make is that the—what exists inside, in my opinion, has little to do with what exists outside, as both of them had unknown treatments.

Q. Since the same scale was not produced on the outside of that tank, if it was produced in whole or in part as the result of heat and galvanizing, if that were the sole cause, then it would appear on the outside as well as the inside, wouldn't it?

A. I would not say that, because one very important element is oxygen in the air.

Q. Wait a minute.

Mr. Underwood:

I think he ought to be permitted to answer.

Q. Go ahead.

A. You may have a certain reaction in the absence of a catalytic agent, that would be entirely—just wouldn't happen. I would also like to state, Mr. Botts, we seem to have considerable trouble in understanding each other; that many chemical processes might have taken place in that tank, due to the condition that the tank was left in, plus the action of the elements since the fire; and certain chemicals that might have reached the inside or the outside of the tank, from either mud, salt water, lime, or even biological matter; it has even been suggested that the tank might have had some coral formation; I don't think that.

Q. Then do you pretend to offer any definite hypothesis explaining the scale on the inside of the galvanized surface, and not on the outside?

A. No chemical prediction, but merely a statement of fact; that the treatment was entirely different, in all likelihood, on the outside and the inside.

Q. Then am I to understand you to take the position that in order for this scale to be produced, mere heat, and galvanized surfaces, won't produce it, will it?

A. I don't say that, although I think those were the principal factors, in most of the scale that we see there. That is just a guess.

Q. Then do you propound the theory that heat plus galvanized surface, plus gasoline fumes, is necessary?

A. No.

Q. Well, would heat plus galvanized surface plus air—is that your theory?

A. I don't know what was there. I don't know what chemicals are released in the average fire. I merely state that I have seen metals discolored in that same manner, around in a great many fires, places exposed to heat; and I recognize it as the result of heat; and I don't know what the—

Q. The case you refer to, was that heat plus galvanized surface, plus what?—in the other cases?

A. In the other cases I have seen boats gutted with fire, and I have seen galvanized tanks of that color; and I have seen great ice factories which have galvanizing around them, destroyed, and these tanks of the same color—galvanized sheets.

Q. In those ice factory cases, was there any gasoline fumes present?

A. I couldn't say, sir.

Q. Now then as a matter of fact, Mr. Gibbs, isn't it true that this theory that you have propounded with reference to that scale, has no scientific basis of which you are aware, or which you can explain?

A. I would not say that, sir. I say that in my opinion it is based purely on science.

Q. Then would you mind reading, to refresh my memory, that last question?

(Preceding testimony was read by reporter.)

Q. I asked if it was based upon a scientific theory of which you were aware or which you could explain. Now then are you aware of any scientific theory upon which it is predicated?

A. I am only aware that zinc, that I have observed exposed to heat, has left that same color. Also aware that certain zinc—that when zinc is treated with certain reagents it has that same color. That is a scientific deduction. If I were a chemical expert I would refuse to say anything about the plate; I would take it out and tell you definitely what was in it. I am not that, but I am a mechanical engineer, and I have given you my opinion based on such observations as I have made in the past.

Q. Exactly. Then this is not a scientific theory of yours, of which you are aware, but a practical observation which you have made; isn't that true?

A. Mr. Botts, I think it is a scientific—it is an opinion based on pure science. I can tell you for instance the effects of electricity, yet I decidedly do not know what electricity is, and no other man does. However, it is based on a scientific training, that I am able to tell you much about electricity.

Q. Now then this scale on here, you say it is based upon a scientific theory of which you are aware; is that correct?

A. It is based on scientific knowledge that I have, that permits me to state that it is similar to other materials that have become that color after fires.

Q. All right; then this as I understand it, you wish to say that this is a scientific theory of which you are aware; is that right? You are aware of the scientific fact upon which you base that theory, is that correct?

A. Yes.

Q. All right, but you are unable to explain that scientific theory, is that correct?—the Why?

A. I doubt whether there is any chemist in the world that can give you the why of it. He could tell you that certain salts which certain reagents resulted in certain new chemical compounds, but he could only give you his guess, based on observations as to what happened. That is all I can give you. And he is a scientist, and as far as I have expressed an opinion, it is based on such science as my profession enables me to base an opinion on, in that manner.

Q. Well the theory that you propound is that there may be a reagent which may cause that reaction; is that it?

A. Yes, sir.

Q. But you don't know what it is?

A. That is right, sir.

Mr. Botts:

That is all.

By Mr. Matteson:

Q. Mr. Gibbs, these rivets that have been taken out of the tank number four, are not called swell-neck rivets, are they?

A. No, sir.

Q. Do you think they were driven hot or cold?

A. Oh, I think they were driven hot. I can't say about that.

Q. Now you are familiar—

(Preceding testimony was read by reporter.)

Q. You say you can't say definitely?

A. No, sir.

Q. Now you know what the American Bureau of Shipping is, of course?

A. Yes.

Q. And that is the American classification society that sets certain standards with respect to shipbuilding, is it not?

A. For certain ships; just as Lloyd's, if you want it built according to their specifications, you can have the builder build it.

Q. And that applies to repairs as well as building, doesn't it?

A. Only if you want the boat repaired in accordance with those specifications.

Q. The standards set by the American Bureau in that respect are reasonable standards, are they not?

Mr. Underwood:

I object to that on the ground it is too broad.

Q. Do you want to answer the question, Mr. Gibbs?

A. Yes, sir, I would just as soon answer the question. It depends entirely upon what the purpose of the specifications was.

Mr. Underwood:

Let me ask a question for my personal information. Have I gone beyond the boundaries of the Court's statement?

Mr. Matteson:

I guess there is no harm done.

Q. I mean, would you recognize that there were good reasons behind most of their rules—would you not?

A. I think so, sir.

Q. Now I refer to a rule in their publication, under Section 23, under the general head of Riveting and Caulking, which reads: Pan head rivets for use in water-tight work under engines are to be swelled in the neck so as

to fill the countersink due to punching.—Do you agree with that?

A. For certain tanks I think that is a very good idea.

Q. Well this seems to be general in its application with respect to water-tight work. Why do you agree with it generally, and not with respect to these tanks?

A. For the reason, Mr. Matteson, that these are peculiar tanks. They are considerably heavier than the tanks that would be required for the duty that they performed. And they have more rivets than would be required to resist the pressure; and whereas you might get a tank of uniform strength of considerably less weight than this tank, this tank, whether it complies with the American Bureau's Rules or not, is more than ample, in my opinion, for the purpose for which it was intended.

Q. Well the point, I take it, is that you—although this requirement appears in American Bureau's publication, with respect to water-tight work, you think it is unnecessary as far as the Seminole's tanks are concerned, with respect to gasoline tightness?

A. Now that is not my idea at all. I think that these tanks are entirely adequate for the service for which they were used. I can conceive of much finer tanks, but of no greater strength. I might even bring out the fact that when a boat is built, as a rule—a new boat, that it is designed to have the various parts of uniform strength and life; and in this particular instance, tanks with a life considerably longer than the life of the normal tank; were installed in the Seminole.

Q. Now you are also familiar in a general way with the rules and regulations that are put out by Lloyd's Register of Shipping in respect to the construction and repair of vessels, are you not?

A. Not particularly. It is seldom we have to refer to rules of Lloyd's.

Q. I mean Lloyd's is the English society that corresponds with our American Bureau, is it not?

A. I understand it is.

Q. And it sets standards in the same general way that the American Bureau does in this country?

A. I understand that it does.

Q. Now I notice that their rules with respect to riveting, under the head of 'Rules for construction of vessels intended to carry oil in bulk', with respect to riveting, say: Where any unfairness exists in the holes they are to be riemered, not drifted, and larger rivets used in the riemered holes.—Now you say that you disagree with that?

A. Absolutely not, Mr. Matteson. The building of a tanker is a very particular kind of work—piece of work; and the ship is a part of the tank, in most instances; and any great strain on the ship puts a strain on the tank, and that strain could cause a leak which would make the ship be extremely dangerous. And so tankers are the most expensive ships in the world, for their hulls, and you have to put the strongest type of construction in every single section; great bracing, for instance, that would not be necessary in a tank supported in a ship.

Q. Well a provision such as this relates to tightness rather than strength, does it not?

A. That relates to a boat design of interior strength.

Q. You don't think that this provision relates to tightness?

A. Oh I think that relates to tightness and strength; but it also must resist the strains of the ship, which are integral, in my opinion, with the tank. I wouldn't think that any rules there were applicable to this kind of a tank—cylindrical tank inside of a boat.

Q. You have given us various opinions here as to the efficiency of the Seminole's tanks. Now I gather that those opinions are personal with you, rather than based on any standards which are published, to which we could refer; is that right?

A. I merely—my opinions are based on the present conditions of the tanks at this time, with the history of the tanks before me.

Q. Well, there are no published sets of standards to which you could refer, supporting your opinions?

A. As to how long a tank of such a nature will last?

Q. As to the sufficiency of the type, and of rivets, and workmanship on the rivets, and particularly with respect to the use of a drift, and offset rivets, on tanks of this type.

A. There are untold treaties on tanks, their proper construction, and so forth.

Q. Well I don't know of any one that, with respect to gasoline or oil tanks, approves the use of offset holes through the use of reamer—I don't mean a reamer, I mean a drift pin, and the placing of the rivet in on a slant, as has been shown to have been the case on Exhibit 158.

A. Don't know of any one that approves that?

Q. Do you know of any treatise or book or authority to which you could refer us, supporting that practice?

A. No, I don't know of any—the name; not offhand, of a treatise on tank building, that I could refer you to tonight. It is the fact, however, that nearly all work of this kind, punched work, is done with the drift pin; and the fact that that is one of the commonest tank-maker's tools, would certainly lead me to believe, in the building of tanks to carry five or six pounds pressure, that this is the practical way to do it.

Q. Without troubling your memory to refer to some particular work that says some particular thing, could you refer us to a work that you regard as standard with respect to the construction of tanks, especially for gasoline or oil?

A. No, I can't give you any name of any tank building treatise. That comes generally under the head of Design, most engineers know, and most of the treatises or the descriptions are made by the tank builders. They have their

own specifications and formulas, based on the laws that come from the proper use and strength—and the proper application of mathematical formulas.

Q. You can't refer us to any particular one that you think would be of benefit to us?

A. Tank builders?

Q. I don't mean builders; I mean some publication.

A. I have read quite a number of books, but I can't refer you to the names.

Q. You saw the book put out by the Lancaster Iron Works, that we had in Court the other day?

A. That catalog?

Q. Yes.

A. I glanced at it; I think that was the name.

Q. Is that such a publication by a tank builder, as you have just described to us?

A. No. I think that would be very interesting and very valuable information, but there is nothing in that that would be of much value—of any supplementary value, to the information that I already possess, to enable me to properly express an opinion on the adequacy of these tanks.

Q. Well do I understand you that tank building is a specialty, which is usually performed by companies such as the Lancaster Iron Works?

A. R. D. Cole, of the Schofield Iron Works; quite a number of them.

Q. They are the people that usually do such work, is that right?

A. They make larger tanks; and innumerable people that make smaller tanks.

Mr. Matteson:

That is all.

Mr. Underwood:

That is all.

(Witness excused.)

4593 Thereupon MR. WIRTH MUNROE was recalled as a witness on behalf of Respondents and further testified as follows:

Direct Examination.

By Mr. Underwood:

Q. Mr. Munroe, last Saturday morning did you arrange for me to remove the four tanks from the Seminole and take them down to Warriner & Des Rocher's?

A. I did.

Q. Did you examine them there?

A. I did.

Q. Tell us whether or not you examined particularly the vertical seams for the purpose of ascertaining whether those seams were soldered.

A. I examined all four tanks to determine the amount of solder that could be found in them, and what if any was left intact.

A. And what did you ascertain as to the solder in the vertical seams?

A. On all the tanks with the exception of number three, the solder was decidedly prominent in the vertical seams—with the exception, as I say, of number three.

Q. How high up was it prominent in all but number three?

A. Approximately twenty to 24 inches.

Q. And how high up did it go in number three?

A. In number three it only extended up a few inches, two to three inches, and that was not in perfect shape.

Q. Above the point where the solder was decidedly prominent, to use your phrase, did you find any evidence of solder?

A. On practically all of them, yes.

Q. And what was that evidence? What did it look like?

A. There were small indications, or small particles of solder still remaining in the seam.

Q. How did you ascertain that?

A. By cutting it with a knife.

Q. How could you tell it was solder?

A. By its softness, and the color of the metal after it was cut.

Q. Were you able to form an opinion with reasonable certainty as to whether those tanks at their vertical seams had prior to the fire been soldered to the top?

A. In my opinion, all four tanks were definitely soldered clear to—or the full length of the side seams.

Q. Did you examine the seams around the top of the tank, between the crown and the vertical side plates of the tanks?

A. Yes, I examined the head crown and the seam, and in practically all of them I found small bits of solder still remaining there, wedged into that.

Q. How did you discover those? I mean, did you have any instrument to use?

A. I used a knife, and pried some of these bits out, and then cut them open with my knife, to ascertain the density of the material, as to whether it was zinc or bits of solder.

Q. And could you tell?

A. Due to the softness of the material, I determined them to be solder.

Q. In how many of the tanks at the top seam did you find that condition?

A. There were indications in all of them, I would say; not continuous all the way around, but there was evidence of it in practically every head. In number three tank there was quite a few of the bits.

Q. Are you able to express an opinion with reasonable certainty as to whether those top seams were, prior to the fire, completely soldered?

A. I believe they were. There was a distinct indication on the metal, slight discoloration along the seam; and the fact that these bits of solder still remained there, which had bubbled out of the seam.

Q. You have already testified that the bottom seam of number four tank was soldered. Did you examine the bottom seam of the other three tanks?

A. I examined the bottom of the other three tanks.

Q. What did you find, as to solder?

A. And found solder on all of them. That on the bottom of number three showed that there was considerable heat applied to it, but not enough to burn it completely away.

Q. You have heard considerable discussion here today about whether or not these tanks were caulked. Have you had sufficient experience with steel work to form an opinion with reasonable certainty, from your observations, as to whether these tanks were caulked?

A. No, sir; I haven't had sufficient experience on the manufacture or the use of tanks of this size to tell whether they had been caulked or not. I have never used a caulking iron in any of my business.

Q. At the tests that were run on tanks one, two and three, did you look to see whether there were any leaks around the bottom seams of those tanks?

A. I certainly did.

Q. Were there any?

A. There were none.

Q. Did you look to see whether there were any leaks around the outlet fittings?

A. There were no—I examined the tank all over, all the seams, and found no leaks around the parts that had been soldered, or the outlet fittings.

Q. How about the plugs at the bottom of the tanks?

A. I found no leak at the bottom plugs.

Q. Did you find any leaks in the vertical seams at any point where the solder was distinctly evident, I think your words were?

A. Yes, sir, there were minor leaks.

Q. Well were they above or below the point where distinct evidence of solder was?

A. They were all above the solder, the remaining solder.

Q. And what did the leaks look like above the solder?

A. With the application of the soapy water, they were just very small bubbles; hardly—some of them hardly any bigger than the point of this pencil, or a pencil lead.

Q. Was there any test of any kind applied to number four tank at Warriner's yard?

A. There was absolutely no test put on number four tank at Warriner's yard.

Q. Or any place else, within your knowledge?

A. There were no other tests applied on number four tank to my knowledge, except what tests I put on it.

Q. The one you have already testified about?

A. The one I testified on.

Q. Did you examine the outlet valve, or what remains of it, the outlet opening, to number four tank?

A. On number four tank, I examined all the outlet fittings on all tanks.

Q. Did you observe the condition of the outlet fitting at number four tank, as it is today?

A. Yes, sir.

Q. And did you observe what the mechanical—I have been referring to the wrong tank, Mr. Munroe; I mean number three tank.

A. Number three tank? Yes, I examined number three tank.

Q. I show you photograph, Exhibit #155. Did you observe what the mechanic did when he made a connection there for the air tests on that tank?

A. I did. I was right there when number three tank —was the first tank we tested.

Q. Were there any threads in that device before the mechanic began to operate?

A. There were absolutely no threads at all in that hole.

Q. What did he do?

A. He inserted a tap, a standard pipe tap in there and cut those threads, so that we could put a plug in it and seal it.

Q. From your examination of that device as it exists today, were you able to form an opinion as to what it is that remains there now?

A. I examined this thing very closely.

Q. Just first, were you able to form an opinion?

A. Yes, I was.

Q. And can you express an opinion with reasonable certainty as to what it is that remains there today?

A. I can.

Q. Have you drawn a sketch to show it?

A. I have.

Q. Let me see it.—Before I have this marked, I will ask you to indicate what the various pieces of it are. This I take it is the shell plating of the tank?

A. That is the shell plating of the tank.

Q. I will mark that 'Shell plating of tank'. And this I take it is the doubler?

A. That is the doubler plate inside of the tank.

Q. So marked. And this of course is a rivet?

A. That is the rivet holding the doubler plate to the shell plating.

Q. And this is a rivet on the other side?

A. That is a rivet on the opposite side.

Q. Now I notice a device that runs between them, or through the shell plating and the doubler plate, and that part of it is shaded and part of it is not. Can you tell me what that is?

A. Well the entire sketch, the entire thing running through, with the kagged edges indicating the threads, is a standard pipe plug, or reducer plug.

Q. This is the reducer plug?

A. That is the reducer plug, across there.

Q. And these jagged edges that you refer to, are the threads?

A. Indicating the threads on the plug.

Q. I mark an arrow to that; "threads". Now at the top of that there are also some threads; I won't mark those. Is that correct?

A. That is correct.

Q. What is the difference between the portion of that reducer plug which is shaded, and the other portion which is not shaded?

A. The shaded part is the part that still remains in the tank; and the unshaded portion of the plug is that which has been destroyed and knocked out in some manner.

Q. Do you have any knowledge as to how it got out, or what made it go out?

A. I have no knowledge at all.

Q. Then I understand it from your examination, it is your opinion that the thing that remains there today is that portion of the reducer plug represented on this sketch by the shaded portion; is that right?

A. That is correct.

Mr. Underwood:

I offer that.

(Said sketch was admitted in evidence and filed as Respondents' Exhibit 6-C.)

Mr. Underwood:

You may cross examine.

Cross Examination.

By Mr. Matteson:

Q. Mr. Munroe, I show you Exhibit 158, which I think you will recognize as a piece of the top section of the tank number four, showing the top part of the side plating and part of the crown in connection with it. You recognize that, don't you?

A. I do.

Q. Now with respect to these bits of solder that you say that you noted, were they in the crevice that runs along between the crown and the side seam, as we find it on this exhibit?

A. Yes, that's the point where those beads were found, wedged down in this open seam.

Q. That is, there was an open seam there that could retain solder?

A. The same as indicated—as on this exhibit. All tanks have that; it is where the turn of the crown meets the side plating.

Q. But there is—the point is that there is on the tops of all of these tanks a similar crevice?

A. Yes.

Q. Of approximately these proportions?

A. That is correct.

Q. And that is a crevice sufficient to retain globules of solder such as you have mentioned?

A. Yes.

Q. Now take this Exhibit 158; do you find any globules of solder in that?

A. I don't see any here at the present time. That has been pretty well handled and picked over, and it might have been moved.

Q. Do I understand that your testimony is that in your opinion the tops of all of these tanks were soldered around through that crevice or seam at the top?

A. That is my opinion; yes.

Q. In their original condition?

A. In their original condition; yes.

Q. Well now the point that you make is that because of the hot fire, that solder melted and ran away, and that is the reason we have no traces of it in Exhibit 158?

A. I will not say it was melted and ran away; I will say it was melted and oxidized to a powder and then blown away by the force of the fire.

Q. Are you a chemist?

A. I am not a chemist; no, sir.

Q. Now solder melts and flows at something less than five hundred degrees Fahrenheit, doesn't it?

A. That is correct.

Q. And at what temperature does it become a powder?

A. Well that I couldn't tell you.

Q. Do you know of your own knowledge that it ever becomes a powder?

A. I know from experience that under—and from what study of chemistry I have done, that any metal, if brought to a sufficent heat; will oxidize and become a powder.

Q. Well of course it has to have a supply of oxygen, doesn't it?

A. Yes, it has to have a supply of oxygen to do that.

Q. And you have seen the solderers working, with a pot of solder and a blow-torch to keep it hot, have you not?

A. I have.

Q. And the reason that that does not oxidize and blow away as it does is, I assume, because it is in a pot which confines it so the oxygen does not get at it; is that true?

A. I think I can explain that to you. I have handled quite a bit of Babbitt, which is just a little bit different form of solder, and also melted a great deal of lead for the pouring of ballast. And on the surface of the pot, a pot of molten metal, you will find an oxidation scum

which has to be removed before you can pour your metal, or ladle it ou ; and that scum on the top is nothing more than oxidation of the metal.

Q. Now are you speaking as a chemist?

A. No, sir; as a practical man.

Q. Well can you tell us that the scum that forms on the top of the solder is oxidation rather than impurities in the metal that is being melted? Have you ever made any test that would tell you that?

A. No, I haven't made any analysis of it.

Q. And you just assume that it was oxidation?

A. It is—it could be partly impurities, but it is also accentuated by the oxidation of the metal itself.

Q. Well now if this fire was hot enough to melt, oxidize and turn into a powder which blew away, large quantities of solder in the top seam, how do you account for the fact that these globules that you saw, remained?

A. Some that didn't completely oxidize.

Q. They were definitely in the form of globules, were they?

A. They were in the definite form of globules; yes, sir.

Q. Well now if there was a substantial quantity of solder in this top seam, and the tank was in a vertical position, and there was a hot fire, you would have in effect a small vessel sitting on the top seam, containing a certain amount of the molten metal, would you not?

A. Yes, you would.

Q. And can you suggest any other method by which that solder could be removed from that seam by a hot fire, other than this oxidation and wind that you speak about?

A. Well those tanks have been out there for a long time, and there has been plenty of rain on them, and wind, and everything else.

Q. The solder at the lower part of the seams hasn't oxidized, has it?

A. The solder on the seams still remains there; it has oxidized to a certain extent.

Q. Well, hardly sufficient to remove any part of it?

A. No, it couldn't remove it, because it hasn't had heat applied to it.

Q. Of course with the tank remaining in an upright position, the force of gravity alone would be sufficient to retain the molten metal in this seam, unless something else removed it, would it not?

A. I would say so; yes.

Q. You don't think it ran through the tank, or anything like that?

A. No, I think the seam was too tight for it to run through.

Q. Now this crevice in the top would seem to be a pretty good retaining place, wouldn't it?—about as good as you could get?

A. It would retain it probably longer than the side seams would; yes.

Q. Have you ever had any other experience with a quantity of solder retained in a crevice such as that, being oxidized to a powder and being blown away by the wind?

A. Not under the exact condition as this. The only other example that I could express would be a small amount of solder that was left—or lead that was left in a ladle, and the ladle remained over the fire before it was noticed and taken out, and that has been completely consumed, until there was no liquid there at all—no molten metal there whatsoever; nothing but a perfectly dry powder left in the ladle.

Q. As a matter of fact you know, do you not, that solder is not readily subject to oxidation?

A. No, it is not, unless the heat is sufficient.

Q. And it is because it is not subject to oxidation, that it is used for the purposes that it is used for, in the

soldering of seams or other points where vessels are wanted to be made tight?

A. I wouldn't say that that is the reason for it, no.

Q. Well that is one of the reasons for it, isn't it?

A. I wouldn't say that it was; no.

Mr. Underwood:

One of the reasons for what?

Q. Well if there is any misunderstanding between us, I will state the question again. One of the reasons why solder is used in exposed places for making a seam tight, or what not, is because it is not readily subject to oxidation—isn't it?

A. No, sir; that is not the reason for it.

Q. Well what are the reasons for it, then?

A. You mean the reasons for using solder?

Q. Yes.

A. The prime reason for using solder is because of its low melting point, and its adaptability to other metals, and making a tight joint.

Q. You say the fact that it is not readily subject to oxidation does not enter into it at all?

A. In my opinion it does not whatsoever; because you could use silver solder, you could use any kind of solder.

Q. Well of course silver solder would have the same quality of not being readily subject to oxidation, would it not?

A. It would not be very susceptible to oxidation either.

Q. When you want to use some kind of a solder, you would not use the kind of solder that was readily subject to oxidation, would you?

A. You wouldn't use anything that was subject to oxidation any more than the metal to which it was attached.

Q. Then if you were choosing the material for solder, you would take into account its adaptability to the metals

to be used, and the fact that it was a more or less permanent substance that was not readily subject to oxidation, would you not?

A. In that sense of the word, yes, I will agree with you. But I still contend that that is not the prime reason for the use of solder.

Q. Refer to, say, this Exhibit 160; do you agree that some of the galvanizing has been removed by the action of heat?

A. I do; there is decided evidence of heat on that.

Q. And what is the melting point of zinc? Do you know, about?

A. I am afraid I can't give it to you.

Q. Well it has a low melting point, has it not?

A. It is much lower than other metals; it is higher than lead.

Q. And the top of the tank was galvanized too, was it not?

A. Yes.

Q. And was some of the galvanizing there also removed by the heat?

A. I would say that there was—at least since the fire, the galvanizing has been affected. I should say—

Q. I am not talking about, since the fire; I am talking about the fire. Do you agree that the galvanizing was at least in part removed from the heads of the tanks as well as the sides, by heat of the fire?

A. I wouldn't say that the galvanizing was removed by the heat at the time of the fire; no. I will say that it was—the properties of it were destroyed enough that the elements since the fire have removed it.

Q. Well do I gather that you have the opinion that the fire wasn't hot enough to melt the galvanizing?

A. Not in all places, no.

Q. Well do you think it was in some places?

A. I do, in some places; direct indication of it in many places. There is one place right on this Exhibit 160, that

indicates heat enough to wrinkle or "alligator" the galvanized surface.

Q. Well if it is small globules than you found in the crevice at the top of the tank, isn't it quite possible that they may have flown from the galvanziing at the top of the tanks, as well as the solder?

A. No, because the globules that I found were decidely lead; that is, the majority of it was lead.

Q. Are you speaking now as a chemist?

A. I can't say that it is the opinion of a chemist, no.

Q. Well you couldn't be certain of that, could you?

A. I have handled quite sufficient of it to be able to tell by cutting it whether it was lead, tin or zinc.

Q. Which was it?

A. In my opinion it was lead—that is, solder.

Q. And is this what you call fifty-fifty solder?

A. I am assuming it to be 50-50 solder.

Q. That would be fifty percent lead and fifty percent what else?

A. Tin.

Q. And what did you do with these globules of solder that you found in the top seam?

A. Well I didn't remove all of them; those that I did remove, they were so small that many of them that I pulled out, they fell on the ground before I could catch them in my hand,—and lost them.

Q. Did you retain any?

A. No, I did not retain any of them.

Q. Well that would have been valuable if you had. You didn't make any effort at all to retain them?

A. No, sir.

Q. Did you call anybody's attention to them when we were all down there either on Monday night or on Tuesday morning?

A. I called Mr. Underwood's attention to them, and I believe, Mr. Gibbs'.

Q. You didn't call attention to Mr. Botts and Mr. Thompson and Captain Patton or myself, did you?

A. I didn't feel at liberty to call attention to any one except Mr. Underwood or Mr. Gibbs.

Q. Why was not tank number four tested?

A. Why was it not tested?

Q. Yes, on last Saturday afternoon.

A. Because the—one reason, we tested it before; a much heavier test; and the other reason was that when we arrived there that tank was practically filled with water for the purpose of cutting.

Q. Had you given instructions for it to be filled with water?

A. I had not; no, sir.

Q. Do you know who did?

A. I do not.

Q. You realize in some respects at least the test you held previously was not entirely satisfactory?

A. They were perfectly satisfactory to us.

Q. You don't recall testifying here before that in certain respects the test was not entirely satisfactory, that you made last spring?

A. Now that you call my attention to it, I believe I did make that remark; due to the fact that the leak in the plug that I had inserted in the filler opening, and the crack in the bushing in the lower opening—as far as hydrostatic test was concerned.

Q. Where is that cracked plug now?

A. I guess it is still in the bottom of number four tank.

Q. And is this the plug that is shown on the right hand side of that Libelants' Exhibit 153?

A. Yes, sir; that's the plug bushing that was cracked.

Q. Can you point out the crack to us?

A. I don't believe I can point it out on this photograph, no, sir.

Q. Did you examine it when we were down there on Saturday?

A. I showed it to some one, I don't remember who it was, whether it was Mr. Thompson.

Mr. Thompson:

No.

A. —or Mr. Patton. Some one asked me about it and I scraped the rust off of it, and showed them where the crack was.

Q. You say you saw the crack last Saturday?

A. I did.

Q. Or last Tuesday morning?

A. Yes; I don't know whether it was—Monday afternoon I believe was the day.

Q. Well can you indicate to us on this picture approximately where that crack is?

A. It would be merely a guess. I can show you where the general place of the crack is, but I can't tell you what face of that bushing in the picture it was on. I have nothing to go by to recall the exact crack.

Q. I examined it and wasn't able to find it. Were you present when the one, two and three tanks were removed from the Seminole?

A. I was.

Q. And was the condition of the wood pads underneath the tanks the same under one, two and three tanks, or similar, to what it was under number four tank?

A. I could not see that, Mr. Matteson, because it was covered to a depth of eight inches at least of muddy water. After we pulled the first tank, or number three tank, out, it muddied up the water so they couldn't see the pans at all.

Q. The water, first of all, in Pilkington's yard, is fresh, is it not?

Mr. Underwood:

I object to that as improper cross examination, and without any basis on the record, of the witness' knowledge.

Mr. Matteson:

I am just asking him if he knows.

Q. Do you know whether the water is fresh at Pilkington's yard?

A. I have not been to Pilkington's yard for a good many years; and I do not know whether it is fresh or not.

Q. Is it fresh at Nuta's yard?

A. Not absolutely fresh; it is brackish.

Q. It is practically fresh, is it not?

A. I do know that is brackish enough up there for certain growths, and I have been informed that there has been considerable salt water in the upper part of the River in the last few years.

Q. The Miami River discharges fresh water, does it not?

A. It does—it is supposed to; it hasn't been discharging a great deal up until the last year, at least not at that point anyway.

Mr. Underwood:

I didn't understand that; what is that point?

A. The freshness of the water; it is not completely fresh at that point.

Q. At Nuta's yard?

A. At Nuta's yard. I might add to that and state that the freshness varies a great deal, depending on the rainfall.

Q. Can you suggest any reason why the fire should have been hotter on number three tank than on any other tank?

A. I don't know that I have got any definite reason for that.

Q. The pans were under all the tanks, were they not?

A. They were.

Q. You didn't have the water level lowered sufficiently to determine definitely the condition of the wood pans under the tanks?

A. I did not; no, sir. We didn't pump any water out of her, and the tide was rising rather fast.

Mr. Matteson:

That is all.

By Mr. Botts:

Q. When you testify or propound this theory which you have propounded, with respect to the oxidation of solder, do you have any technical knowledge with reference to such an occurrence?

A. The general study of chemistry that I have had, and at school and since then.

Q. When you studied chemistry, did you ever at any time study or observe any statement of authority with respect to the oxidation of solder?

A. Not on solder, no.

Q. You studied oxidization generally?

A. Yes, sir.

Q. Then do you pretend to have, or claim, any technical knowledge with reference to the oxidization of solder, or the circumstances under which it would occur?

A. No more than I have already stated, Mr. Botts.

Q. Then such knowledge as you may have in that respect would have been gained by virtue of some observation of such an ocurrence, and not as the result of a technical or scientific study; is that correct?

A. My knowledge has been—a large portion, is practical. I have read chemistry books and tried to inform myself on the subject of general chemistry.

Q. In these chemistry books that you have read, have you ever read a passage or sentence or discussion that directly mentioned oxidization as applied to solder?

A. I would not say, to solder only.

Q. As applied specifically to solder, then, you have never read anything of the kind?

A. Not to solder specifically, no.

Q. Now I understand you to say that on some occasion or occasions you had seen solder in a melting or soldering pot, where it was undergoing heat, you have seen it dissipate or completely oxidize and go off into the air?

A. The reason I didn't answer was because I didn't know whether you were through with your question or not.—Yes, I have seen that.

Q. All right now; then when you observed that, was there any residue left in your pot?

A. Oh yes.

Q. Now what was the nature of that residue?

A. And it's practically a powder in consistency.

Q. Now did you observe in the top seams of the tanks of the Seminole, any indication whatsoever of the existence of any such residue?

A. Oh no.

Q. You saw no evidence that any such residue had ever been there?

A. I wouldn't expect to find any.

Q. You didn't see it?

A. No, sir.

Q. This theory that you have propounded, as the result of which you conclude that the top seams were soldered, is based entirely upon your belief that you found some small globules of solder remaining; is that right?

A. That is not the sole basis of my opinion; no, sir.

Q. All right, what other basis do you have for it?

A. The other basis for my opinion is that there are strong indications where the acid flux had affected the

metal, in the way of the solder, when it was first applied.

Q. And what were those indications?

A. Discoloration.

Q. And you assert that you saw discoloration along the seams?

A. Discoloration, and the accentuation of oxidation of the metal, or rust, in some places, and the oxidation of the zinc or galvanizing in others.

Q. Now then in propounding the theory that solder had been there, and had been subjected to such great heat that it would completely oxidize, did you take into consideration the quantity of heat, that is the temperature, which would be required to completely oxidize solder?

A. Yes, I considered the heat; I had to.

Q. Are you aware of the amount of heat that is requisite to oxidize solder, if such phenomenon can be produced by heat?

A. Yes, I am perfectly aware of the amount of heat, and I took it into consideration.

Q. How much heat does it take then, if you know?

A. I can't give you the exact degree necessary, but I do know that there is also a period of time to be taken into consideration.

Q. I expect then you didn't quite understand the previous question when I asked you about taking into consideration the amount of heat; you don't mean then to suggest that you know how much heat applied to solder, will oxidize it?

A. I don't know the exact degree of heat; no.

Q. Then you wouldn't know whether or not the degree of heat requisite to oxidize solder, assuming that it is possible to produce the phenomenon by means of heat alone, is greater or less than the amount of heat to melt galvanizing, or zinc?

A. I do not know the exact degree, but I do know that it is lower than that of galvanizing.

Q. Then do you say that you know that a lesser degree of heat, applied to solder, will completely oxidize it, leaving nothing but a powder, when that degree of heat is less than the heat required to melt galvanizing?

A. I do, yes.

Q. You know that?

A. I do.

Q. How do you know that?

A. I know that from practical experience.

Q. Wait a minute now; do you know how much heat was present in this soldering pot when that solder oxidized?

A. No, I didn't stick any thermometer into it.

Q. Well then how do you know that that degree of heat was less than a degree of heat which would melt zinc or galvanizing?

A. Well because I know that the amount of heat, from practical experience, know that the amount of heat that it takes to oxidize solder is lower than that that it would take to oxidize galvanized iron.

Q. Mr. Munroe, do you mean to seriously assert that you can without any temperature gauge—thermometer of any kind—you can observe a pot of molten solder, and say that the temperature is for instance more or less than 500 degrees Fahrenheit?

A. I think I could, yes. I wouldn't tell you the exact temperature of it, no, in degrees.

Q. How would you do that? By looking at it?

A. By the manner in which it acts; yes.

Q. All right. Now then what manner do you refer to? You say you judge by the manner in which it acts; now tell us just exactly what you have in mind.

A. By the color of it.

Q. All right, then what is the color to which your refer?

A. The color of solder or lead; they are almost the same; it turns to an almost black—not jet black, but a

very dark grey; and as the temperature increases on the thing it has a rainbow color flowing back and forth across it all the time.

Q. At what degree of heat will that rainbow color manifest itself?

A. I don't know; I told you I didn't put any thermometer into it.

Q. Then how do you know how hot it is?

A. I know that it is too hot to save the metal; I know that.

Q. Beg pardon?

A. It is too hot to save the metal; in other words you are burning up the metal in your pot when you reach that point.

Q. But you don't know how hot it is when that metal begins to burn up, do you?

A. No, I do not know.

Q. Well then how do you know that it is less hot than the melting point of zinc?

A. Just from practical experience; just good common-sense will tell me; the fact that I have handled both of them.

Q. Do you mean to tell me that by common-sense, without any measuring instrument, you can tell whether the temperature of solder in the melting pot is 300, 400, 500, 600 or 700, or within any of those ranges?

A. No; maybe you have got me wrong; maybe I haven't said all of it. I do know from my studies that the melting point of lead or solder or tin or zinc is different; that one is higher than the other.

Q. All right, do you know what the melting point of solder is?

A. It is somewhere in the vicinity of 400 degrees; that is all I can tell you—or a little less. It depends entirely on the grade of solder.

Q. Now then do you know the melting point of zinc?

A. I am not sure, but I believe it is around 700; in that vicinity.

Q. Have you your Kent's Handbook here?

A. I have.

Q. Could you inform yourself of those points?

A. I think I can; if I can find the tables.

Mr. Underwood:

To save time, may we have somebody else look that up?

Mr. Botts:

I just can't very well go on until I have gotten that.

Mr. Underwood:

It might be possible to take up some other line. If you can't don't do it.

A. The index of this book, you have to go back and forth all the time. I don't mean this will give solder; this is individual metals. Here is zinc, 786.9 degrees is the melting point of zinc.

Q. All right, now solder as I understand it is a combination of lead and tin; is that right?

A. That is correct.

Q. What is the melting point of tin?

A. 449 degrees.

Q. And of lead?

A. 621.

Q. Then the melting point of solder, would it be somewhere between those ranges?

A. I don't know.

Q. See if you can find solder in there, and see if there is any table that gives the melting point of solder.

A. What happens with the combination of the two metals, I don't know; but I am sure that the melting point of solder is--

Q. Well the melting point of tin, you say is 449; was that it?

A. Well we will say 450, yes.

Q. Well the melting point of lead is 600 and something, isn't it?

A. Yes.

Q. Well the melting point of solder wouldn't be lower than either of the component parts, would it?

A. I am not sure about that. In my opinion—

Q. What is the melting point of lead?

A. I will have to find that table again; I have forgotten what page it was on. Melting point of tin, we will say 450; 449.4.

Q. And of lead?

A. 621.

Q. And of zinc?

A. 789—787 we will say; it is 786.9.

Q. Now the solder couldn't possibly melt at a lower melting point than the tin, could it?

A. I wouldn't think so; I don't believe it would.

Q. Then when it got to the point where it would become so overheated that it would oxidize and pass away as a gas, it would necessarily be considerably higher than the lowest melting point, wouldn't it?

A. It would have to be higher than the melting point; yes.

Q. All right.

A. But I wouldn't say, a great deal higher.

Q. If the melting point—if you were going to fuse it and have it entirely pass away in the form of a vapor, it would have to carry away both the lead component and the tin component, wouldn't it?

A. I wouldn't say it would pass away as a vapor, Mr. Botts.

Q. Well how does it pass away, then?

A. I say that it forms a powder; I don't say that it completely passes away.

Q. All right in order for it to melt and oxidize, if it was at a lower melting point then—now then take tin, for instance; it wouldn't oxidize until it had reached its boiling point, would it?

A. It would start oxidizing immediately on application of heat, and before it even started to melt.

Q. Well now then getting back to this oxidization; if you have tin and lead, if it started oxidizing the tin at less than the melting point of the lead, and that oxidization is caused by heat, until it got up to the oxidization point of lead it would merely take out the tin and leave the lead, wouldn't it?

A. It would; yes.

Q. Then in order for it to get to the point where it would oxidize the combination of metals, it would have to be above the melting point of the lead, wouldn't it?

A. To oxidize the lead, yes.

Q. And that is 621. Now then you say that from your observation, merely visual and without any instruments of measurement, you were able to tell that on the occasion when you saw this solder oxidized, which necessarily was above the 621 degrees necessary to melt the lead, that it was less than the melting point of zinc.

A. Yes, because the melting point of zinc is higher than that of lead.

Q. Now the metling point of zinc is 787, and of lead 621. Now then do you mean to seriously sit there and tell us, Mr. Munroe, that by merely looking at a melting pot containing solder, that you can tell that it oxidized and disappeared as a liquid, at a temperature greater than 621 degrees but less than 787 degrees?

A. You say, disappears as a liquid? I didn't say anything about that.

Q. You said it disappeared as a liquid and became a powder.

A. I didn't say it disappeared as a liquid; it does become a powder, yes.

Q. That is what I said; it disappeared as a liquid.

A. I don't understand your use of the words, disappearing as a liquid.

Q. When it becomes a powder it disappears as a liquid.

A. It changes from a liquid to a powder; yes.

Q. Then you say that solder—that lead-tin solder at a temperature of less than 787 degrees will oxidize and cease to be a liquid and become a powder, do you?

A. I do.

Q. And you say that you could tell that when this—by merely looking at it on the fire, or when subject to heat,—that you could tell that that lead-tin solder combination was of a temperature greater than 621 degrees and less than 787?

A. Absolutely.

Q. And you could tell that by just looking at it.

A. In a pot of solder there is no galvanizing present; no.

Q. Wait a minute; that isn't the question I asked you. I asked you if you could tell that that disappeared as a liquid at a tempreature less than 787 degrees.

A. I know that it will disappear at that point, yes.

Q. That isn't the question I asked.

A. I am not a freak, Mr. Botts.

Q. No. I know that; I am not suggesting that you are.

A. I don't carry any feather in my hat or any thermometer in my eyes.

Q. Then you stated that you knew when that solder disappeared as a liquid and became an oxidized powder, it was at a less temperature than the melting point of zinc, didn't you?

A. I said—when I said that I meant that it would oxidize at a lower temperature; I didn't say that necessarily that all the time it was lower than that of zinc, no.

Q. I didn't ask you whether it would; I asked you

whether it did, and didn't you answer me that it actually did do that?

A. I did, and in my mind I was considering the difference in the melting point between that—or the oxidation point of lead and that of zinc.

Q. When you were observing this melting point, or this oxidation point, did you put your hand down to feel it?

A. I certainly did not.

Q. You just stood off and looked at it?

A. That is as close as I want to get to any pot of lead.

Q. And your observation then was purely by the eye?

A. Aboslutely.

Q. And you say that by looking at a pot of molten solder you can tell that its temperature was less than 787 degrees?

A. I can; yes, sir.

Q. Now—and greater than 621 degrees?

A. Certainly.

Q. You can do that also?

A. I certainly can.

Q. Now then what phenomenon do you observe by the eye which enables you to deduct that range of temperature in those very—in that very hot liquid?

A. The very simple thing of deduction. Knowing that lead melted at a lower point than that of zinc. And that oxidation sets in at a very little bit above that of the melting point—

Q. How do you know that?

Mr. Anderson:

Wait a minute; let him finish his answer.

A. That if that was kept at a temperature below that of zinc—the melting point of zinc, your lead would be completely disappeared or dispersed into a powder in a

length of time. It will be accentuated by the increased heat, and the thing will oxidize and become a powder at a fast rate.—That is all.

Q. Either you can't understand my question or I don't understand your answers; so I want to try and propound the question in a different way, to see if you can get the answer. You have stated definitely that you can tell the temperature of that molten mass within a range between 621 degrees and 787 degrees.

A. Yes, there is a difference of 160-odd degrees there.

Q. All right; 166, we will say. Granted. You are looking at that molten mass, merely by your ocular observation?

A. Yes.

Q. Now then in order for you to judge that temperature, there must be some reaction in that molten mass at varying temperatures, which registered do your skilled ocular observation, and tells you this temperature is now 621; and later, it is less than 787. What phenomenon, visible to the eye, is present in that molten mass from which you make that deduction?

A. By simply the rapidify by which this scum—you might call it a scum,—forms on the surface of the molten metal.

Q. There is nothing in the color, change of color, of the metal, then?

A. There is a slight change in it, yes. As the stuff builds up it becomes a darker color, until finally the top of it is disintegrated into a powder.

Q. All right; now I want to know, what is it that you see in that molten mass that distinguishes it in the temperature between a temperature of 621 and a temperature of 687? What is it you see that is different?

A. I am afraid I am at a different line than you are, Mr. Botts. I am stating in my answers the point of oxidation of lead; I am not comparing it with that of the melting point of zinc, in actual degrees.

Q. Well you said you could tell.

A. I know, Mr. Botts, that oxidation sets in at a lower temperature than that of the melting point of zinc; I do know that.

Q. Well, how?

A. Why the simple fact that I know that the melting point of lead is lower than that of the melting point of zinc.

Q. All right, but how do you know how hot it is when it begins to disintegrate into a powder?

A. Because I do know that it begins to disintegrate into a powder at a lower—a little bit higher temperature than that of the melting point of lead.

Q. How do you know that?

A. From experience, Mr. Gibbs—I beg pardon; Mr. Botts.

Mr. Botts:

Will you read the last answer.

(Preceding answer read by the reporter.)

A. I should correct that; the melting point of the material we are talking about, whatever it happens to be; whether it is lead, solder or zinc; whatever it is.

Q. Would you mind from this handbook giving me the boiling point of lead and the boiling point of tin, and the boiling point of zinc? Make it tin, first; what is the boiling point?

A. I don't know what they mean by the boiling point.

Q. Well would you mind telling us what it says there.

Mr. Underwood:

Are you merely asking him to read out of the book, Mr. Botts?

Mr. Botts:

Yes.

Mr. Underwood:
Can't we agree on that, to save time?

Q. What does it say is the boiling point of tin?

Mr. Underwood:
Boiling point of tin, according to Kent's Handbook, is 3800 degrees.

Mr. Botts:
And the boiling point of lead?

Mr. Underwood:
Varies between 2900 and 3600.

Mr. Botts:
And of zinc?

Mr. Underwood:
1724.

Mr. Botts:
All right; thank you.

Q. Now what happens to this lead-tin mass constituting solder, between its melting point we will say of 621, for lead, and the boiling point?

A. I don't know, Mr. Botts.

Q. It remains a liquid during that period, doesn't it?

A. I assume it does; yes.

Q. Now then how would you tell from looking at that, when in the process of its forming a liquid but before reaching the boiling point that it passes this 787 degrees of zinc? How do you tell that, when looking at that liquid?

A. I don't believe I can explain it to you, Mr. Botts, so you could understand it, in my own language.

Q. I think I can understand it if you can explain it.

A. I doubt that.

Q. Well would you mind bearing with my ignorance and explaining it, if you can explain it—whether I understand it or not? Maybe we will get a smart man that can understand it.

A. I prefer not to try it.

Q. Then you mean to say that you can't point out any—do I understand you to admit that you can't point out any phenomena apparent on that liquid that is a predicate upon which you could base a statement that that temperature has now passed 787 degrees?

A. I don't think I can, any more than what I have already said.

Q. All right. What are those phenomena to which you have already called my attention?

Mr. Underwood:

Do you mind if I object, on the ground it is repetitious?

Mr. Botts:

Not a bit; because I want him to summarize it now, since you have said—

Mr. Underwood:

Is this argument; I thought the Judge warned us against it.

Mr. Botts:

No, I don't think so.

Q. I want you to summarize what you say are the phenomena upon which you predicate your suggestion.

A. The same as I said before; the characteristic of the scum as it is forming on the surface of the molten metal.

Q. What particular characteristic do you allude to?

A. I am alluding to the color of it.

Q. Now we are getting somewhere.

A. As I said that before, I told you the color of it.

Q. What color is produced between 621 degrees and 787 degrees which is characteristic of that range of temperature?

A. I can't tell you between those exact figures, Mr. Botts.

Q. Well then you can't tell whether it had reached 787 or not, can you?

A. I know what the characteristic is, as it enters any heat.

Q. All right, as it enters any heat you know that, but you don't know any particular characteristic that would be observable between the ranges of 621 and 787, which would mark off a point when you could say it has reached beyond 787,—do you?

A. I think it would be a lot easier for me to express what you are trying to drive at, Mr. Botts, by stating that I have seen definitely, when removing solder from a galvanized iron surface, I know that I have removed it—completely clean, by the use of heat, and not damaged the zinc to any appreciable extent.

Q. Melted it off, in other words; is that right?

A. It was melted off, the majority of it; and the remaining—the thin, what has been spoken of as the tinning, which is a very thin layer, has been oxidized off.

Q. Now then, you have told me that the melting point of solder is less than that of zinc. So it would melt off of a zinc surface without melting the zinc, wouldn't it?

A. Absolutely; that is what I am trying to tell you.

Q. But that isn't the question I am trying to ask you.

A. Because—but I don't want to argue with you.

Q. No, because I am asking the questions. Now you have finally stated, unless I have misunderstood you—

and if I have, please correct me—that you, by your eye, can tell by observing a melting pot of solder, that it had not in a given condition reached the melting point of zinc, of 787 degrees.

A. I said that it had started to oxidize at a lower temperature—I know lower temperature than that—

Q. Do you mean to tell me now that you cannot tell whether that melted substance has reached the melting point of zinc or not?

A. No, I don't think I can tell you whether it has reached the melting point of zinc, or exceeded it.

Q. Then you can't tell by your ocular observation when it reaches 787 degrees; is that right.

A. That is correct; yes.

Q. Then if I understood you previously to say that you could tell by observation, I was mistaken?

A. You were mistaken in my answer, I am sure.

Q. Then—

A. Or I was mistaken in the ideas that you were trying to arrive at. I was talking about the oxidation—that when oxidation sets in—

Q. That wasn't what I asked you. Then as I understand it now—and let's be sure we understand each other this time; you are wholly unable to tell by looking at a melting pot of solder, whether it has arrived at or passed the temperature of 787 degrees; is that correct?

A. I could not tell you whether it had reached that degree or exceeded it; no; not by looking at it.

Q. Then you are unable to tell whether or not, when this quantity of solder completely oxidizes and becomes a powder,—you are not able to tell whether it had passed the melting point of zinc or not,—aren't you?

A. I can tell you that the solder begins to oxidize very shortly after it reaches its melting point.

Q. Now how soon after? Fifty degrees, 100 degrees?

A. I would say less than 100 degrees, yes.

Q. Now then how do you tell that it has not increased above the melting point more than 100 degrees?

A. From the statement that I made a few minutes ago, Mr. Botts; the fact that I have melted solder off of a galvanized object.

Q. Now you are getting into—

A. No, I am at the same point I was before.

Mr. Botts:

Read the question, please, Mr. Bryant.

A. It is a very erroneous question that you are trying to ask, Mr. Botts.

(Discussion was had between counsel for Libelants, off the record.)

Mr. Botts:

That is all.

Mr. Underwood:

It is understood that the case is closed on behalf of all parties, with the exception that Mr. Matteson has the privilege of recalling Mr. Thompson to the stand, and one or two other witnesses, if he chooses, to testify concerning the question of whether or not these tanks were caulked; all that testimony to be in New York: and that I have the privilege thereafter of taking further evidence if I so desire, to rebut such matters as Mr. Matteson may bring out from any one or more of the three that he is privileged to call.

Mr. Matteson:

I may want to ask the witnesses in New York a few questions about the rivets, but the principal thing will be the caulking.

Mr. Underwood:

As long as it does not extend beyond that, I will agree to this procedure; but if the case is to go on to any greater length than that,—any substantially greater length than that, I see no point in doing it, and would prefer to stay down here and finish it right now.

(Following discussion off the record, at 8:50 o'clock p. m., November 22, 1939, taking of testimony before the Commissioner was concluded, with the reservations above noted.)

State of Florida,
County of Dade, ss.

I, Ernest L. Bryant, heretofore duly appointed to take the testimony of witnesses on behalf of Libelants and Respondents, in that certain cause now pending and undetermined in the United States District Court for the Southern District of Florida, Miami Division, in Admiralty, wherein Charles Coryell, et als., are Libelants, and George J. Pilkinton and John S. Phipps are Respondents, do hereby certify that on November 21st and 22nd, 1939, there personally appeared before me at Room 209, Federal Building, Miami, Dade County, Florida, John A. Thompson, J. N. Patton, Alfred F. Warriner and C. E. Stevens, witnesses on behalf of Libelants, and George W. Gibbs and Wirth Munroe, witnesses on behalf of Respondents; that said witnesses were by me duly sworn to testify the truth, the whole truth and nothing but the truth, in the cause aforesaid; that the testimony then given by them was reported by me in shorthand and afterward transcribed by me or under my supervision; and that the foregoing transcript of testimony taken on said dates of November 21st and 22nd, 1939, is a true and correct transcript of said testimony so given. I further certify that at the taking of said testimony, Leonard J. Matteson,

Esq., and David W. Dyer, Esq., of Proctors for Libelants; Fred Botts, Esq., Proctor for Respondent George J. Pilkington; Eugene Underwood, Esq., and Robert H. Anderson, Esq., of Proctors for Respondent John S. Phipps.

I further certify that I am not of counsel for nor in any way related to any of the parties to this cause, nor am I in any way interested in the outcome thereof.

In Testimony Whereof I have hereunto set my hand and seal this eighth day of December, A. D. 1939.

ERNEST L. BRYANT,
(Seal) Commissioner.

United States District Court, Southern District of Florida, Miami Division.

Charles Coryell, et al., Libelants,
against
George J. Pilkington and John S. Phipps, Respondents.

Further depositions taken on behalf of the libelants, at the office of Messrs. Bigham, Englar, Jones & Houston, 99 John Street, New York City, December 6, 1939.

Appearances:

Messrs. Batchelor & Dyer, Messrs. Bigham, Englar, Jones & Houston (Mr. Matteson) for the libelants.

Messrs. Loftin, Stokes & Calkins, Ray C. Alley, Esq., Messrs. Burlingham, Veeder, Clark & Hupper (Mr. Underwood) for John S. Phipps.

It is stipulated that the testimony may be taken by a stenographer, signing, filing and certification being waived, stenographer's fees to be taxable.

4637 EDWARD ELLSBERG, being duly sworn and examined as a witness for the libelants, testified as follows:

By Mr. Matteson:

Q. Commander Ellsberg, what is your business?

A. Consulting engineer.

Q. Where is your office?

A. Westfield, New Jersey.

Q. Will you outline for us your educational and practical experience which qualifies you as a consulting engineer.

A. I am a graduate of the United States Naval Academy, class of 1914; a graduate of the United States Naval Post Graduate School at Annapolis, 1916, Bachelor of Science; a graduate of Massachusetts Institute of Technology, in naval architecture and Master of Science; I hold a degree of Doctor of Engineering from the University of Colorado, granted in 1929; naval constructor in the Navy from 1917 to roughly 1925; I have been outside superintendent and repair superintendent at the New York Navy Yard and the Boston Navy Yard, and have had under my direct charge the construction of four large ships, and the repairs to hull and machinery of probably one hundred or two hundred more—quite a number. Since 1926, when I resigned from the Navy, I was chief engineer of the Tidewater Oil Company for nine years, during which time I had charge, in my department, of the design and the erection and construction of oil tanks for gasoline and other types of petroleum oils, to the extent, probably, of several hundred tanks, from small sizes up to 80,000 barrel tanks. As a part of this general education in the beginning, I was taught the use of various tools that are involved in the different operations, and after that time I was a supervisor in charge.

Q. You have written a number of books, Commander Ellsberg?

A. I have written a number of articles having to do with the designs and the violations of ship and ship structures, some other articles on petroleum, and several books that have had to do with salvage work, and some other books that have no bearing on engineering.

Q. You, as a matter of interest, had something to do with the raising of the Submarine S51, was it?

A. Yes, I was salvage officer on the salvage of the S51, which lasted nine months, from about September 1925 to July 1926, and was salvage officer on the Submarine S4, also in 1927, for the initial period of several weeks.

Q. Some of your books have dealt with those operations, have they not?

A. Yes, two of them have.

Q. What are the names of these books?

A. "On the Bottom" dealt with the salvage operations on the S51, and a later one recently published "Men under the Sea" dealt with the salvage operations on the S4 and with certain other salvage expeditions. I may add also that as a consulting engineer at the present time, my work is mainly in the field of petroleum engineering but not wholly.

Q. Do you have some clients, as consulting engineer, that you advise continually on such matters?

A. No, I have no definite retainers at the present time, the cases are mostly separate ones.

Q. Are you familiar, Commander, with the process known as caulking, as applied to steel plating in steel tanks?

A. Yes.

Q. Will you describe to us what that process is?

A. In connection with any ship structure or oil tank, or as a matter of fact a water tank or any tank which is intended to hold liquids, it is necessary, in order to make the structure or the tank tight against leakage, if

it is a riveted structure, to caulk the seams of that tank. If it is a welded structure, the welding is relied on for that purpose. In connection with caulking, which is common for all riveted structures, whether they are ships or tanks, the requirements are that the plates—

Mr. Underwood:

I object to any recitation of requirements unless they are the opinion of the witness himself.

The Witness:

Well, this is my opinion.

A. (Continuing.) My opinion shows definitely that to secure tightness, it is necessary that a riveted tank or ship structure be caulked, and my own actual experience in that has been that to secure a tightly caulked job, it is necessary that the two plates first be neatly fitted and properly and securely held together by adequate riveting; that after that has been done, the edge of one plate is required either to be chipped on the job to a smooth, and usually a slightly beveled edge, unless that plate, before it has left the shop, has been planed to the same smooth edge, slightly beveled; that after it has been erected and riveted in the tank or the ship, the requirement is that a caulker shall chip the edge, if it has not previously been chipped. That is a necessary thing, because the plate has only been sheared, but it is not necessary in case the plate has been planed properly in the shop; that with the edge of the plate either chipped or planed, the caulker next, with a caulking tool, takes the overlapping plate and goes through an operation which is called splitting, in which at about half thickness more or less a tool is run over the edge of the plate so as to divide the plate to some degree into two sections, one of which is forced toward the underlying plate. When that has been done, a caulk-

ing chisel, ordinarily with somewhat round edges so that it will not cut into the underlying plate, is then run back and forth over the split plate so as to mechanically force the metal of that plate into intimate and very tight contact with the underlying plate; and during this operation, the edge of the top plate; which is being caulked, is left with a very decided depression where the caulking tool has been run back and forth above it. This depression normally varies with the thickness of the plate being caulked, but would ordinarily have a minimum depth of about 1/16 of an inch. The object of this is to bring the two plate edges into very intimate contact so that there is no opening through which a liquid can seep. The necessity of caulking, and the care and skill with which it must be done, is greater when the tank contains oil than it is in the case of water, and is greatest when the oil to be contained is a light liquid like gasoline, which requires the very highest standards of workmanship to make a tightly caulked joint. That relates to the seams. Now, I don't know whether you include in that question the caulking of rivets, or is that a separate one?

Q. Yes, I think you may tell us about the caulking of rivets at the same time.

A. It is furthermore my own actual experience that in order to keep the riveting tight in a tank which is to hold liquids and particularly oil, that it is necessary to countersink the rivet holes in the outer plate, and that it is necessary and usual practice to drive what are called countersunk point rivets so that the rivet itself, while being driven, is completely expanded into a somewhat conical hole in the outer plate so as to make a tight joint in order that liquid will not leak along the shank of the rivet from the inside of the tank and escape around the point. It is further necessary, and more particularly necessary, with oiltight work, but it is usual with water or with any liquid, that the holes through which the rivets

are driven must either be drilled holes, or else if they are originally punched they must be punched small and then reamed out with a reamer to full size so as to get a fair hole through which the rivet is driven, so that the rivet may have a chance completely to fill that hole and give it a tight job. My ordinary practice for both tanks and ships, and my observation is, that to secure tightness with liquids, it is necessary to have countersunk point rivets, properly faired holes, properly driven, and finished off rivets caulked into the countersinks and caulked edges on the plates both for joints and for butts.

Q. Commander Ellsberg, just so we will have it clear: What is a reamer?

A. A reamer is a --it looks something like an ordinary drill, but it differs in that the angle of the flukes are much sharper, and it is deeper. The point of the reamer is much smaller than the major body of the shank, and to a degree conical, so that the small point is inserted in the hole in the plate which may not lie wholly fair and true, and then as the reamer is forced through, being operated by an air drill, it cuts away the metal surrounding the punched hole, which is weakened by the punching, and as the expanded shank of the reamer goes through, the hole gets larger, and in a proper reaming job, then when the reamer has been punched all the way through so that you come to the parallel section of the reamer, which is a cylinder, you are left with a fair hole.

Q. What is a fair hole, as a matter of terminology?

A. A fair hole is one in which, even though it may be at a slight angle with the plates, the hole in the lower plate and the hole in the outer plate, the sides are completely parallel through and through, with no space where one plate has a larger hole than the other. So that you are left, even though the hole may not be perpendicular to the plates, with a hole that is at least cylindrical along its own axis.

Q. What is this tool that I show you?

A. This is a caulking chisel.

Q. Is that the type of tool that is ordinarily used in the process of caulking that you have described?

A. Yes, this is a tool which is normally used to finish the caulking job and to force the caulked metal of one plate against the metal of the other..

Mr. Matteson:

I offer it in evidence.

It is marked Libelants' Exhibit 163 (Ellsberg).

Q. I notice that this tool has a straight axis from one end to the other?

A. Yes.

Q. Is that essential in a caulking tool or not?

A. Well, that is common, but some caulking tools, where you have to get into difficult corners or in tight spaces, are also made with the working edge of the tool curved somewhat, and they will be made to different degrees or curvature depending on how you hold your hammer, and still get the point of your caulking tool in on the edge of the plate. That is an ordinary caulking tool for average work that is normally accessible to the caulker.

Q. The curvature you speak of would be at the point of the tool?

A. Yes, at the point of the tool.

Q. I show you here what purports to be a drawing of a caulking tool, which is in two parts, one designated "Plan" and the other "Elevation". Would that be a usable caulking tool?

A. That is a usable caulking tool. I have seen some offset caulking tools of this general nature, and this might be used in order to permit the caulker to get in on some set-up where, with a straight tool, he might not be able to

reach it so well. Of course this is not, and I don't suppose intends to be, a complete working drawing of such tool, because this end here would normally—the end away from the point—would normally be of smaller diameter and would be a cylinder to go into the caulking hammer.

Q. I have here two plates—a piece of a plate—3/16 inch plate—joined together by rivets. Can you illustrate from these the process of caulking that you were describing to us?

A. Yes. On these two sections of 3/16 inch steel plate which have been riveted together, one side illustrates the stages of caulking. A part of the plate has been either planed or chipped—it looks to me as if it had been planed—and on that same side the edge which has been planed—half has been caulked against the lower plate so that as these two plates are examined, one part has been completely caulked, and the job is finished, and the other part has been—well, one might say—about half done, in that the edge has been smoothly finished by planing here to remove the strained metal which would result from the shearing operation when the plate was first laid out, and it is also evident, as you look at this as a caulked job, that the edge which has simply been planed and not caulked, is not quite in contact with the underlying plate, that is, it is possible there to insert the point of a knife between that, so there has been no watertightness achieved or oiltightness on that part of the joint, but the other half over which the caulking tool has been run for a finish has had roughly half the plate caulked tightly down against the underlying plate, and brought into forcible and intimate contact with the plate beneath it so that that edge has been caulked and is now tight against oil or water.

Q. Just to make it clear: These rivets for fastening these two sections together have round heads on one side and are not flush with the plate, and on the other side

have flattened ends which are more nearly flush with the plate. You have been speaking of the seam on the side where the flattened ends of the rivets appear?

A. Yes. I may add, on the subject of caulking, that the points of these rivets have also been caulked so that as they were first driven and finished off and flushed in what, in this plate, are countersunk holes, the rivets have been finally finished with a rivet caulking tool which has gone around the edge of each one of the points of these four rivets to force the metal firmly and finally into the countersink. This rivet caulking tool differs from the average seam caulking tool, in that it is curved to a radius of a size to suit the rivet point and it has a much thinner edge and a partially tapered edge in distinction with the tool which is used to caulk the plate edge itself. The opposite side of this same plate is not caulked. The opposite side of the plate, as distinguished by having the heads of the rivets hemispherical heads protruding above the plates, is the sheared edge of the plate as it comes from the shop, and that edge has not been either planed, chipped or caulked. It is also observable, looking at that, that the two plates do not lie in firm and intimate contact, and it is possible to get the point of the knife in between them, which is normal with plates which have not been caulked.

Mr. Matteson:

I offer those two plates in evidence.

They are marked as Libelants' Exhibit 164 (Ellsberg).

Q. Commander, I have here some sections cut from tanks of the Seminole, which is involved in this litigation, and I would like to ask you with respect to the seams appearing thereon, whether or not they have been caulked? In the first place, I will refer to Exhibit 157.

The interior side thereof has some arks in blue chalk placed by another witness in the case, and I ask you to examine that and tell us whether that seam has been caulked either on the inside or the outside.

A. (Examining same.) No, this plate has not been caulked, either inside or outside.

Q. How are you able to determine that?

A. First, with respect to the inside: It is evident that the inside of the plate very definitely and markedly shows the sheared edge as it came from the shears, with the direction of shearing from the outside towards the inside, and with a very marked space between the two plates, which shows that the edges have never been forced into contact. Secondly, the edge of the inner plate shows that it was never chipped and never planed, and it shows absolutely no sign of a caulking tool ever having been run over that seam to force the metal against the outer plate. The outside seam also shows no signs of having been either chipped, planed or caulked, and there is a complete absence of the depression line which is formed when a caulking tool is used to run over the edge of an overlying plate to force it against an inner plate. The outer plate has evidently been sheared from the outside toward the inside. There is very definitely no evidence of a caulking tool ever having been run over that plate.

Q. When you use the phrase "from the outside toward the inside" with respect to shearing—

A. I mean toward what would have been the center of the tank as these plates are assembled. I may say further that there is absolutely no evidence that any of those rivets were ever caulked either.

Q. Yes, I was going to ask you that. You say there is no evidence that the rivets were caulked?

A. No, the rivets have never had a caulking tool on them.

Q. Are you familiar with the process of soldering, Commander Ellsberg?

A. Yes.

Q. And with the properties of solder?

A. Yes.

Q. Can you tell us, referring still to the same Exhibit 157, whether there has originally been, or whether there has at any time been, soldering along the outside seam or around the rivet edge of this section of the tank, bearing in mind the fact that this tank is supposed to have been through a hot fire?

A. I have examined this sample previously, and examined it again now. I would say that absolutely there was never any solder on the outer seam of the plate marked 157. It is still evident along the seam, on the lower plate particularly, the remains of the galvanizing, and it is quite evident, looking at that, that there never has been any solder laid along any part of that joint, either on the lower plate or on the plate edge of the overlying outer plate—that was never soldered at any time.

Q. How are you able to determine that?

A. If this joint had once been soldered, there would have had to be a bond between the solder and the galvanizing on the underlying plate which is galvanized, and a bond made by tinning between the sheared edge of the overlying plate, which edge is not galvanized, and the solder, and if there had ever been any solder on that joint, the evidence of the tinning still adhering to the galvanizing on the underlying plate and to the exposed steel edge on the overlying plate would still be visible. There is none whatever.

Q. And you say that in spite of the fact that I tell you the evidence is this exhibit has been through a hot fire?

A. Yes, even though it had been through a hot fire which had been hot enough to melt out and run off the mass of solder, the tinning effect would still be visible against the galvanizing, and any fire which would leave the galvanizig would still leave some of the tinning. In

particular, at one end of this, where the plates are slightly separated, and a knife edge can be inserted, if there ever had been any solder on that joint, there would be some solder in there which might be scraped out with the knife, but there is none—nothing but rust.

Q. I show you Exhibit 159, which is also a section of the same tank and which has some evidences of solder on it, and tell you that this was cut from the original tank with an acetylene torch. Can you show us on this exhibit anything which illustrates what you have said with respect to the traces of the removed solder by heat after it has been applied?

A. Yes, on Exhibit 159, which at one time evidently had the outer joint only soldered from one end of 159 to the other end, it is apparent that the solder that originally was laid up on this joint is still practically all there except at the top and bottom edges of the seam where it has been, to a fair degree, melted away. The evidence of this plate would show that the major part of sample 159 has never had enough heat on it to melt the solder, but that at both ends, where 159 was cut out of the original tank with the torch, and evidently an acetylene torch, from the looks of the edge, that the metal at those edges had to be raised to a temperature of roughly 3000 degrees when the steel was burned, and that the action of that high temperature melted the solder for a distance of roughly an inch and a half from each end, but that it still, in spite of that very high heat, it has left a very perceptible coat of tinning on both what was the galvanized under plate and on what was the un-galvanized sheared edge of the overlying plate, and that on this sample which has been exposed at the edges to a very high heat, that tinning is still very distinctly in evidence. In most places it is bright, but where it has been darkened by some dirt, a slight scraping with the knife immediately restores the brightness and shows the tinning still left on the metal.

in spite of the fact that the metal at these points has been exposed to a temperature high enough to set steel on fire and start it burning. That tinning, still visible, goes up to the very burned edge of the plate at both ends, where the heat was highest.

Q. Before we pass this exhibit: Can you tell us whether those plates have been caulked in the places where the edges are visible?

A. The overlying plate, where the edges are still tinned, shows no sign of a caulking tool ever having been in contact with it, and the fact that a knife can be inserted through the solder between the two plates shows that the edge of the overlying plate has never been forced mechanically into contact with the underlying plate by a caulking tool. The inside seam on this same sample, Exhibit 159, also has never been caulked.

Q. Commander, there has been a suggestion that the evidences of caulking on the plate edges on these two exhibits, 157 and 159, may have been destroyed by the fact that the plates are said to have been through a hot fire. What is your opinion with respect to that?

A. I would say that that is very definitely not so. On plate 157, the exposed edge of the overlying plate outside shows here and there still some of the shearing marks that were left on the edge of that plate when it went through the shears, and the caulking mark is always very radically deeper than the slight folds in the metal you get when it is sheared and consequently, if there had been any caulking depression left, it would still be markedly in evidence. It is certainly missing from this plate.

Q. Do you, in your opinion, see any evidence of distortion or destruction of any part of the plate by a hot fire?

A. No. Exhibit 157 still lines up practically true and probably as straight as it ever was, and with the same general curvature that it originally had. There is no evidence of perceptible buckling in this plate due to a fire.

Furthermore, the galvanizing on the outside shows—except where the edges have been burned by a torch—no particular signs of ever having been subjected to a fire hot enough to have made the metal red.

Q. Why do you say that?

A. The melting point of zinc is around 700 degrees. The point of redness of steel is roughly around 900, and from there a little bit up, and if you had gotten a temperature that had been high enough to get this steel anywhere near a red heat, it probably would have burned the galvanizing off in a very considerable degree—there is no evidence of that. The galvanizing simply looks like old galvanizing normally would, with a coat of whiteness. I have seen plenty of steel that has been through fire in gasoline tanks, and some abroad, and where you get a considerable amount of heat there from a fire, you get a very visible and obvious buckling or distortion, of which there is no evidence here.

Q. With respect to the galvanizing which you mention, can you determine from the inspection of this Exhibit 157, whether the tanks was galvanized after manufacture or not?

A. Yes. These plates, and the plate edges and the rivets, very decidedly show that this tank was built of galvanized plates that were galvanized before assembling, but that after the job was assembled and riveted up, there was no galvanizing of the tank as a completed tank. The plate edges which have been sheared, both inside and out, show no evidence of galvanizing, and the rivet points are simply the ordinary metal of the rivet with no evidence of galvanizing. The heads show none either, and most conclusive of all: If this tank had been galvanized as a whole, after it had been riveted up, the seams would have been full of the molten zinc, and the seams, and particularly the inner seam of this sample (Exhibit 157) show no evidence of any molten or liquid

zinc ever having entered them. This sample was never galvanized after it was riveted up.

Q. Do you see, or can you tell us, whether the rivets have at any time been soldered, either on Exhibit 157 or Exhibit 159?

A. The rivets on Exhibit 157 have not been soldered on the points. The rivets on 157 have not been soldered on the heads. On Exhibit 159, the rivets were never soldered on the points and they were never soldered on the heads either. There is no sign of any soldering having been done on either the heads or the points of the rivets on either one of these samples. There is slight evidence that on Exhibit 159, a little of the solder that was used in soldering of the seams dripped over toward two of the end rivets and touched those rivets on one side only. The evidences of tinning, where that solder ran over, are still plain on those two rivets, but the rivets themselves were not soldered.

Q. We will pass to Exhibit 160, which is another section cut from the same tank, and ask you whether you can tell us whether the seams on that exhibit have been caulked either on the inside or out?

A. Sample No. 160 is a particularly good example of a very poor job of assembly without caulking. The outer seam very clearly shows the original shearing marks of the plate, which in this case was sheared from the inside toward the outside.

Q. Referring to the axis of the tank?

A. Referring to the axis of the tank, and the line of shear is clearly shown to have run off the true line and then about the middle of the plate it was shifted in the shear and a new shearing line was started, leaving a corner about an eighth of an inch deep in the edge of the plate. If this plate had ever been planed for caulking, you would have had a true straight line instead of this irregular line with a corner in it. If it had ever been

chipped for caulking, the caulker would have chipped away this corner left in the shearing of the plate and given himself a smooth curve against which he would then have run his caulking iron. The edge of this plate shows absolutely no sign of ever having been planed, chipped or caulked. The inside edge of the same sample (160) is very clearly simply the sheared edge of the plate, sheared from the inside toward the outside, with the two plates not in very good contact, and open for the insertion of a knife edge at a number of points. The inner plate edge was never planed, never chipped and never caulked. The rivets also very clearly were never caulked either inside or outside, and are good examples of very poor riveting.

Q. Will you point out what you have in mind with respect to that?

A. The points of these rivets on the outside are cracked and split in various places. The edges of the rivets do not come down in tight contact with the metal of the outer plate, and the work was either done by a riveter who was unskilled in the trade or careless in the type of work he was turning out. I may add here that the evidence of the points of these rivets also indicate that they were driven cold, since this cracking and the lack of a fair smoothly finished point is evidence that the metal was hammered down in the cold state. It is a particularly bad joint all the way through—sample 160.

Q. From the workmanship on these three specimens which you have examined and commented upon, what is your opinion with respect to the fitness of tanks so constructed for holding gasoline?

A. The tank is completely unsuitable as a container for gasoline, it is unsuitable in the workmanship on the plates, it is unsuitable from lack of caulking on the seams, it is unsuitable from every poor riveting, and with gasoline in this tank you could expect seeps around rivet

heads and around the seams. It is the type of tank that is very evidently never designed for holding gasoline, and the type of tank which anyone who was acquainted with the difficulty of holding a penetrating liquid like gasoline in a tank would reject immediately for that service.

Q. What is the difficulty of holding gasoline?

A. Well, in a tank that is built for holding water, you can get away with a moderate amount of poor workmanship, and, if the tank, is not to be under pressure, with a fairly bad job, because the water leaking through around the rivets and through the seams will ultimately cause rusting on the rivets of the seams, which will give you a fair degree of tightness with water; if however, you put gasoline in a tank, in the same tank, either before or after it has had water—if you put it in when the tank was brand new you would immediately get bad leaks immediately—but if the tank has previously been used for water so that it has had a chance to rust up around the shanks of the rivets and through the uncaulked seams, then it would hold gasoline to a moderate degree and perhaps even for a short time well until the gasoline has cut through the rust. Any oil, and gasoline in particular, instead of rusting a metal and sealing itself up, will cut away the already existing rust and cause a leak which will gradually increase in amount as the years go on. Consequently, a tank to hold gasoline has got to be properly built and properly maintained, or you will have leaks in it, whereas the same kind of a tank, or even a worse built tank will hold water satisfactorily, and particularly when the tank is not under pressure. Furthermore, a small leak of water which would make no difference, because the water has no intrinsic value of its own and will do no damage, can be stood, whereas the same loss of gasoline is highly dangerous.

Q. You used the term "bad leaks", Commander—what did you have in mind when you said you could expect bad leaks?

A. Well, if the tank has been previously made tight because of the rusting of the rivets and the seams, what you will have, once you have put gasoline in it, and the gasoline has had a chance to work on the rust, is that it will seep through here and there in weeps and drips, and will, of course, as it runs out, evaporate. It doesn't mean, unless you had a clear hole through here, that you would have a stream of gasoline shooting out under pressure or squirting out.

Q. Does this defect in the shearing to which you called attention on Exhibit 160, have any bearing on the tightness of the tank?

A. Well, it merely—in this particular instance has a worse lack of fit of the outer and inner plate at that point than a properly sheared plate would have had. As a matter of strain, if this tank were intended to be used under pressure, either for water or oil of any kind, the plate should have been rejected by the Inspectors, because you don't get the proper distance from the plate edge to the line of rivets, because the shearing has run inside, and that plate should have been thrown out for that reason and never put into this tank.

Q. It has been suggested, Commander, that tanks constructed such as this tank was, by reason of its strengthening factors, referring particularly to the thickness of the plates, and the closeness of the riveting, was suitable for uses much more severe than the confining of gasoline. What in your opinion are the uses to which a tank constructed as this one was could be put?

A. Well, if this tank had been built with proper workmanship and properly caulked, then its general design would have made it satisfactory for either water or oil under moderate pressure, but without the caulking, which is absent here, if this tank had been put under pressure, either of water or of oil, and brought to anywheres near its designed working strength, as regards the thickness of

the plates and the size of the rivets, the tank would have leaked very badly because of poor riveting, because of lack of caulking, and might well have failed by the tearing of the plate at the point where it was improperly sheared.

Q. What can you say with respect to the way in which the riveted heads fit the plate on this sample 160?

A. The points, you mean?

Q. Yes.

A. It is a very poor riveting job. The edges of the rivets are cracked. The rivets are not uniform, they have not been hammered down into proper shape and contact with the plate, and I would say that they are both weak as rivet points, and very poor for tightness.

Q. There has been some suggestion that the condition of the rivets on these three exhibits we have been referring to, 157, 159 and 160, can be accounted for by corrosion during the period of a little more than four years since this fire took place. Bearing in mind the fact that the tanks had been in service on the yacht Seminole for some twelve or thirteen years prior to the date of the fire, can you tell us whether these conditions that you have called our attention to could be accounted for by corrosion or deterioration since 1935?

A. On sample 160, while there has been some moderate rusting on the rivet points, it is not very great, and it is very plainly evident that those rivets are practically in the condition that they came from the riveter's hammer, because these cracked edges have not been corroded away. Cracks are very sharp and very clear just as the riveter finished them, and on probably at least half a dozen rivets on sample 160, you can still see very clearly the lines and the marks left by the riveter's hammer as he worked around that rivet there, and that one at that point—these cracks—that crack there (indicating)—and they haven't rusted out of the heads of these rivets. I would say that this riveting job, in Exhibit 160, shows very poor work-

manship, and the rivets, except for moderate rusting, are practically in the condition that the riveter left them. On sample 157, the rivet points still show very clearly the edges of the riveting hammer die and are not badly rusted. On sample 159, the corrosion on the points is somewhat worse, one rivet point shows definite evidence of considerable corrosion, but the others moderate, and on the rivets there the cracks on the edges are still visible on at least one. The rivet heads inside the tanks on all three samples—on two samples—160 and 157—show moderate corrosion more than the rivet points. On sample 159, the corrosion on the rivet heads inside is not especially marked, those heads are still in fair shape.

Q. I would like to refer to Exhibit 158, which I can tell you is a section cut from the top of one of these tanks, the seam being the top seam, between the top of the side of the tank and the crown, and I call attention to one rivet which has been removed—said to have been removed by burning from the plate. Can you illustrate any of the points that you have made by reference to that rivet hole?

A. This exposed rivet hole on sample 158, which is a section of the joint between the crown or top of the tank and the side, shows that the hole in the crown and the hole in the side were improperly laid out when punched, and when assembled failed to line up truly by someone, between a sixteenth and an eighth of an inch. The holes show also that no reamer was ever run through these holes to true that up, and that consequently, when a rivet was driven in that hole, the point of the rivet and the head of the rivet failed to come concentrically, it would have been impossible for the rivet to have completely filled the hole, and it is an example of a violation of all the rules of riveting up and assembling tanks for containing liquids, and more particularly for containing gasoline, in that the holes were nto properly laid out in the first

place, were not ever reamed truly afterwards before the rivet was driven, and are a good sample of the careless workmanship with which this tank was constructed.

Q. Can you tell us whether the seam inside or out on that exhibit has been caulked?

A. (Examining same.) The outside seam was never caulked, the inside seam was never caulked, the inside seam in addition shows a further example of careless workmanship, in that there is a piece of metal adjacent to the rivet which has been removed, where the shears ran off the true line and then were re-set to the true line and a new sheet line started. Neither the inside seam nor the outside seam were ever chipped, planed or caulked. In addition to that, the assembly of this particular sample indicates that the crown was not given a sufficiently long straight side for an overlap, so that the side sheet comes up on the crown after the crown has started to bend away at the knuckle radius, leaving a particularly wide open joint at the top and one that would have been practically impossible to have made tight on this assembly, even by caulking.

Q. Can you tell us, by examination of this Exhibit 158, whether the top seam—outside seam—was ever soldered?

A. The outside seam shows no sign of solder or of tinning either on the crown or on the side wrapper sheet, and there is a total absence of any solder in the joint between the two, where there would still be some if any solder had ever been run on that joint. There never was any solder there.

Q. It has been suggested, Commander, that that joint was soldered on the outside and that, due to high temperature to which the tank was subjected during the fire, that the solder was reduced to a powder which was afterwards removed by wind or some other force. Can you tell us whether in your opinion that is possible?

A. I think that is ridiculous. If there had ever been any powder in that joint, as it got hot and melted again,

it would have run deeper into the joint, and when the metal cooled off you couldn't have had any current of air sweeping through this joint to remove anything. The solder would have stayed in there a little deeper than it was originally put in, and in this opening, for instance, where the plates are a little more separated, when the rivet was knocked out you would see signs of solder that had melted and run down while this was exposed to heat, and there is no sign of solder there. That could never have happened.

Q. What do you see, if anything, as you look through that opening between the plates where the rivet was knocked out?

A. Well, there is very evident evidence of rusting between the crown sheet and the side, in what was originally the lap of the two plates. That is evident, both from the top and from the bottom, and that indicates that those plates were never in tight enough contact while the tank was in service to keep moisture out from under there, and that the moisture did get in between those two plates and rust it up, which is just what you would expect from this type of construction. You see rust in there but you can't see any solder.

Q. I call your attention to this Exhibit 6-A, which is a section cut from the bottom of this same tank, and call your attention to the riveting there, and ask you what you can point out to us with respect to the riveting?

A. The riveting on this joint exhibits very clearly again the poor and careless workmanship used in the construction of these tanks. The rivet which happens to be directly below the red dot after the "4" painted on the sample, has the point of the rivet on the outside badly off center from the head of the rivet on the inside, which shows conclusively that the holes in the outer plate and the inner plate were not truly lined up, and that the rivet was driven through an improper hole. In addition to that,

all of the rivets in this sample, and in particular the rivet just referred to, are very poorly driven rivet points, indicating that the metal, which once formed the points of these rivets, were only thin films spread out over the plate, which have since rusted practically completely away, exposing the holes beneath, and very definitely showing that the shanks of the rivets, as driven, never filled the holes in the plates in which they were driven. It is a good sample of the type of work which would have been rejected immeditely by any competent inspector for a gasoline tank.

Q. Assuming that, as originally driven, these rivet points did spread out, as you said, in a thin film, would that in your opinion form a proper protection against seepage of gasoline?

A. No, these holes should have been countersunk holes to get proper tightness to hold gasoline, and the rivets should have been countersunk rivets, filing a countersink with solid metal through the thickness of the outer plate. What actually was the case in this job was that a thin film of metal was spread over part of the hole, which has corroded away at some time in the past, and exposed the hole, showing that the hole was neither countersunk nor ever filled by the straight side of the rivet, and is completely unsuitable for gasoline.

Q. Bearing in mind that this tank had been in service for twelve or thirteen years prior to 1935, and since 1935 has been subjected to the elements, can you tell us in your opinion whether the conditions there shown can be accounted for by corrosion since 1935?

A. The amount of corrosion indicated on this sample, Exhibit 6-A, must have extended over a very long number of years, and I would say that it is not very probable that the sample was perfect up to 1935, and since 1935 developed the corrosion shown. It was probably progressive throughout the life of the tank.

Q. Is there any evidence of solder on this Exhibit 6-A?

A. Yes, the lower seam of sample 6-A was once soldered and still shows a very considerable amount of solder left.

Q. How about the rivets?

A. There is no evidence whatever of any solder ever having been on the rivet heads or the rivet points.

Q. Is there any evidence of caulking on the Exhibit 6-A?

A. The ends of the inner plate on Exhibit 6-A, which would be the plate that would be caulked against the outer plates, show no signs of ever having been caulked. The seam is simply overlaid with some solder, most of which is still here. It shows good adherence in some spots and poor adherence, or no adherence, in at least one other spot.

Q. Which is the spot where you called attention to where there is no adherence?

A. There is no tinning at that point, the solder evidently never stuck to the outer plate.

Q. Just so we will be clear, when we come to examine the record: You are holding this exhibit—

A. On the side toward the "A" of Exhibit 6-A—it is on this side, and just outboard of the outer rivet on that side—that is the last rivet there—right there, for instance—no tinning (indicating).

Q. You have held this exhibit with the "6-A" down?

A. Yes, and with the "A" to my left as I look at it.

Q. And it is at the lefthand edge of the seam that you call attention to the fact that there is no tinning on the outer plate of the tank, is that it?

A. That is right.

Q. Now, I call your attention to Exhibit 5-X, and ask you if that section has ever been caulked?

A. The edges of the inner plate of sample 5-X show clearly that they have never been caulked.

Q. And is there any solder on the rivets—has there been?

A. No, the rivets on 5-X were never soldered. They are not quite so badly rusted outside as on Exhibit 6-A, but one of them is nearly as bad. One rivet on Exhibit 5-X also shows a moderate eccentricity between the rivet point and the rivet head, but not as bad as on Exhibit 6-A.

Q. I call your attention to Exhibit 5-Z, and ask you about the caulking and about the soldering.

A. The exposed plate edges of the inner plate on Exhibit 5-Z, both of which are clearly exposed, show no sign that the plate was ever caulked. The joint is, as in the last sample, however, soldered.

Q. Any evidence of solder on the rivets?

A. No, the rivets show no signs of ever having been soldered, either inside or outside.

Q. Now, referring to Exhibit 5-Y, I will ask you the same questions with respect to Exhibit 5-Y.

A. Both edges of sample 5-Y, which I have just exposed by scraping away the soldering, show no evidence that a caulking tool was ever applied to them. This happens to be the most heavily soldered joint of any of the bottom joints that I have seen here, and the rivets in this case show no signs of having been soldered, either on the heads or the points. Here is a particularly good example, on 5-Y, of what I was talking about—of a thin feather of iron having bene knocked down from the rivet point, and I won't break it off, I have bent it up a little bit—on the second rivet from the right side, and it hasn't yet corroded away. It is a thin film of metal that was smashed down against the plate—that would further indicate a very poor type of riveting.

Q. That is directly under the red mark?

A. That is directly under the figure 1 on the outside. No decent riveter would ever finish off a rivet like that.

Q. Any evidence of solder on the rivets on this sample?

A. No, on the rivets on sample 5-Y there is no evidence of solder either on the heads or the points of the rivets.

Q. What in your opinion, Commander Ellsberg, would be the effectiveness of solder on tanks constructed such as these, in making a tight joint, in repect to gasoline?

A. In my own work and observation on tanks for carrying oil, the use of solder as a caulking material on a tank of this nature would never be allowed. It is the poorest material that could be used for the purpose, even as a makeshift, because this tank having been constructed, in order to get good adherence of the solder it would be necessary to clean the surfaces thoroughly, chemically, exposing the bared metal on the sheared edges, and the clean galvanized metal on the flat edges, and then it would be necessary to tin those surfaces by running a solder iron back and forth under a fair degree of heat in order to get the solder to stick, and on the completed tank that would be a very difficult thing to assure, that ordinarily any person building or working on a steel tank which was not caulked and which he had to make tight, in spite of that, would noramlly use welding, either electric or acetylene, to weld the two edges together with a steel welding rod, but solder would never be used by any competent workman or shop for such a purpose, because it would be very difficult to get a job that would come near being tight, and there is the further hazard, in connection with the gasoline tank, that if a fire ever occurred for any reason at all in the neighborhood of that tank, that the solder that melts at a lower temperature of around 400 degrees, would melt out of the joint, re-open the leaks which had once been plugged with solder, and start to spill the inflammable gasoline on the fire. It would never be used by a proper shop or workman for that purpose, and never be passed by a competent inspector for that purpose.

Q. What would be the effectiveness of soldering the bottom seam, as appears on Exhibit 5-X, without soldering the rivets?

A. For gasoline, even if you made a perfect joint with the solder on the seam, you would still have the possibility on any tank, and on this tank the certainty, of leaks around the rivets, because the rivets being poorly driven, through improperly-lined-up holes, without being countersunk, and with poor type of point, would be bound to leak gasoline through the rivets, and would give you weeps and seeps of gasoline on the outside of the tank, which would vaporize, even though the joint itself had been made tight by solder.

Q. And would that be true of the side seams as well?

A. Yes, the same would be true of the side seams, which would, where they are not soldered—would leak because of the lack of caulking, and, both where they are soldered and where they are not soldered, would certainly leak through the rivets which are about as poor in the side seams as they are in the top and bottom seams.

Q. Is a drift sometimes used for lining up rivet holes in plating such as this?

A. It is, but it is prohibitive where good workmanship is required. That is, two holes which do not line up, may be distorted to a sufficient extent to get a rivet through by driving a tapered pin or a drift through, which further deforms the metal, but does not give you a fair hole. A drift can be used, and looking at this particular hole it appears that a drift probably was driven through that to expand the hole and allow the rivet to come through.

Q. You are looking now at the exposed rivet hole in Exhibit 158?

A. Yes. That is strictly prohibitive where you are trying to get good oil-tight or good water-tight work. The hole has to be reamed fair, and if necessary an oversize rivet driven to fill the hole.

Q. You have seen these samples—the exhibits we have discussed here—157, 158, 159, 160, 5-X, 5-Y and 5-Z, which I have told you are sections taken from tanks which were used on the yacht Seminole for the storage of gasoline supply for main engines, what is your opinion, from the workmanship as you have observed it on these tanks, is the suitability of a tank so constructed for that purpose?

A. These tanks are improperly built and constructed for that purpose, and the make-shift job of soldering part of the seams, which was done, did not make them suitable for the purpose and it was hazardous and unsafe ever to have installed them for the storage of gasoline on that yacht or on any vessel or in any location, whether aboard a ship or not.

Q. I call you attention to this exhibit 117, which consists of portions of two rivets, one of which was driven from this hole, Exhibit 158, and another from another rivet hole in one of the tanks, and ask you to examine them and tell us what you observe with respect to them.

A. Well, they indicate that they were not driven in faired and true holes, that in one rivet the hole in one plate toward the point was decidedly larger than the hole in the other plate, and the rivet has bulged here and there, due to that lack of fairness. The other rivet very definitely indicates that it was driven in an offset hole where the two plates did not properly line up, and the rivet was bent over in an endeavor to get it through, and then pointed up. Neither one of these rivets indicate that the holes in which they were driven were ever properly faired or reamed for rivets, nor does it appear that they could truly and fully have filled the holes in which they were driven. Also by the looks of them, I would judge they were probably cold-driven rivets.

Recess taken at 2 P. M.

4675 After Recess, 2 P. M.

Present at before.

EDWARD ELLSBERG resumes the stand.

Cross Examination by Mr. Underwood:

Q. Commander Ellsberg, you resigned from the Navy in 1926?

A. Yes, December 1926.

Q. And since that time you have been with the Tidewater for nine years?

A. Yes, until 1935.

Q. What was your job there?

A. Chief engineer.

Q. In charge of what?

A. Both the design and the mechanical erection, construction and maintenance of the physical plant for refining petroleum and any other problems that came in in connection with pipe lines or tankers.

Q. Have you had anything to do with the construction of any ships for Tidewater in that interval?

A. Tidewater built several ships, but I had just a casual supervisory interest in the plans, they were planned by shipyards like Sun, Bucey & Jones, so I had no supervision over the constructing of those ships for Tidewater.

Q. So your work was in connection with shore tanks?

A. Since 1926, with shore tanks.

Q. For Tidewater, I speak of?

A. Yes, for Tidewater.

Q. And since you left Tidewater, I think you said your work has been mainly in the field of petroleum engineering?

A. That is right.

Q. What does that mean—some sort of work you did for Tidewater?

A. Yes, it is design work, survey work in connection with existing refineries, and the last job which was about two months ago, was an examination of a number of oil tanks in a refinery in Pennsylvania.

Q. Crude oil tanks?

A. Both crude oil, lubricating oil and gasoline tanks—they were all involved.

Q. Then you really haven't had anything to do with tanks on vessels since you resigned from the Navy, have you?

A. Well, on the S4 job which came about two years after I resigned, we had some tank problems there, and on some of Tidewater's tankers, which we had to operate after they were built. I had a fair amount to do with maintenance problems on those tanks—they were tankers.

Q. They were bulk oil tanks in a tank steamer?

A. Bulk oil tanks in a tank steamer. They had some small tanks for lubricating oil—yes, you are quite correct there, yes, that is right.

Q. Did I understand you to say that you were the superintendent of the New York Navy Yard?

A. No, you didn't.

Q. You were superintendent of something at the Navy Yard, was that it?

A. Yes, I was the outside superintendent in charge of construction of several ships.

Q. You said four large ships?

A. One large ship at New York and three large ships at Boston.

Q. What type ships?

A. The ships at Boston were oil tankers.

Q. And at New York?

A. That was a battleship in which the major job we had in the hull was a very extended system of oil tanks, she burned oil—that was the most complicated structural job we had.

Q. Fuel oil tanks?

A. Yes.

Q. Double bottom tanks?

A. No, sides.

Q. Wing tanks?

A. She carried her tanks in a cellular at the sides.

Q. Something similar to a double bottom, only in the sides?

A. Well, it was vertical instead of being horizontal.

Q. Have you ever designed any cylindrical tanks to contain gasoline?

A. Yes, large numbers.

Q. How long ago?

A. The last design work I did on that was about 1935.

Q. How big tanks?

A. They would run in size from about thirty inches in diameter and five or six feet high, through tanks about four feet to six feet in diameter, and six to eight feet high, and those were for receiving tanks for gasoline in connection with various refining processes.

Q. Were used in the refineries?

A. Yes, they were for use in refineries for holding gasoline, and then, I would say, several hundred from those sizes up to 80,000 barrel tanks. In other words, my tank experience for gasoline has been, I think, rather wide, and I have had to design and build, and then afterwards take care of it in operation, gasoline tanks from small vertical cylindrical tanks up to large field tanks.

Q. But not in connection with vessels?

A. No, those were ashore. I may add there, that naturally it is more difficult to keep a tank aboard a ship than it is ashore.

Q. Why do you add that, Commander?

A. Because, you see on a vessel—

Q. I don't mean why is it so, but why do you say that—I didn't ask you that.

A. You were making a distinction between a ship and a shore tank, and I was trying to point out what the distinction is there.

Q. You didn't think I asked you which was more difficult to keep tight, did you?

A. Well, I assumed you asked a question with respect to the difference between ship tanks and shore tanks for some particular purpose, and since that is the difference I was glad to inform you—perhaps you know.

Q. You didn't under and me to ask you about that though, did you?

A. No.

Q. You volunteered that, didn't you?

A. Yes, that was volunteered.

Q. You don't suggest that a caulking tool of this size, Exhibit 163, could be used to caulk a 3/16 inch plate, do you?

A. Yes, I do, that is a satisfactory tool for a 3/16 inch plate.

Q. Do you know how wide the point of that tool is?

A. It is a little more than an eighth of an inch—practically an eighth of an inch, yes.

Q. Compare an eighth with the width of Exhibit 164.

A. That is perfectly all right. What is the matter with it?

Q. I am asking you.

A. There is nothing the matter with it.

Q. You say that that tool could be used to do this caulking on Exhibit 164?

A. Yes.

Q. Have you ever done any caulking yourself?

A. Yes.

Q. How long since?

A. Oh, probably my own caulking, except for making good minor leaks, is—oh, fifteen years ago.

Q. How much of it have you done?

A. I never claimed to be on expert caulker—I told you in connection with learning the job—a moderate amount, so that I learned how to use caulking tools, riveting drills and other tools. I am sorry if I have given you an impression that I am a mechanic, then I would like to correct it.

Q. You don't need to be on the defensive, just answer my questions and we will get through a lot quicker.

A. All right.

Q. Where did you do any caulking?

A. At both the New York Yards and the Boston Navy Yard.

Q. While you were superintendent in charge of construction work there?

A. No, that was as a student. The only work I ever did as superintendent there was occasionally to take some tools and rectify a minor defect which had to be done right away, and I would do that.

Q. Or perhaps to show a man how to do it?

A. No, I would never attempt to show a caulker how to do a caulking job, because the chances are most of the caulkers were far better caulkers than I.

Q. The caulking process that you have described, is that the only caulking process with which you are familiar, I refer, of course, to caulking steel plates.

A. There are variations in the tools used, but that is a standard and normal process of caulking steel plates and tanks, and it is the one with which I am familiar, yes.

Q. Is that the only one with which you are familiar?

A. Unless you include welding.

Q. No, my questions aren't trick questions. When I say caulking, I mean caulking.

A. That is correct, yes.

Q. I am not sure whether I correctly understood your testimony about Exhibit 164. Part of this seam you say has been caulked where it shows a decided depression?

A. Yes, that is right.

Q. What did you say had been done to the balance of that seam?

A. This has evidently been planed to give you a smooth surface for the final caulking.

Q. Has anything else been done to it?

A. Evidently not. It might have been chipped, but this plate seems to have been planed.

Q. Are chipping and planing alternative processes for achieving the same result?

A. Yes. Did I make myself clear as to why you chip and plane? If not I would be glad to do it now.

Q. In your description of the caulking process, have you been describing caulking by means of a power tool only?

A. No, it can be done either by hand tools or power tools. The ordinary power tool is an air tool and of course the hand tool is operated by your muscles.

Q. So that what you have told us about the method of caulking would be equally applicable to hand tool and power tool, is that correct?

A. Practically. You can usually get a little more finished job with the power tool, but you can do a very nice job with hand tools.

Q. Would you say that Exhibit 164 was caulked with a power tool or a hand tool?

A. That looks to me like a power tool job.

Q. Commander, you have made various comments on these pieces of tank which you have examined here this morning. I would like to get clear one thing: Do you say that they necessarily leak because of these things which you pointed out as defects, or that they would be likely to leak or what?

A. Well, the answer to that is that an uncalked tank of this construction could not be tight, containing gasoline, this tank as built as shown by these samples here.

Q. I want to be clear about your testimony on that: Assuming that these tanks were not caulked—as you say

they were not—is it your testimony that they necessarily leaked?

A. Yes, they would have to leak with gasoline in them.

Q. And that would be true from the day they were built, assuming gasoline was put in them that day?

A. If these tanks, when they had first been built, and never had water in them—from the day they were built had gasoline in them—they would have leaked.

Q. Assuming these tanks were put in the Seminole in 1922, and were used for carrying gasoline from 1922 to 1935, the tanks leaked for a period of thirteen years, didn't they?

A. If those tanks had come from the shop without any rusting to plug the holes up at all and had been put in the Seminole as they physically stand today, they would have wept gasoline from seams and rivets from the day they had been put in.

Q. Began right away?

A. Yes, if they had been new tanks and built the way they are.

Q. Where would those leaks have been?

A. You would have had weeps along these open seams—

Q. What do you mean by open seams?

A. You see that seam there (indicating)?

Q. I am asking you—just say it on the record.

A. The seam as shown on sample 158.

Q. Of course, you wouldn't get any leak there, that being the top seam, unless the gasoline was up there?

A. You would have to have the gasoline level above this point, then we would have leaks. Now, taking—I assume you are talking about this soldering having been on the day the tanks went in as new tanks?

Q. Let's just consider the side seams for the moment, which you say were not soldered—assuming the tanks were full of gasoline, would they leak along the seam?

A. Yes, the seam would have shown leaks, weeps—not necessarily all along it, but here and there along that seam, and various of the rivets would have shown weeps.

Q. Well, which rivets?

A. Those rivets there where the metal it not down here on the plate would have shown weeps—160.

Q. Counting from the righthand end of Exhibit 160, the righthand end when 160 is right side up, tell me the numbers of the rivets which would leak?

A. I wouldn't assume to do that, because I can tell you this: Nobody can look through each one of those rivets and say that that specific rivet—looking at the point—is goin to leak. I can tell you this: That the first five rivets over the figures "160" are poorly driven points and would have probably leaked.

Q. I want to get this straight: I understand you tell me that tanks built like this, will leak from the very day they are built, being filled with gasoline that day?

A. That is right.

Q. I want you to tell me just where they would leak, on those samples—take 160 first, and tell me which rivets would leak that day?

A. I am not God, and can't tell you that. I can tell you, having seen some of these holes that were cut out—looked at those seams and judged the character of the riveting—that it is absolutely certain if this tank when new, would have been filled with gasoline, would have had weeps from the seams and weeps from some of the rivets. I have tested very many tanks, of which the workmanship is far better than this, and I have never found a tank yet that, when it was first filled up with gasoline, and tested after having been built, didn't show leaks on some rivets or some of the joints, that did not have to be re-caulked, and this job is evidently, in workmanship, so much worse than any tank I have ever seen built for gasoline, that I am sure there would have been far more leaks in both rivets and in seams.

Q. Can you point out any rivet that you say actually leaked from the day that tank was put into use as a gasoline tank?

A. I wasn't there, how can I say that?

Q. Well, isn't that what you have said, Commander?

A. No, I have said—

Q. Haven't you told me those tanks leaked from the day they were put in use?

A. I would say if those tanks were filled with gasoline when brand new, and without a lot of rust in them from previous water use to plug up the openings in the seams and around this poor riveting, in the absence of all that filling material which would gradually wash out in the presence of gasoline, if originally present, that the riveting on those tanks is so poor, and that the uncaulked seams are so evidently uncaulked, that without any question you would have weeps around rivets and seams. Now, I can't tell and say specifically that a given rivet will leak, but looking over some of these, some place here, you can take a rivet like that, which I discussed a while before (6-A) the rivet that is under the red dot at the right of the "4", that rivet very evidently does not fill the hole, and that the gasoline would get to that rivet from the inside, and you would probably get a leak at that rivet—that is the worst sample here.

Q. Well, talking about that: Do you say that the gasoline would get to that rivet hole?

A. It would, with the exception of the rust filler inside.

Q. Do you say that the plates around that hole are not sufficiently tight together to keep the gasoline away from the hole?

A. You can't lay two plates together and drive them up with riveting of this sort, especially on a circular surface, and get them so close as to get a tight joint for gasoline without caulking.

Q. You don't think that is possible?

A. I have seen too many tanks—I would say it is not possible. It would be possible in just this case: If those were machined joints—if those were turned to a true machine fit—which it never was—and this thing (indicating two contact faces of the plate), the outer plate turned also to a true machine fit, and those two surfaces then fitted together as machined surfaces, it would be possible, not otherwise.

Q. So that it is your testimony that these tanks installed in the Seminole in 1922, assuming that they had not previously been used for something else, immediately began to leak?

A. It is my testimony that they would immediately show weeps.

Q. And continue to show weeps—

A. Evidently they did it, because there is physical evidence here that in an attempt to rectify the weeps and leaks they had, they went to the make-shift of soldering up some of the worst seams that were evidently leaking.

Q. You conclude, merely from the fact that solder is present on some parts of these tanks, that they leaked from those parts?

A. Yes, I would say that in an attempt to cure the leaks they went to this make-stift of soldering some of those joints.

Q. Would you say there was no leak in the side seam above the point where the solder stops?

A. At that time I assume that the rust there stopped those leaks.

Q. You are assuming now there was rust there?

A. Yes, that is what I am assuming. I can see the rust, as a matter of fact, in one of these open joints right here (indicating on Exhibit 158).

Q. So that you want the Judge in this case to believe, assuming these tanks were never used for anything previously to gasoline, that they immediately began to seep or weep gasoline when installed in 1922, and did so

continuously thereafter for a period of thirteen years, is that right?

A. The first question is your assumption—that is, you make an assumption that these tanks were put in the vessel brand new without ever having been used for anything else—do I ask if you assume that?

Q. I am assuming that.

A. All right, if one takes that assumption that these tanks had never been used for the storage of water or anything else up to the day they were put in the ship, just as they came from the shop, it is certain that these tanks would all weep gasoline.

Q. And continue to do so during all the time they held gasoline?

A. Still on the assumption—except to the extent that they may have got in and tried to wipe solder in it or something else.

Q. Let's assume they were used for some purpose, say for the holding of water, before they were installed in the Seminole, that, you say, would cause a condition of rust to exist in the joints which might stop leakage of gasoline for a time?

A. As long as water was being used in there— that is common experience, and it is my experience.

Q. I am asking to assume now that these tanks were used for holding water for some undeterminate time, and then they were put into the Seminole for the purpose of holding gasoline, do I understand that it is your testimony that they wouldn't begin to leak right away?

A. Very probably not.

Q. How soon would they begin to leak?

A If I had seen the tanks at that time I would be in a better position to tell you, I cannot state at this time.

Q. Any opinion on that at all?

A. It would depend on how badly they were rusted, and how good a rust job had been done in sealing up these crevices between the seams and around poor rivets.

Q. There is evidence in this case, I think, that shows those tanks were installed in 1922. On that assumption would they begin to leak by 1935 if they had been used for water previously and were rusted inside?

A. They would probably leak before that.

Q. Well, when?

A. You might get some weeps after you had had gasoline in them a few weks. Some other place might not start to weep for several years. There might be some places in the tank where the metal fortuitously happened to be hammered together tightly, where you would never get a leak, but having used tanks of this general size for gasoline, I can say that within some period—that might be from a few weeks to a few years— in different parts of the tanks they would get leaks in all four of these tanks from gasoline seeping through some of these tanks.

Q. Then whether they were used for water or not prior to their installation in the Seminole, and there used for gasoline, these tanks in your opinion leaked either from the outset or within a few weeks thereafter, is that right?

A. There would be some leaks probably within a few weeks, and the case would tend to get worse as the tank got older and gasoline kept in them for a longer period.

Q. So that in either event, these tanks were leaking no later than, we will say, 1925, is that right?

A. I would say, looking at these tanks, that you had some weeps in them probably by 1925, yes.

Q. And that is not a process that would stop by its own volition, is it?

A. No, unless some work was done on it, would either stay at bad as it is or ultimately get worse.

Q. Gasoline itself wouldn't plug up the leaks by any corrosive action or anything of that sort?

A. No.

Q. So, if leaking in 1925, and nothing done in the interim—

A. Why do you say 1925?

Q. Do you want to pick any better date?

A. No, I was curious. You have mentioned 1925 several times. I am not particular as to any year.

Q. You said if the tanks were used for water previously, you would have some leaks through the rust within a period of a few weeks?

A. That is probable, yes.

Q. Since these tanks were installed in 1922, 1925 is three years later, and therefore more than three weeks—more than a few weeks?

A. Yes, you would have some weeps.

Q. So that by 1925, you would have some leaks in these tanks, whether they had been previously used for something else or not?

A. Very probable.

Q. And that is not a process that would stop by itself?

A. No.

Q. It could only be stopped by some act of man?

A. Yes.

Q. Have you ever had any experience in the construction of vessels elsewhere than in Boston and New York Navy Yards?

A. You mean actually supervising the construction of them myself?

Q. Yes.

A. Not as a supervisor. I have had occasion to observe the construction of vessels in other yards.

Q. Where, for example?

A. The New York Shipyard at Camden, and the Newport News yard at Newport News, the Sun Yard—

Q. At Chester, Pennsylvania?

A. Yes, in Pennsylvania, and I have had repair work, of course, on vessels that were built in German yards, in English yards and in American yards.

Q. Commander, the ordinary naval vessel doesn't have tanks of this type to hold gasoline, does it?

A. Somewhat larger, yes.

Q. Cylindrical tanks?

A. Yes.

Q. What type of vessel has such tanks?

A. Well, you take a ship like the ordinary cruiser, will carry some gasoline for its motorboats, and they have tanks—cylindrical tanks—in them to carry gasoline. A large ship like an aircraft carrier, that has to have a huge volume of gasoline for a lot of planes, will have some structural tanks built in below, but naval vessels have had cylindrical tanks put in for carrying gasoline.

Q. You mean such vessels as battle cruisers?

A. Well, I said cruisers, they are more numerous. We have no battle cruisers, so naturally we have no gasoline tanks in battle cruisers.

Q. That is for use in airplane motors?

A. Usually in the motorboats, and on ships that only have one or two planes they may use it for planes, but the average service is for these ship's motorboats. I think I made it clear, if I didn't I will reiterate it—that ships like aircraft carriers have built-in gasoline tanks.

Q. Have you ever seen any tanks—gasoline tanks—the seams of which were soldered?

A. Never, except, if you mean these five-gallon tins—that I wouldn't call a tank, no, but as a regular tank of any size above 100 gallons, I never have.

Q. Of course, those little ones you speak of are made of sheet metal, and not plates?

A. Yes, they are made of tin sheet iron, those have soldered sheets, they are covered with tin.

Q. Commander, you have been asked to assume that those tanks went through a fire?

A. Yes.

Q. Before the pieces that you have before you were cut out?

A. Yes.

Q. Just what kind of a fire have you visualized in making that assumption?

A. What kind of a fire I have assumed?

Q. Yes. You have been asked to assume they went through a fire—what kind of a fire have you assumed?

A. The information that was given me was that this yacht had a fire after an explosion, and that a shed and other yachts burned up. I made no assumption about the fire other than what I can see from the visible evidence of these tanks, and from the visible evidence of these tanks, the evidence it that the fire around the tanks directly should not have been a very serious or a very long continued blaze. The tanks themselves don't show it. There may have been—I made no assumptions about a fire at all, except I was told there was a fire there.

Q. Well, have you assumed that it was or was not a fire of great heat or of great length in the vicinity of these tanks?

A. The evidence within the vicinity of the tanks is that the fire was not severe. I have seen fires involving oil tanks and oil storages and I have seen tanks, both small and large, that have been through such fires.

Q. By such fires, what do you mean?

A. What I would call a severe petroleum fire, and without exception the tanks in those cases, the metal has been badly wrinkled and buckled. All I can assume here, for instance, from the evidence, is that the bottom of these tanks and down near the lower edge, there could have hardly been any fire to talk about, because it hasn't even melted out the solder, and the solder would melt at a temperature of around 400 degrees Fahrenheit, or a little more, which it not a very high heat in any fire, and that even if the tops of the tanks had been exposed to a severe blaze, that is one that would tend to distort and buckle the metal, the heat would have traveled down the metal sides more or less towards the bottom, and would certainly, by conduction through the tank's sides, would apparently have conducted the heat down the steel sides

of the tanks toward the lower end and have melted out the solder there, which it did not do.

Q. Of course, you don't know whether the conditions at the top of the tank are any different than the conditions at the bottom or not, do you?

A. Not having seen the fire, I can't say, I can only say that the bottom did not have any appearance of heat, because the solder it not melted out, and the evidence of the top sample, Exhibit 158, shows, of course, the effect of flame where the acetylene torch cut this sample out, but there is no particular evidence of distortion due to high heat on the rest of the metal.

Q. Run your eye along that seam—do you see that distortion?

A. There was a rivet driven out of there.

Q. Well, there is distortion there?

A. Yes. This it not a true line there, but evidently—and you can see that very plainly, both inside as well as outside—there has been used considerable force—used at that point to knock a rivet out, with the effect it has distorted the inside plate and has evidently penetrated the outside plate.

Q. You consider that distortion due to the driving out of the rivet?

A. It is absolutely certain that the distortion on the inner plate is due to the driving out of the rivet which was driven inward, and the distortion on the outer plate is also in the same direction, an evident result of the same force that was used to drive out the rivet. If you can show me some photographs of this tank after the fire, whole—before cutting off—I might be able to pass on the question of this distortion a little better.

Q. Did I understand you to say correctly that in your opinion the rivets on this piece of tank, which you have seen, are practically the same condition as when they were driven?

A. No. Referring to one or two samples I made that statement, but I did not make that statement as applying generally to all rivets. It is very evident that on sample 6-A, for instance, the rivets have been corroded to such a degree that that is not the state in which they were left when they were first driven.

Q. Look at Exhibit 160 for example.

A. The rivet points on 160 are practically in the same condition in which they were left when they were driven. They show the cracks and the hammer marks of the riveting hammer, and those have not been corroded away. On the inside of the tank, the rivet heads are more corroded than the rivet points outside, and show very decided pitting.

Q. Referring to Exhibit 160, these cracks in the rivet points, what is your criticism of those cracks?

A. That that shows an unskilled riveter who drove them up, and that furthermore they were probably driven up cold. In other words, no skilled riveter will drive a rivet like that flattened out, with the fin left beyond the line at which he is trying to make his point, and with the metal spread so much that it cracks that way (indicating a crack a little to the right of the red letter "A").

Q. Indicating the sixth rivet from the right when the red letters "2A" are right side up?

A. That is right.

Q. Do you say that crack would leak?

A. I say that is a sign of a poorly driven rivet. The one next to it is as bad or worse.

Q. Do you know how big those tanks were?

A. Just from looking at them; I have some idea of the diameter. I have been told they are about forty-two inches in diameter and about seven feet high.

Q. At what temperature does solder melt, did you say?

A. There are different compositions, but solder will melt at about 400 to 450 degress Fahrenheit, for those

that are normally in use. You have solders that will melt a little below 400, and some that will run up towards the 500 line—all temperatures Fahrenheit.

Q. What is the melting point of zinc, do you know?

A. Around close to 700 degrees Fahrenheit—a little on the low side, I think, but in that general vicinity.

Q. I take it that rusting is a more rapid process when metal is exposed alternately to air and water, than it is otherwise, is the correct?

A. What are the otherwise conditions?

Q. When it is exposed only to air or only to water.

A. The most rapid rusting comes on a steel object which is continuously moistened and at the same time continually exposed to air. An object which is exposed to ordinary air only, without physically being wet, will rust very much slower than one which is continuously or alternately wet. An object which is completely submerged below water and not exposed to air, will rust very much more slowly than one just exposed to air alone.

Q. You said something about Exhibit 6-A—something about the absence of solder at the lefthand end when you held the tank upside down, so to speak. Take your knife and scrape some more there, will you?

(Witness does as requested).

Q. What do you see now?

A. I see more bright metal than I saw before, but I still see some spots in there that show no signs of any tinning at all, and with a magnifying glass I could give you a better opinion, but I think I scraped that spot hard enough to scrape down to the bright steel. The other spots scraped easily to a bright finish from the lead or the tinning, but this spot, after considerable hard scraping, feels to me, from the way the point of the knife acts, that I am simply scraping bare iron.

Q. And do you express the opinion, from the appearance of Exhibit 6-A at that point, that the solder never formed a bond at that place?

A. Yes, that was my opinion before, and it still is.

Q. You have never done any designing or construction of yachts, have you?

A. Not of this type. I have had work on the construction of small boats in the Navy that were motorboats, but they wouldn't class as yachts.

Q. And your repair work has been limited to vessels of the Navy, and tankers?

A. No, I have repaired practically every type of ship that is built, including yachts.

Q. What type of repairs have you done to yachts?

A. Why, when you had to repair bulkheads, repair sides, handle repairs of piping and machinery. You see I can make that clear by saying this: During the World War, the United States commandeered pretty near every yacht in the country, of all kinds, big and small, and they came into the repair yard where I was working on repairs, by the dozens, and I have had every kind of repair work on yacht hulls that is required to keep them afloat, except repairs to fine furniture and upholstery and things of that nature with which we never bothered.

Q. You haven't had any yacht experience since that time?

A. I own a small sailboat myself, but I wouldn't class that as a yacht of this nature.

Q. So your answer to my question was no? (Repeated) You haven't had any yacht experience since that time?

A. No. Since that time, since the end of the World War, I have had no experience in yacht repairs, that is true.

Q. What was your job at the Navy Yard in those days?

A. The New York yard?

Q. Yes, at the time you speak of when the yachts were being repaired.

A. I was assistant outside superintendent on repair work for something like over a year, and during that time I had these vessels that we are talking about, and from then on, for about a year and a half—between a year and a year and a half—I had charge of the construction of a new ship, I was outside superintending construction on that job, that was at the New York Navy Yard.

Re-Direct Examination by Mr. Matteson:

Q. Did you tell us the temperature necessary to cut plates such as these that have been cut from the tanks?

A. Yes. The metal it heated up to a temperature of around 3000 degrees Fahrenheit, at which point it takes fire and burns with the oxygen. You have a temperature of about that nature along these burned edges.

Q. There was one other thing I think you said. You were speaking of the possibility of making one of these rounded sections from the bottom or top of the tank tight by having a machined fit between the plates. In your opinion, was there such a fit between the plates on any of these exhibits?

A. There is no evidence of that in these. There is very decided evidence it is not so by the way the lines are—there is one that has a certain bad shearing edge. These were never machined and I may add that that is not done in the normal construction of tanks of this kind anyway.

Q. Commander, you said that you might be able to give us a better idea of the extent to which the tanks were distorted by the fire, if you could see a photograph that showed more of a length of a tank. I show you this exhibit, Libelants' Exhibit 139, which shows a substantial section of the side of one of these tanks after it had been removed from the wreck. What can you tell us after examining that, with respect to—

A. This only shows part of a tank. I hoped you might have a photograph showing the entire tank, but all this

photograph shows is that the section of the tank shown in this picture shows no particular sign of any distortion. The sides are still straight, the bottom seems to have its normal curvature, and you can't see any buckling or bulges in the thing, so I would say that picture might just as well have been taken of the tank when about new. it doesn't show any sign of distortion there. Here is another picture, marked Libelants' Exhibit 141—this is the next best picture I can see. That tank, as shown in Libelants' Exhibit 141, indicates that the sides of the tank are still a true cylinder, and that the bottom of the tank, which is visible in the photograph, still appears to be a true circle, so that in this picture there is no evidence of a distortion of the tank due to heat or other means.

Q. I call your attention to Exhibit 152, in which the tank was lying on the ground, and the picture taken from an end view.

A. That is looking from the top of the tank down the tank along one side?

Q. Yes.

A. And this also shows the side of the tank to be still straight and still a cylinder, and the top of the tank still to be a circle. It also indicates the fact that, as is shown by sample 158, that this tank is improperly constructed, in that the sides rise up above the curvature of the top head and that the top edge is not in close metallic contact with the top head as it should be, and that is very apparent that the metal it not in the close contact that good workmanship requires.

Q. I show you this exhibit, 5-L, which is a photograph looking down into the tank compartment, showing the sides of Nos. 1 and 2 tanks before they were removed from the vessel. Does that add anything with respect to distortion?

A. The sides of No. 1 tank and No. 2 tank, as shown in this photograph, are still straight, and indicate no signs of bulging or distorti

Re-Cross Examination by Mr. Underwood:

Q. Have you seen other tanks that have been through gasoline fires—oil fires?

A. Yes, quite a number—this is in refinery service.

Q. Do I understand that tanks that are exposed to such fires don't look like these?

A. A tank that has been through a real fire, and exposed to high heat, is always wrinkled and buckled and distorted. I have seen quite a number. I have been unfortunately present at a number of refinery fires, due to gasoline and some due to other oils, and I have had good opportunity for observing.

Q. Do you know at what temperature gasoline burns?

A. What temperature gasoline burns?

Q. I mean how high a temperature it gets to when liquid gasoline burns—how hot a fire you get?

A. Something depends on the conditions of the proper mixture of air, but if you were to burn gasoline in air under fair conditions, you would get a temperature that would, in the flame, run around 2500 or 3000 degrees or even higher, but you don't need that temperature on steel, steel will start to get a dull red at around 900 to 1000, and brighter red at around 1200 or 1300, and under these conditions, if the steel is heated up to a point beyond its redness point, and sometimes even when heated below that, you will get bulging and distortion.

Q. Do I understand it is your opinion that these tanks were not exposed to such a fire?

A. All I can say, looking at these samples and pictures, there is no evidence that they were exposed to such conditions. It appears from some of the photographs that they were shielded by a steel bulkhead on each side of them, which may well have been a factor in that situation, but the tanks themselves certainly don't show it.

4705 RONALD R. NELSON, being duly sworn and examined as a witness for the libelants, testified as follows:

By Mr. Matteson:

Q. Mr. Nelson, what is your business?

A. Shipbuilding — not shipbuilding — drydocking and ship repairing—Marine Basin Company, President of the Marine Basin Company.

Q. You are President of the Marine Basin Company at the present time?

A. That is correct.

Q. How long have you been President?

A. Since June 1934.

Q. How long have you been connected with that Company?

A. Since January 1, 1929.

Q. Will you describe to us the operations of that Company?

A. We do general ship repairing, which goes into all phases of structural work, engineering work, renovating, overhauling, drydocking, refinishing and painting and so forth.

Q. What type of vessels?

A. Mostly steel—95 per cent steel.

Q. Do you do ship repair work on yachts—steel yachts?

A. Yes.

Q. To what extent?

A. I would say that our business is composed of about 80 per cent—steel yachts, larger yachts.

Q. How large a yard is yours?

A. In extent, in size?

Q. Well, just to give us an idea, yes.

A. We have an enclosed basin where we have three piers, two of them are over 1000 feet long—1305 feet, to be exact—one 900 feet. That will give you some idea as to the wharfage.

Q. How many vessels do you handle there in the course of a year?

A. That would be hard for me to say, whether it is 200 or 400—I have never really made a count.

Q. That will give us an idea—200 to 400?

A. I would say somewhere in there, yes.

Q. How many men do you employ there?

A. It varies from, I would say a minimum of sixty to a maximum of a hundred and sixty during the various seasons.

Q. Tell us personally about your own experience in connection with steel vessels—the repair of them.

A. Do you want me to go back from the beginning?

Q. Yes.

A. Well, I started in 1916 serving a shore apprenticeship in the Charleston Navy Yard, Charleston, South Carolina; from there I went into the Navy, went through the various schools, the electrical school, Brooklyn Navy Yard, the submarine school in New London, the submarine battery school, submarine gyro school and in the regular submarine service during the War. After the War was over, I came out and went to work for the Sperry Company over in Brooklyn in stabilizers, engine work—ship's stabilizers, gyro stabilizers, and from there I went to Boston and was with a large yacht while she was under construction there for Mr. Palmer, after which I went to sea for about eight years as an engineer. After that, I went with the Winton Engine Company at Cleveland as a guarantee engineer for a short time, and then to the Marine Basin Company.

Q. Your first position with the Marine Basin Company was as what?

A. Second Vice President.

Q. Since then, you have become President?

A. That is right.

Q. In connection with your work, are you familiar with cylindrical steel tanks for the storage and retention of gasoline on yachts and other vessels?

A. Yes, sir.

Q. Are you familiar with the process of caulking steel plates?

A. Yes, sir.

Q. I show you this Exhibit 164, and ask you what that is.

A. This is a sample of a piece of steel riveted work, if that is what you mean.

Q. Where did that come from, do you know?

A. Yes. It was made up in one of our shops down at the Marine Basin.

Q. What does that illustrate with respect to steel work?

A. It illustrates the modern practice of riveting and caulking.

Q. Will you show us the caulking on this exhibit and explain to us what is consists of?

A. The caulking is the righthand half of this sample—is caulked.

Q. When you are holding the exhibit with the rivet points toward you, is that right—the righthand end when you hold the exhibit with the rivet points toward you?

A. That is correct.

Q. The rivet heads, as distinguished from the points, are the hemispherical ends on the opposite side?

A. That is correct. You want me to describe this caulking?

Q. Yes, will you please do that?

A. Well, this caulking is done with what we call a standard round-nosed caulking tool in the regular fashion. The center of the plate edge is first split with your tool, then you go back and hammer the metal from the split in against the side of the plate, thereby forcing the edge of

this tight into the face of the plate here, making a caulked joint.

Q. And what is the purpose of caulking?

A. The purpose of caulking is to make it tight.

Q. You say the righthand part of this seam has been caulked?

A. That is right.

Q. How about the lefthand end?

A. The lefthand end hasn't had anything done to it, any more than just planed off.

Q. Does this exhibit illustrate the difference in appearance between the caulked seam and a non-caulked seam?

A. Yes, it does.

Q. The caulking that appears on this seam, will you tell me whether that is the normal size of caulking for that size plate, or not?

A. That is what we would call normal light caulking as opposed to heavy.

Q. Will you, on this exhibit, point out to us the nature of the riveting?

A. This riveting is standard button head countersunk type of riveting—rivets caulked.

Q. What is the purpose of caulking the rivets?

A. To prevent the rivet from leaking.

Q. And does this exhibit illustrate the manner in which that is normally done?

A. That is what we call standard practice.

Q. What do you mean by standard practice?

A. If we were going to build a tank or a vessel of any kind, we would employ that kind of construction.

Q. And when you say that kind of construction, what is it you are referring to?

A. The riveting and the caulking.

Q. Do you include the caulking of the rivets?

A. Absolutely.

Q. And you have in mind a tank for the retention of gasoline, when you say that?

A. Yes, I have—or pressure tanks.

Q. Does the tank for the retention of gasoline require any different standard or degree of care in construction than any other tank?

A. Yes, sir, it does.

Q. In what respect?

A. A tank for the retention of gasoline needs to be pretty well constructed for tightness.

Q. Why is that?

A. Because gasoline will eat its way through, wherever a leak it apt to form, where rust is formed. Gasoline is harder to confine than water, in other words.

Q. What is its effect on rust, where rust is present?

A. Gasoline will eat its way through rust.

Q. You have shown us this Exhibit '164, illustrating caulking. I would like to ask you to examine, for instance, Exhibit 157, the seam on the outside and the seam on the inside, and tell us whether those seams have been caulked?

A. No, sir, these seams have not been caulked.

Q. How are you able to determine that?

A. Because there are no caulking tool marks on them. The only marks I see here are shear marks.

Q. What are shear marks?

A. Marks that are left by the cutting shears when the plate is cut.

Q. What is the nature of those marks which you see?

A. Well, take for instance this edge left on this plate (indicating).

Q. You are referring to the inside edge of this exhibit?

A. That is correct. Without having examined the edge of this plate, you could see that this plate was sheared in this direction—the cutting edge of the shear pushed this feather out.

Q. We have the exhibit lying with the number down, so we are looking at the interior of the tank, and I think you called attention to the upper edge of the upper plate, is that right?

A. Yes.

Q. And you say there is a feather that shows which is the cutting mark and which is the shearing mark?

A. This feather was left by the shear—as the shear came through cutting this plate out, simply pushed over this little burr or feather.

Q. If these seams that you have examined had been caulked, what would be the difference in their appearance from what you observe?

A. If this seam was ever intended to be caulked, in the first place it would have been chipped or planed and then you would see the tool marks from you caulking tool. This top edge that I spoke of a minute ago would be split in the center, and the inner part of the metal forced in against this bottom plate, thereby making a joint.

Q. That is as it appears in this Exhibit 164 at the right-hand side?

A. That is correct.

Q. Am I correct that the inner edge would show a depression as a mark of the cutting tool, or a trench?

A. That is right, it would show a depression, as you can see by looking at this plate edge here (Exhibit 164).

Q. Referring to Exhibit 164?

A. Yes.

Q. I call your attention to Exhibit 160, and ask you to examine the inner and outer seams of that plate, and tell me whether or not that has been caulked.

A. Very definitely not, there has never been a caulking tool on that.

Q. I show you Exhibit 159. First, the outer seam has some solder covering it in parts; turning it over and referring to the seam on the opposite side, I ask you to ex-

amine that and tell us whether that has been caulked or not.

A. No, sir, that has not been caulked.

Q. I ask you to turn it over to the side where there has been solder—and the solder is still present in the major part of the seam—and ask you if you can tell me from the parts of the seam which are exposed, whether that seam has been caulked or not.

A. No, sir, they have not.

Q. I refer you to Exhibit 5-X, a section of the bottom seam of one of the tanks, and ask you to look at that and tell me whether that seam has been caulked.

A. No, sir, that has not been caulked.

Q. I ask you the same question with respect to Exhibit 5-Z?

A. That has not been caulked.

Q. I ask you the same question with respect to 6-A.

A. No, sir, that hasn't been caulked.

Q. I ask you the same question with respect to Exhibit 5-Y.

A. No, sir, that hasn't been caulked.

Q. I show you Exhibit 158, which is a section cut from the top of this tank, and ask you whether that seam has been caulked either inside or out.

A. No, sir, that has not.

Q. Now, with respect to the outside seam, can you tell us whether or not it would be practicable to caulk that seam?

A. The outside seam?

Q. Yes.

A. No, sir, you could not caulk this seam.

Q. Why not?

A. Because the overlap in the plate is not in line with the flat surface.

Q. What difference does that make?

A. Well, it makes this difference: The crown of this head starts to fall away from this seam, and all you would

accomplish by caulking would be simply push the plate over it—you have no foundation to caulk on.

Q. Does your experience include the construction of gasoline tanks such as—well, the general character—I don't refer to workmanship of these tanks from which we have sections here.

A. Yes, I have constructed quite a number of them.

Q. What is necessary with respect to the riveting of such tanks when they are constructed for the purpose of retaining gasoline?

A. I don't believe I quite understand that question.

Q. Well, assuming that you are constructing a cylindrical steel tank for the purpose of retaining gasoline, and, of course it is a requirement that be tight for the retention of gasoline, what in a general way are the precautions and the character of riveting that is required for that purpose?

A. Well, of course in the first place, your punching or drilling, as the case may be, if the holes are punched they should be properly reamed to the proper size, the proper size rivet for the kind of tank you are going to build, depending on the pressure you are going to carry, or if gasoline tanks like these, the right sized rivet, right sized spacink and correct workmanship in the riveting and caulking—rivets caulked and seams caulked.

Q. I show you Exhibit 158, and call your attention to the rivet hole appearing therein, from which a rivet has been taken out, and ask you to tell us first of all what you observe with respect to that rivet hole.

A. The two holes are out of line, they were never reamed, and from the elongation of the hole itself, it is clearly evident that a drift was used instead of the holes being reamed.

Q. What difference does that make?

A. It makes this difference: That when holes are so poorly punched and so far out of line, and a drift has to

be driven into these two holes to try to bring them in line, it inevitably elongates both holes, and when a rivet is driven in it is driven in at an angle, and the shank of the rivet does not fill the hole and it makes a leaky job.

Q. Is the use of a drift good practice in construction of a gasoline tank?

A. No, sir, it is not.

Q. If this hole had been reamed, what difference would there be in it?

A. It would be a straight hole.

Q. I call your attention to Exhibit 6-A, a section from the bottom of one of these tanks in question, and ask you to observe the riveting on that section and tell us what you observe with respect to it?

A. The same thing applies here: These holes—at least three of them definitely are badly out of line—the rivets driven in at an angle which indicates that they were not reamed.

Q. What difference did that make with respect to the tightness of the tank?

A. When a rivet is driven in this manner?

Q. Yes.

A. The shank of the rivet doesn't fill the hole, therefore it leaks.

Q. I ask you to examine the points of those rivets and tell us what you observe.

A. Well, in the first place, the points were poorly headed up. In two cases here they were just bent over, you might say, to one side, which indicates a very poor riveting job.

Q. Would you consider a tank constructed with that type of workmanship was a proper tank for the storage of gasoline?

A. No, sir, I would not.

Q. I ask you to observe Exhibit 160, and tell me what you observe with respect to the riveting of that section.

A. You want me to confine my remarks to the rivets only?

Q. No, having in mind that we are interested in the adequacy of this tank for the retention of gasoline, tell us what you observe about it.

A. In the first place, the shearing of the steel plate is very bad indeed. You can see where the shears ran off here in the center, gouged the plate out close to the rivet hole and started off in a new line. The rivets themselves are very badly driven.

Q. In what respect?

A. Whoever drove those rivets headed them up in such a fashion as to split them at the edges—they are all mushrooms—split at the ends of the mushrooms.

Q. What difference does that make?

A. I would say that those rivets were driven cold—it looks like a cold-driven steel rivet to me—and so much hammering or so much driving on them that they crystallized and split, and probably they were the wrong length to begin with, which means that the shank of this rivet hasn't made up or filled the hole.

Q. Why do you say you think they were too long to begin with?

A. Because of the fact that they have had to be driven down and mushroomed so much to get down to the steel plate.

Q. What do you observe with respect to the rivet points, as to whether they were actually driven down to the steel plate or not?

A. Well now, you can see here that these rivets were all different lengths. Here is one that looks like a fair job, right in the center.

Q. You are referring to the one which is ninth from the right hand side when the Exhibit 160 is held in an upright position?

A. I only say fair. A good many of these rivets you can see right under the head—they are not driven home,

and of course in this type of rivet you can't caulk them, you can just drive them up as tight as you can, and of course the seam itself is not caulked.

Q. Why do you say that you can't caulk rivets of that type?

A. To caulk a rivet you must have the type of construction that we are looking at here.

Q. In Exhibit 164?

A. Yes.

Q. And how is that different from the type that is in Exhibit 160?

A. This particular type of rivet is a countersunk rivet, and is flush-driven (indicating Exhibit 164), and therefore has a caulking edge to it that can be caulked. This type can't be caulked (referring to Exhibit 160).

Q. How essential is caulking in a gasoline tank?

A. There is no other way of making a rivet tight, there is no other way of making a seam tight—that is, I say no other way—that is the standard practice that we employ. There is such a thing as welding—welding seams, butts and rivets—but ordinarily when we build a steel welded tank we expect to make that tank tight by riveting and caulking—welding is resorted to under other conditions.

Q. I call your attention to the rivets on Exhibit 157, and ask you to tell us what you observe there?

A. This is the same type of riveting we have been looking at in Exhibit 160, I don't see any material difference, it looks the same to me.

Q. The same comments would apply?

A. Yes.

Q. And with respect to Exhibit 159?

A. That is exactly the same type of riveting.

Q. I show you Exhibit 158, a section from the top of the tank.

A. (Examining same.) This is also the same.

Q. I show you Exhibit 5-Z, and ask you what you observe with respect to the riveting on that section.

A. (Examining same.) That is the same type of riveting.

Q. Can you tell us whether the holes for those rivets have been reamed?

A. I would say that they have not.

Q. Why do you say that?

A. Because they don't line up.

Q. Are you familiar with the process of soldering?

A. Yes, sir.

Q. I ask you to examine Exhibit 160, and ask you if you can tell us whether the outside seam of that section has at any time been soldered, and ask you to bear in mind the fact that this tank has been through a fire and it has been suggested that there may have been solder there originally which ran away as a result of the fire.

A. This seam has never been soldered.

Q. Why do you say that?

A. If it had, there would be indications of the tinning still there, regardless of the fire.

Q. Do you find any indication of tinning still there?

A. None whatever.

Q. Why would you expect to find evidence of the tinning still there?

A. You will find in soldering steel particularly—and it is not a very successful process—that you have to use very strong acid to clean the surface before you start to tin, and once tinned and soldered, no matter how much heat you might apply to that joint or that surface, you will still see the tinning there, you just can't—I don't believe—burn it off without melting the whole plate.

Q. I show you Exhibit 159 and ask you if there is anything on that plate that illustrates what you say.

A. Well, you can see here that evidently part of this solder has been melted away—melted and run off.

Q. Where do you observe that?

A. At the two ends. I can very distinctly see the tinning that is left on the steel.

Q. This plate, I will tell you, was cut as a section of the side of the tank by use of an acetylene torch. What would the effect of that on the solder be, of the metal itself?

A. The temperature at the point of burning would be pretty high point, 3000 degrees Fahrenheit, and that being the case this temperature naturally would melt this solder back for a ways—I assume that is what happened from the looks of the plate.

Q. Does the tinning still remain?

A. Oh, very definitely.

Q. How close does it come to the edge of the plate that was burned?

A. The tinning that I see here?

Q. Yes.

A. It looks about an inch and a half.

Q. I mean does it extend all the way up to the edge now at present, or did it stop short of the edge?

A. Oh, I see what you mean. All the way up to and overlapping the edge that was burned.

Q. I show you this Exhibit 157, and ask you to examine the seam there and tell me whether that has been soldered or not.

A. There is no evidence of having been soldered.

Q. And your reasons are the same as given with respect to Exhibit 160?

A. Yes, sir.

Q. I show you Exhibit 6-A, which you observe as having been some solder in the bottom seam, and ask you whether the rivets have been soldered.

A. No, sir, these rivets have not been soldered.

Q. I ask you the same question with respect to Exhibit 5-Y.

A. No, sir, these haven't been soldered.

Q. I ask you the same question with respect to Exhibit 5-Z.

A. No, sir.

Q. I ask you the same question with respect to Exhibit 5-X.

A. No, sir.

Q. In a previous answer you said something about solder on this type of construction not being very successful. What did you mean by that?

A. It is very very difficult to get solder to adhere to steel or iron, it has never successfully, to my knowledge, been done.

Q. In your opinion, is soldering a seam in tanks of this construction, a safe method of protecting the seam from gasoline leakage?

A. It definitely is not.

Q. Why is that so?

A. Because of what I have just said relative to the success of soldering steel or iron.

Q. I call your attention to Exhibit 158, which is a section from the top of one of these tanks, and ask you whether that has been soldered or not.

A. The seam or the rivets or both?

Q. Both.

A. No, sir, there has been no soldering here.

Q. Why do you say that?

A. There is no evidence of solder anywhere, there is no evidence of tinning anywhere, and if this seam, for instance, had been soldered, there would be evidence of it from releasing this rivet.

Q. Where would that appear?

A. It would appear between the two laps.

Q. It has been suggested that this seam, which was at the top of the tank, originally contained solder, and due to the fact that the tank had been through a fire, that the solder was reduced to a powder which was thereafter removed by the influence of the elements. In your opinion, is that possible?

A. I have never heard of such a thing before, I couldn't say whether solder could be reduced to powder and blown

away or not. However, if that had taken place, there would be evidence of soldering here—left here.

Q. And you find none?

A. I find none whatever.

Q. Let me ask you, Mr. Nelson: From your observation of the materials and workmanship, as contained in these exhibits that you have examined—157, 158, 159, 160, 5-X, 5-Y, 5-Z and 6-A, whether tanks so constructed, of the dimensions of forty-two inches diameter and seven feet length, installed vertically, in your opinion would they be proper and safe tanks for the storage of gasoline in a yacht for use as the fuel supply for her main engines?

A. In my opinion, they would not.

Q. And why do you say that?

A. Because of the fact that the tanks were very poorly constructed and very definitely would leak, and I think that is reason enough.

Q. Referring again to Exhibit 158, and looking at the inside of it, I would like to ask you to tell me what you observe with respect to the fitting of the crown to the side plate and the workmanship there.

A. Are you referring now to the crown itself?

Q. Yes.

A. The crown itself is poorly constructed in that the flange is not deep enough and very badly sheared.

Q. When you say badly sheared, what are you referring to?

A. The ragged edge of the shear itself.

Q. Just below the open rivet hole?

A. Just below the open rivet hole, where the tool again slipped and cut in close to the rivet hole and was just left, and started off in another direction, or continued on. The holes, of course, were punched—they were not drilled—and they certainly were never reamed, and there is no chance in the world for a caulking edge on these seams.

Q. I call your attention to the fact that in the way of this rivet hole, the plates have been separated to a certain extent. Can you look through between them there?

A. Oh, yes, you can see daylight right straight through.

Q. What do you observe as you look through there?

A. Are you referring now to the condition of the metal itself?

Q. Yes.

A. I can see rust—the condition of those two surfaces appears to be exactly the same as the inside surface of the tank ittself.

Q. And what is that?

A. Rust.

Q. Referring to the condition of Exhibit 160, you have commented on the condition of the rivet heads and seam. Taking into account the fact that this piece of plate is said to have been through a fire, will you tell us whether, in your opinion the conditions that you have described—commented on—could have been caused by a fire or deterioration since the fire in the last four years?

A. The conditions I commented on were certainly not brought about by this plate having been subjected to heat.

Q. Have you observed any evidence of distortion due to the fire, on that exhibit?

A. No, sir, I did not.

Q. I ask you to observe Exhibit 157, and tell us the same things with respect to that plate, as to whether conditions are accounted for by fire or by corrosion since the fire—the conditions on which you commented.

A. The surface condition of this plate, Exhibit 157, seems to be different, of course in that the galvanizing has practically disappeared and there has been corrosion.

Q. Do you see any other evidences of distortion due to fire?

A. No, that is the only difference I can observe between the two plates.

Q. You mentioned galvanizing. Referring to these exhibits, can you tell us whether these tanks were galvanized after manufacture or not?

A. No, sir, they were not.

Q. How can you tell that?

A. If the tank was galvanized after manufacture, the galvanizing would fill up the cracks in the seams and also fill up the openings under the rivet heads, and there is no evidence of any such thing here, and besides, these rivet heads or rivet points were never galvanized, and the plate is, so that this tank was never galvanized after it was constructed.

Q. You have been referring to Exhibit 160. Are your comments true with respect to the other exhibits, 157 and 159, for instance?

A. Due to corrosion, and a little evidence of any remaining galvanizing on this plate, it is difficult for me to say—157. There is a slight evidence of galvanizing on the plate itself but none whatever on the rivet points.

Q. 159?

A. I would say the same thing for 159 as I have just said for 157.

Q. Do you see any evidence of galvanizing on the rivets on this Exhibit 6-A?

A. I can see no evidence.

Q. 5-Y?

A. No, sir.

Q. 5-Z?

A. No, sir.

Q. 5-X?

A. No, sir.

Q. One more question about the soldering: As you noted, there is evidence of solder on the bottom seam, but you said there was no evidence of solder on the rivets around these sections from the bottom seam. Assuming that solder was used on the bottom seam, but not on the

rivets, what would the result be with respect to the tightness of the tank?

A. If it was possible to make the seam itself tight, of course the seam wouldn't leak, but that wouldn't prevent your rivet from leaking, which means that it wouldn't prevent the gasoline from draining out of the tank and into the bilges, or wherever it would go. In other words, if you had leaky rivets, it would be no good to solder the seam of the tank and leave the rivets unsoldered, or whatever you were doing to them.

Q. I show you Exhibit 163, and ask you if you can tell me what that is.

A. This is a caulking tool.

Q. Is that the usual type of tool that is used in caulking processes you have described?

A. For certain sized work, yes.

Q. Is that the proper size for such work as has been done on Exhibit 164?

A. Yes, it is, it is the right sized tool.

Q. I show you Pilkington Exhibit 17, which consists of parts of two rivets, one of which is said to have come from this open rivet hole on Exhibit 158, and ask you to observe these two rivets and tell me what you observe with respect to them.

A. The rivets, of course, were driven through a hole or through two holes out of line.

Q. How can you tell that?

A. This rivet does not form a right angle—the shank of the rivet is not a right angle to the head, it is crooked over and that is due to having been driven through holes out of line—forced out of line—and it is clearly evident that the shank of these rivets certainly never made a joint or never filled the two holes in the plates—very evidently loose.

Cross Examination.

By Mr. Underwood:

Q. When did you become associated with the Marine Basin Company?

A. January 1, 1929.

Q. You said something about serving an apprenticeship in 1916—as what?

A. I don't quite understand that—where?

Q. As what?

A. In the Charleston Navy Yard?

Q. Yes.

A. Apprentice electrician.

Q. That is where your experience with ships began?

A. That is right.

Q. Then you went into the Navy?

A. That is right.

Q. What was your rank in the Navy?

A. I went in the Navy as landsman for electrician, and I went to the schools that I mentioned a while ago, came out of the schools as third class electrician, second class, first class and finally chief electrician on board a submarine.

Q. And your rank in the Navy, when you left the Navy, was chief electrician?

A. That is right.

Q. In the Sperry Company, your work, if I understood correctly, was in connection with ship stabilizers?

A. Gyro stabilizers, yes.

Q. You said you were then, for a time at Boston, in connection with the construction of a yacht?

A. That is right.

Q. What yacht was that?

A. The yacht Guinevere.

Q. What type?

A. Three-masted auxiliary schooner, 195 feet long.

Q. What did you have to do with her construction?

A. I was superintending certain phases of it for the owner.

Q. What phases?

A. The engineroom in particular—her engineroom machinery.

Q. For example, what machinery?

A. Her Diesel engines, electrical equipment and general engineroom equipment.

Q. Was it in her that you went to sea as an engineer for eight years?

A. Yes.

Q. So that you were to be the engineer of that vessel, and you represented the owner in some measure during her construction?

A. That is right.

Q. Thereafter, I think you went with the Winton Engine Company?

A. Yes, I did some guarantee engineering work for them for a short time.

Q. On vessels?

A. On vessels.

Q. And from there you went directly to the Marine Basin Company?

A. That is right.

Q. Your work there is as an executive, I take it?

A. That is right.

Q. Where is your plant, Mr. Nelson?

A. Right here in Gravesend Bay, Brooklyn.

Q. Have you installed any cylindrical steel gasoline tanks on any yachts that have been built at your plant?

A. Oh, yes.

Q. As large as 500 gallon capacity?

A. In one tank?

Q. Yes.

A. No.

Q. What is the largest that you can recall offhand?

A. Oh, it would be hard to say, I would say 36 to 40 inches in diameter, five to six feet long.

Q. Have you ever done any caulking yourself?

A. Only in school.

Q. At what school?

A. Brooklyn Navy Yard.

Q. That was in connection with the electrical school or the submarine school?

A. The electrical school, I spent eight months in the electrical school there and we took up general machine shop practice.

Q. How did you happen to make this Exhibit 164?

A. Mr. Thompson asked me to have it made.

Q. Were you there when it was made?

A. No.

Q. What did he ask you to make?

A. He drew out a sketch of just what you see there—a specification.

Q. Do you have that with you?

A. No, I haven't, I gave it to the machine shop foreman and he made the sample.

Q. What instructions did you give to the machine shop foreman?

A. To make me up a sample according to this sketch and specification.

Q. What did the specification say about caulking?

A. Caulk one-half of the seam.

Q. Is that all it said about caulking?

A. That is all.

Q. You said that the edge to be caulked was first split, is that correct?

A. That is right—we call it split—you split it with one edge of that caulking tool through the center.

Q. The same tool as this (indicating Exhibit 163)?

A. Yes.

Q. You first learned about caulking at the Brooklyn Navy Yard, is that right?

A. That is right.

Q. I understand from what you said that your only subsequent experience with caulking is since you have been associated with the Marine Basin Company, am I right about that, or wrong?

A. That is mostly correct, I would say. My experience with caulking—I don't know just what you mean by that.

Q. I mean with the process, and not the familiarity with seeing plates being caulked—with the process of caulking.

A. No, then that is not correct.

Q. What is not correct?

A. I have been familiar with it since 1916, if I understand your question right. I have been around where it was being done most of that time.

Q. Did you have anything to do with caulking as an apprentice at the Charleston Navy Yard?

A. No.

Q. You first personal familiarity with the process was at the Brooklyn Navy Yard, is that right?

A. No, I wouldn't say that is correct. I would say that the only caulking I ever did with my hands was in school at the Brooklyn Navy Yard.

Q. Did you have anything whatever to do with caulking at the Charleston Navy Yard?

A. No.

Q. And you went from there to the Brooklyn Navy Yard?

A. Yes.

Q. So that your experience at the Brooklyn Navy Yard is your first experience with caulking, isn't that so?

A. That is right.

Q. You didn't have anything to do with caulking with the Sperry Company, did you?

A. Yes, I did.

Q. Tell me about that.

A. The work that I did for Sperry had to do with not only the building but installation of these gyro stabilizers, where considerable iron work had to be done, and I was Sperry's guarantee engineer on these installation jobs that I saw, so naturally I laid out a good deal of steel work to be done, where riveting and such work was done.

Q. What sort of steel work?

A. Foundation work.

Q. You mean structural hull work?

A. Yes.

Q. Any tank work?

A. In this particular case, no.

Q. This Exhibit 164: Do you know whether that was caulked with a power tool or a hand tool?

A. I happen to know that it was caulked with a hand tool—now, wait a minute—this particular tool here was the one we did the job with—that is a power tool—but in using that tool to do this caulking it was done by hand—is that clear enough? That is ordinarily a tool that is used in a power hammer (indicating Exhibit 163).

Q. I understood you to say, Mr. Nelson, that these tanks very definitely would leak, is that correct—is that your opinion?

A. That is my opinion, yes.

Q. Do you mean by that that they would leak from the moment they were built, as soon as gasoline was put into them?

A. It wouldn't be very long.

Q. How long—a matter of hours?

A. That is impossible for me to say how long exactly, but gasoline has a cutting effect on this kind of business, and it wouldn't take so very long.

Q. Well, I want to get clearly on the record just what your opinion is on that point: Do you say that these tanks were constructed in such a way that they weren't tight at the outset?

A. I can't possibly see how they could be.

Q. Well, you haven't quite answered my question. I think perhaps you can say either yes or no to this question: Do you say that these tanks were so constructed that they would leak from the moment they were put into use as gasoline tanks?

A. Yes.

Q. Well, can you show me just where any particular one of these things would leak, from the very beginning?

A. There are many rivets there that would leak.

Q. Right away?

A. I believe so.

Q. Well, which ones would leak right away?

A. This rivet here would leak (indicating the rivet under the red dot on Exhibit 6-A).

Q. Any others?

A. I believe that most of the rivets in the way of the center of this seam here would leak (indicating Exhibit 160).

Q. Any others?

A. Oh, there are probably many more, I have to take a magnifying glass to find some of them—those are the worst ones.

Q. Those would leak right away?

A. I believe they would.

Q. Of course, if the rivet that you first pointed out—the one on Exhibit 6-A under the red dot—leaked, that would necessarily involve a leak first in the seam between the crown and the side plate of the tank, wouldn't it?

A. In this particular case, that seam is open down to the rivet.

Q. You say it is?

A. Yes, so far as fluid is concerned.

Q. So it is your testimony that from the time these tanks were first put into use as gasoline tanks, there was a leak at that particular rivet?

A. No, I didn't say that. I said I don't see any reason why these tanks wouldn't leak with this type of con-

struction. Now, what happened to that particular rivet, between the time that this tank was first put into use, and what I see now, is a different thing. This rivet may have been burred over, and that burr rusted away since this tank was first put into use. However, that rivet would stand a might good chance of leaking when it was brand new.

Q. Now you don't say it would leak from the very beginning?

A. I can't say, because I don't know what condition that rivet was in from the beginning—that is the head of the rivet.

Q. And of course, you don't know when the head of the rivet got into the condition it is now in, do you?

A. No.

Q. Turning over to Exhibit 160, which is before you there: Do you say those rivets would leak from the very beginning?

A. I say I believe these rivets would leak, yes.

Q. So assuming these tanks were installed in this vessel in 1922, and this fire occurred in 1935, that particular tank leaked every time there was gasoline that high in the tank, is that right?

A. I don't know that they did, but I say I believe that they would have leaked.

Q. You have been called here, Mr. Nelson, as an expert to express an opinion about these tanks, and I want to get that opinion clearly on the record: I want to know whether it is your opinion that that particular tank, Exhibit 160, leaked at the places you have mentioned—the rivets you have pointed out—from the time the tank was first built?

A. I believe, looking at this construction, that this tank leaked when it was first built, yes.

Q. So that that tank would leak from 1922 to 1935 every time it was filled with gasoline up to that point, is that your testimony?

A. I believe that to be true, yes.

Q. You don't solder tanks at your plant, is that correct?

A. We don't solder steel or iron tanks, no, sir.

Q. I think you said that if the seams of these tanks, for example the seams shown in Exhibit 160, had once been soldered, you would still see signs of tinning notwithstanding it has been through a fire. What do you refer to by tinning?

A. When you are going to solder a joint or solder a seam, you first clean that to clean bright metal by use of a scraper, wire brush or emery wheel or some such instrument, to clean all the rust down to bare metal, and use acid and use a soldering iron and solder and put a light coating of solder on that surface—that is tinning. Then you can go ahead and adhere solder to that tinning.

Q. Is the tinning that you refer to the same substance as the solder itself?

A. Yes, sir.

Q. But applied at a slightly different time?

A. Yes.

Q. If the fire is hot enough to burn away the solder which is applied after the first tinning has been applied, why doesn't it burn away the tinning too?

A. The tinning for some reason or other adheres to the metal more firmly than the balance of the solder that is put on. I don't know just why extreme heat won't take it away, but it will not.

Q. Then if the original tinning adheres to the metal, why is the second coat put on?

A. The tinning is a couple of thousandths of an inch thick—the tinning of itself wouldn't form a joint.

Q. You mean that the coat of tinning, as distinguished from solder, is only about two-thousandths of an inch thick?

A. Or less.

Q. But that won't burn away, you say, although the solder itself, which may be an eighth of an inch thick will, is that right?

A. That is not entirely correct. The solder, including the tinning—or the solder in the tinning—will melt and run away, but that bright surface caused by the tinning will remain there.

Q. What is the bright surface—is it part of the tinning or is it something else?

A. It is part of the tinning, yes.

Q. What is this substance used in tinning—is it any different than solder itself?

A. No, it is solder, it is the same thing.

Q. Then what is the bright material that it leaves behind if the solder melts and goes away?

A. That is the tinning.

Q. If the temperature is raised to such a high point that it will melt the solder and cause it to run away, why doesn't that solder which goes under the name of tinning, dissipate and run away too?

A. I am not enough of a chemist to tell you that, all I can tell you is I know it won't.

Q. What do you base that on? Have you had any experience with tanks that have been through fires?

A. No, but I have had experience with materials that have been in the fire for various reasons. I know that you can take—I have experimented with it personally—you can take and tin a surface and go ahead and do your soldering, and then you can take a blow torch and put on that surface and run all of the solder off of it and hold the blow torch there all day and you still have your tinning left underneath that—bright.

Q. Have you done that yourself?

A. Yes, I have carried on, a few years ago, long experiments in the soldering of castiron in particular—with no success whatever, incidentally.

Q. Do you know at what temperature solder melts?

A. Around 450 degrees, Fahrenheit.

Q. How about zinc?

A. Zinc, 750 degrees, I believe.

Q. You expressed the opinion that fire could not have caused the condition of these exhibits that you have commented on, by that do you mean the structural conditions?

A. I meant this: I was commenting on the riveting and the caulking—the structural condition.

Q. You mean to say, I take it, that the fire wouldn't cause cracks in the points of the rivets, such as you see on Exhibit 160, is that what you mean?

A. No, sir, they would not.

Q. Or fire wouldn't cause the little edges on the points of the rivets that you have noted on Exhibit 160, is that what you mean?

A. No, sir, they would not.

Q. Well, of course, fire plus exposure to alternating air and water over a period of four years, would cause considerable rusting, wouldn't it?

A. That is correct.

Q. Noting the points of the rivets on Exhibit 6-A, you see quite a lot of rust around those points, don't you?

A. There has been rust there, yes.

Q. There still is?

A. There still is, it has been cleaned somewhat.

Q. Exposure to the atmosphere and water alternating over a period of four years, could cause a great deal of that, couldn't it?

A. Well now, that depends on what condition the steel was lying in, when you say a great deal.

Q. The rusting process will begin as soon as you expose metal of this kind to air and water alternately, will it not?

A. That is in the water and out of the water—and in and out?

Q. Yes.

A. Yes, there will be rust, of course—erosion.

Q. It will begin as soon as you subject metal to these conditions, will it not?

A. Yes.

Q. And it will go on continuously too, will it not, as long as those conditions remain the same?

A. That is what it will do.

Q. And of course you get rust at a more rapid rate when you alternate exposure to air and water on the one hand, than you do when you have the metal exposed only to the air or only to the water, isn't that so?

A. Yes.

Q. So isn't it a fact, Mr. Nelson, that the present condition of the rivet points of Exhibit 6-A is not a fair criterion by which to tell their condition four years or more ago?

A. That question is rather misleading.

Q. I don't want to mislead you, and you are bright enough and intelligent enough to take care of yourself, and answer it any way you want.

A. The rivets, as I see them here, while there has been a rust condition, it is clearly evident that they were very poorly driven in the beginning, because you can see the shank of this rivet here (indicating the one under the red dot) entirely clear of the hole in one direction, which originally bent over against one side of the hole.

Q. Do you say that particular rivet point never extended over the plate to cover up the hole between the shank and the edge of the plate?

A. I wouldn't say that, no. That rivet head may have been feathered over so it covered over the hole, but the shank of the rivet didn't fill the hole.

Q. Is it your testimony that there never was any metal from the rivet in the present aperture between the shank of the rivet and the hole in the plate?

A. I say that the shank of this rivet never filled this hole to begin with.

Q. How about the head or the point when it was turned down when driven?

A. The head of the rivet, when it moved over might easily have extended over the hole—that may have rusted away—but it would never have made the hole tight.

Q. You don't think it would?

A. No, sir.

Q. You said, with reference to one of these rivets which is part of Pilkington Exhibit 17, as I understand it, that it never filled the hole and was very evidently loose—did I understand you correctly to say that?

A. That is what I said.

Q. And do you mean to say that one of these rivets from the very beginning was loose in the tank?

A. We use that term to mean that the rivet was not tight, it doesn't mean that you could take and wiggle the rivet. When we say loose, we mean leaking—not tight.

Q. Does that apply to one or both of these?

A. That applies to both of these.

Q. So that from the very day this tank was completed and put into use as a gasoline tank, it is your testimony that both these rivets leaked?

A. It is my testimony that both of them very likely did leak.

Q. As I see it, there are two possibilities: They either leaked or they didn't leak. Now, at the moment, I am not interested in whether they are likely to leak or whether they may have leaked, but only whether they did or did not. Now, what is your testimony on that—did they or did they not leak?

A. I have no way of knowing whether they did or whether they did not.

Q. Can you, from what you have seen, express an opinion as to whether they actually did or did not leak from the very beginning?

A. My opinion is—my honest opinion is that these tanks did leak from the beginning.

Q. These two rivets leaked from the very beginning (Pilkington Exhibit 17)?

A. We are talking about the tanks now.

Q. Well, say the tank leaked in the way of these two rivets from the very beginning—is that your testimony?

A. In my opinion I believe that they did.

Re-Direct Examination.

By Mr. Matteson:

Q. Referring to Exhibit 6-A, you have been asked some questions about the corrosion on the points of the rivets. I will ask you to compare the corrosion on the points and on the heads and tell me what you see.

A. There has been very little erosion on the heads. There has very definitely been more on the points.

Q. Does the condition of the heads give you any indication of the extent of the corrosion on the points?

A. None whatever. Evidently the heads of the rivets were protected by some means, and the points or the outside rim of the tank exposed to moisture or some other condition, because there is a difference in the two conditions.

Q. If the tanks were standing on wooden platforms on this end (indicating Exhibit 6-A) would that give greater protection to the inside or outside?

A. Sunken into the wood?

Q. Sunken somewhat into the wood.

A. More protection to the inside.

Q. Referring to this Exhibit 164, something has been said about specifications to which this was prepared. Was there any indication given to you with respect to the nature of the caulking that was to be placed on it?

A. No, sir.

Q. Does that caulking, as shown on Exhibit 164, represent normal practice?

A. That is correct.

Q. Did you exaggerate it to any great degree at all?

A. The caulking of the rivet heads I would say was exaggerated to some degree.

Q. How about the caulking of the seams?

A. No.

Q. Do you recall whether you were requested to caulk the rivet heads or not?

A. No, we were not.

Q. Did the specification consist of any more than the thickness and dimensions of the plate and the fact that the seam was to be half caulked?

A. Nothing more except the rivet spacing.

Q. Is the workman who actually did this work here?

A. Yes, he is.

Q. What is his name?

A. Thomas Hansen.

4745 THOMAS HANSEN, being duly sworn and examined as a witness for the libelants, testified as follows:

By Mr. Matteson:

Q. Where are you employed?

A. Marine Basin Company plant.

Q. What is your position there?

A. General foreman.

Q. Do you know about caulking steel plates?

A. Yes, I should say I do.

Q. Have you done it yourself?

A. Yes, sir.

Q. How many years experience have you had in that sort of thing?

A. I started in this business when I was fourteen years old, and I have, off and on, all these years, done it quite often.

Q. I show you this Exhibit 168, will you tell me what that is.

A. That is a riveted joint where you proceed to make a tank of any vessel holding liquid.

Q. Did you make that?

A. Yes, I made this sample.

Q. How did you come to make it?

A. By request of my employer.

Q. Were you given some sketch or instruction with respect to making it?

A. Yes, I was.

Q. Have you that with you?

A. No, I have not.

Q. What did it consist of?

A. It consisted of an outline of the spacing of the rivets.

Q. What instructions were you given with respect to caulking the seam?

A. To caulk the half of the seam so that you could readily see the difference between an uncaulked and a caulked seam.

Q. Were you given any instruction as to the width of the caulking?

A. No, sir, I used my own judgment on that. I done that so often before, and I never got instructions of that kind.

Q. Does that exhibit show the usual caulking for a plate of that size?

A. Yes, it does, the usual procedure.

Q. How about the rivets?

A. You mean the spacing of the rivets?

Q. The caulking of the rivets.

A. Yes, that is the usual way of caulking rivets like these.

Q. Did you caulk the rivets?

A. Yes, sir.

Q. Did anybody give you explicit instructions about that?

A. No, this is the usual procedure to caulk rivets of this kind.

Q. For tanks for carrying gasoline?

A. Any liquid for that matter.

Q. What is this Exhibit 163?

A. The caulking tool I used for this particular seam—I haven't got the tool for the rivets.

Q. Is that the usual kind of a caulking tool to use?

A. Yes, sir, it is.

Q. Just tell us how you caulked.

A. You will note this tool has an edge that is a little higher.

Q. One edge is a little higher than the other?

A. Yes, as you will see, and when you start caulking you first split your plate with the sharp edge, laying down like this, and then raise the tool up and force that remainder of the plate into the plate opposite, like you could see there (indicating Exhibit 164).

Q. Did you do this by hand or use a power tool?

A. I did it by hand—this is a power tool, but you can also use it by hand.

Q. And you used it by hand?

A. Yes, sir.

Q. Will you look at Exhibit 160 and tell me whether that has been caulked or not.

Mr. Underwood:

I object to this because of the agreement that Mr. Matteson made at the close of the last session in Miami, that he would call only two other witnesses in addition to Mr. Thompson, and I think it is a complete departure from our agreement to go into that with any more witnesses.

Mr. Matteson:

It is true that at Miami I said that I would call two additional witnesses on the subject of caulking. As long as Mr. Hansen prepared this exhibit and has come here, I would like to ask him simply the question as to Exhibits 160, 157 and 159, as to whether they have been caulked or not.

Mr. Underwood:

I raise no objection to producing an extra witness with respect to the manner in which Exhibit 168 was prepared,

but I do object to your going on further with this witness about any pieces from the Seminole's tanks, on the ground it is an admitted departure from our agreement, which was a condition of our suspending taking testimony at that time.

Mr. Matteson:

I certainly don't want to be put in the position of violating any agreement, and I will concede the calling of an additional witness is a slight departure. However, as this witness is here and has prepared this exhibit, I would like to have him point out the difference between the seam on Exhibit 160 and 157 and the seam on Exhibit 164, and if Mr. Undeerwood considers that as a departure, it is quite all right with me for him to make the point and I would simply like to ask the questions of this witness, and if the Court thinks they should not be considered, that is quite all right too. As long as he is here, I don't want to miss the opportunity of asking the question.

Mr. Underwood:

I will object to it, and at the proper time move to strike it out as a violation of the agreement.

Q. Will you just examine this Exhibit 160, Mr. Hansen, and compare it with the caulked seam which you have shown us on Exhibit 164, and point out whether there is any difference between them.

A. There is a vast difference between them from a practical man's point of view.

Q. What is the difference?

A. In the first place, this is not prepared for caulking, and in the next place it never has been caulked, there is no caulking, so any practical man can see.

Q. I ask you the same thing about Exhibit 157.

A. Well, that is the same thing, only in this place here they have been inverted to reverse the plate and lay the

shearing edge in against, and in this case the shearing edge is out.

Q. That is in Exhibit 157, the shearing edge is laid against the inner plate?

A. Yes.

Q. And in Exhibit 160, the shearing edge is laid out?

A. That is so it appears to me.

Q. Is there any caulking on Exhibit 157?

A. Not that I can see.

Q. Looking at the reverse side of 157, is there any caulking that you can see on that plate?

A. No. If I might say so, it couldn't be done, it is impossible to do any kind of caulking inside, you couldn't get in there to do it, in a small tank of that sort.

Q. Well, aside from that?

A. There is none.

Mr. Underwood:

I would like to make this statement on the record: That I shall not cross-examine Mr. Hansen with reference to his opinion as to the condition as to caulking of the samples from the Seminole's tank, because I consider that testimony no part of the record in this case.

Cross Examination.

By Mr. Underwood:

Q. Mr. Hansen, how long have you been with your present employer?

A. About fourteen years.

Q. You have been in this general line of work for longer than that?

A. Since I was fourteen years old, I am now fifty-three.

Q. Where was your work before you went with the Marine Basin Company?

A. In this country I have been with the Staten Island Shipbuilding Company for many years, and with the Barber Steamship Company repair shop I was before that.

Q. You mean the New York office of the Barber Steamship?

A. That is right—in their repair sh

Q. And you had some experience abroad before that?

A. I had plenty of experience abroad.

Q. Where?

A. In Copenhagen I served my time with Burmeistr & Wain.

Q. At whose request did you make that little piece of metal?

A. My employer.

Q. Who?

A. Mr. Nelson.

Q. Did you have any discussion with anybody else about it?

A. No, sir, I was merely asked to make a sample which would compare with that small sketch he gave me.

Q. Did you talk with anybody else about it before you made it?

A. No, sir.

Q. Nobody at all?

A. No, sir.

Q. Is this the tool you used (Exhibit 163)?

A. Yes, for caulking the seam.

Q. Is that the kind of tool you ordinarily use for caulking, in your experience?

A. Yes, for that type of work.

Q. You pointed out that one of the points of this tool was longer than the other?

A. Yes, very little—you can see it.

Q. You first take the tool with the long edge down?

A. That is right.

Q. And split the plate?

A. That is right—split you might call it or get a line in it.

Q. And then you elevate the tool a little higher and hit it down?

A. Yes, that is right.

Q. You don't turn the tool over?

A. No.

Q. Mr. Hansen, you hold that tool in that caulking groove up to the light, you will see that you can't possibly get that tool all the way down in there so that it shuts out the light, isn't that true?

A. This tool, of course, when you caulk the seam down, you let it down this way here—this is the way the tool is laid down when you caulk it down (indicating).

Q. You are telling me you turn the tool over?

A. You can see yourself.

Q. Is that right?

A. Yes, after the first procedure, yes, that is right.

Q. When you turn the tool over and put the long end in, you can still see the light through there, isn't that so?

A. It might be so, I don't know about that, but that is the way it is done.

Q. Well, look at it.

A. I can't see any light through there now.

Q. You can't see any light through there?

A. No, I don't think you can either. After all, I couldn't tell the exact angle I held the tool.

Q. You mean to tell me you can hold that tool in there so you can't see any light through it?

A. I wouldn't say I can or can't, I don't know. Hold it in the proper angle you can't see no light through it.

Q. Can you find a way to hold that thing so you can't see any light through it?

A. Yes, I did it, I got glasses on too, I can see very good. You move it back and forth a little bit, this shows it is convex a little, so that will be—

Q. Did you ever use a bigger one than that on a 3/16-inch plate?

A. No, sir.

Q. Did you use a smaller one than that on a 3/16-inch plate?

A. No, I would say this is the right tool.

Q. Have you ever used a smaller tool than that on a 3/16-inch plate?

A. I couldn't say truthfully either, perhaps I have. This was the tool I picked out for this job.

Q. They come smaller than that, don't they?

A. Yes.

Re-Direct Examination.

By Mr. Matteson:

Q. How much smaller, Mr. Hansen?

A. As practical men, we don't measure tools like that, I couldn't say—a thirty-second—perhaps that would be the most.

Q. You mean 1/32 of an inch smaller than that?

A. Yes.

Q. That would be the smallest?

A. That is the smallest, otherwise it becomes a chisel.

Adjourned to 2 P. M., December 7, 1939.

Met pursuant to adjournment, 2 P. M., December 7, 1939.

Present as before.

4754 JOHN A. THOMPSON, having been duly sworn and examined as a witness for the libelants, testified as follows:

By Mr. Matteson:

Q. Mr. Thompson, in the first place we have an exhibit here; No. 164. Did you have something to do with the preparation of that exhibit?

A. Not with the preparation exactly, I asked Mr. Nelson of the Marine Basin if he would be good enough to prepare a small sample from two 3/16 inch plates riveted together, and to caulk half of one seam in order to show the difference between a caulked seam and an uncaulked seam in the same line. I didn't request him to do anything with regard to the riveting—the caulking of the riveting—apparently they did that on their own free will, all I gave him was a very rough sketch; approximately the size of these rivets, and marked off four rivets giving the distance of approximately 1 1/16 center and just said "Caulk half". I haven't got the paper, but I could repeat it if you want.

Q. Did you give any instructions with respect to the depth or nature of the caulking?

A. Nothing whatsoever. All I said in connection with the caulking was to caulk half the plate and to leave the other half uncaulked.

Q. Referring to that exhibit, will you tell us whether or not the caulking that appears there is normal caulking for that size of plate?

A. Yes, in my opinion this is just normal caulking?

Q. Will you explain to us briefly what the caulking consists of, as it appears there?

A. Well, there was a term used here yesterday that I don't normally use, because we don't split the plate, but the term is used here. We use a tool to give a line on approximately half the thickness and press the metal down slightly then, and then the final movement is by rocking the caulking tool and forcing that slightly displaced material of the outer plate close against the inner plate in order to close off the space there entirely. I think if you will look at the end of this plate you will see the part that has been closed off. It is closed off to about a depth of approximately an eighth of an inch, and the trench is slightly more than an eighth of an inch width, and I imagine, without measuring, somewhere about a thirty-second or a sixteenth of an inch in depth.

Q. Does that exhibit represent the normal appearance of a caulked seam?

A. This seam has the appearance of a normal light-caulked seam.

Q. Are you familiar with the process of caulking rivets as has been done on this exhibit?

A. Oh, yes.

Q. Is that a satisfactory method of making rivets tight?

A. Well, not a countersunk rivet, the only type of rivet you can countersink is the countersunk point rivet—that, is the normal caulked rivet.

Q. Since you were last on the stand, you spoke to me about caulking on some of these exhibits. In the first place, I call your attention to Exhibit 157, on the back of which appears some blue crayon marks. Do you recall what those blue crayon marks are?

A. That was a mark made by Mr. Gibbs inside No. 4 tank, representing a picked sample of caulking, so I understood, of that particular seam.

Mr. Underwood:

I ask you to examine the seam on the inside of this exhibit and tell me whether you see any evidence of caulking there.

The Witness:

None whatsoever.

Q. Has that seam ever been caulked, in your opinion?

A. It has not.

Q. Why do you say that?

A. It is entirely free of all caulking tool marks, and still has shearing marks on the plate, very evident to me. I am not saying only on the edge but in the thickness of the plate there is evidence of shear marks on the edge.

Q. What is the significance of that?

A. Showing the plate edge has not been disturbed from the time it was sheared.

Q. How about the seam on the outside of this exhibit?

A. The same remarks apply to that too. Looking at the outside of the plate with the red letters "4 B" up, just immediately or slightly to the left over No. 1 rivet from the side, there is evidence there of a slight slip of the shearing blade on the edge of the plate—you can see that quite definitely.

Q. What is the significance of that?

A. It shows the shearing marks are still there as originally. The edge of that plate has not been disturbed by any other tool since.

Q. Is there any evidence of the use of a caulking tool anywhere throughout that seam?

A. No, sir.

Q. I refer to Exhibit 160, and ask you to examine the seam on the outside of that plate, and tell me what you observe with respect to possible caulking.

A. My observation as to the caulking is the same as to the previous exhibit, except I don't see any depression—I can still see the shearing blade marks in places, but there is no mark whatsoever indicating any caulking of any kind. I am quite satisfied that that plate has never been caulked.

Q. I call your attention, in the way of the seventh and eighth rivets from the righthand side of the plate, held with the "160" up, and ask you to examine the condition of the edge of the upper plate nearest to the lower plate and tell me what you see there—when I speak of the upper plate I speak of the plate that is on top of the lower plate.

A. That is the edge of the plate that is adjacent to the heads of the rivets?

Q. Yes, on the underside which comes in contact with the plate that is beneath the other—what do you observe there?

A. I don't quite know what you want to know, Mr. Matteson—I think I have already given testimony as to this bad shearing.

Q. I want to know if there is any evidence of caulking there.

A. No, there is no evidence of any caulking there, none whatsoever. That part you refer to now, incidentally, is where we saw actual beads of water coming out, as I have already given reference to.

Q. I would like to have you examine the reverse side of this plate at the seam, and tell me what you observe with respect to possible caulking there.

A. The edge of the inside plate is badly corroded, but looking at the plate with the edge upward, there is still evidence, between the fourth and fifth rivets—

Q. From the righthand side?

A. From the righthand side. (Continuing) of shearing blade marks, but generally speaking the whole edge is more corroded than the others you have shown me, but I am satisfied there was no caulking there at any time.

Q. Now, I ask you to examine Exhibit 159, the seam on both sides, and tell me what you observe with respect to caulking.

A. Looking from the inside of the tank, the shear blade marks are quite evident, and there is no evidence of any caulking at any time.

Q. Now, will you examine the outside of the plate as far as you can?

A. The outside plate—the whole plate?

Q. No the outside seam.

A. Looking from outside of the tank on the seam, I think the tinning and the solder would prevent me definitely saying there was no caulking there, it is not possible to examine this seam on account of the tinning and the soldering. If I could scrape away part of that tinning—if I could get down to the steel—

Q. Can you do that in a small area?

A. Would it be all right if I do that one end (scraping). I will confine the scraping to a very small area. It is difficut to get this tinning off, I don't think it is possible to get it all off with a knife, but in my opinion this plate has not been caulked. Using the point of the knife to get right down to the metal, it is just as hard on the inside of the edge as the outside, and I am satisfied that that plate has not been caulked in the part that I have scraped.

Q. I call your attention to Exhibit 158, and ask you what you can tell us with respect to the inner and outer seams with respect to caulking.

A. Taking the outer seam, this plate has never been caulked, and it is impossible to caulk it; it can never be caulked.

Q. Why?

A. Because the gap between the inner edge of the outside plate and the crown plate is far too wide to caulk it, you would ruin the plate if you attempted to caulk that. You would have to definitely split the plate down for a considerable depth in order to get any metal over, and then you would have to weld up that split so it would be hopeless to caulk. It wouldn't be possible to caulk that seam in a satisfactory manner, the job would be worse afterwards.

Q. How about the interior seam?

A. Impossible to caulk that, due to its condition. It is frightfully bad workmanship here on the inside, and it would be absolutely impossible to caulk that plate without chipping it to get a fair surface first, or to have it machined. Originally, I think the crowns would be machined on their lower edge, but from observing this exhibit, the crowns were merely sheared, and there is evidence, as I have already stated, of very bad shearing in this exhibit.

Q. Who do you say it was only sheared?

A. It is obvious from the appearance of the seam—the edge of the plate itself.

Q. And what in particular do you call attention to?

A. The unevenness of the whole line, and furthermore the presence of a mistake on the part of the shearer, inasmuch as he allowed the shear blade to go off the line to a very considerable extent, and slice into the seam—into the plate—leaving, as you can see, a jagged piece of metal showing.

Q. I call your attention to Exhibit No. 6-A, and ask you to tell us whether that has been caulked or not.

A. Owing to the presence of solder at the lower edge of the plate, I can only judge this from the end of the plate itself, and I am satisfied that plate was never caulked.

Q. Did you examine both ends?

A. I did examine both ends, yes—I had previously examined all these very carefully.

Q. I ask you the same thing with respect to Exhibit 5-Z.

A. It is very clear from the one end of this exhibit—I don't know what end you would call that—the end to the right of 5-Z—looking at 5-Z, to the right of those letters—it is evident that that plate has never been caulked.

Q. Have you examined the other end?

A. Yes, I did, but it is much clearer on this one end that I mentioned.

Q. I show you Exhibit 5-Y, and ask you the same thing.

A. It is evident from both ends of this plate that this plate has never been caulked.

Q. I show you Exhibit 5-X, and ask you the same thing.

A. Here we have a very good example, showing that the plate was not caulked. The edge of the crown—the lower crown plate—has been sheared at a considerable angle away from a square—that is from 90 degrees—and it is very evident from the end—to the left of the letters "5-X"—that this plate has not been caulked. It is also evident from the other end that the plate has not been caulked.

Q. I show you this Exhibit 163, and ask you to tell me what that is.

A. That is a caulking tool for an air caulker machine, but it is rather longer than most hand caulkers, but it otherwise is quite similar, except that a hand caulking tool would be of the same diameter towards the top whereas this has been reduced to fit the machine.

Q. Is this the usual type of caulking tool, as far as the cutting end is concerned?

A. As far as the cutting end is concerned, it is quite usual. You will notice at the caulking end there is not only a slight taper away from the upright or from the square, but it is also rounded, which enables the caulker to use the slightly rolling motion that I have already mentioned.

Q. The rounded surface is from side to side?

A. From side to side, yes, that is to prevent, in a way, the caulker from applying too heavy a load on the edge of the caulking tool and giving a bad joint in the trench, or appearance in the trench.

Q. What is the trench?

A. The trench is the depression below the top of the plate formed by the caulking tool, which is shown in that Exhibit 164.

Q. There has been some testimony with respect to soldering, Mr. Thompson, and there has been some testimony that there were evidences, consisting of bits of solder or other traces left in the seams of some of these tanks. Did you examine the tanks for the purpose of determining whether there were any such evidences or not?

A. Yes, I examined them very carefully for that very purpose.

Q. And what did you find?

A. I could find none.

Q. To what extent did you find evidences of solder on the tank?

A. Well, on the Nos. 1, 2 and 4, the tanks were soldered at the side seams for a length of approximately eighteen inches to two feet, and on 1, 2, 3 and 4 they were all soldered on the lower circumferential seam.

Q. Did you examine tank No. 3?

A. I examined tank No. 3, yes.

Q. Were there any evidences or traces of solder in the side seams of that tank?

A. Not in that tank, no, sir.

Q. I ask you to examine this Exhibit No. 160, the outer seam, and ask you if there is any evidence of solder there?

A. No, sir.

Q. What would you expect to find as evidence of solder, if solder had been there?

A. Oh, I think there would be—supposing the heat had been hot enough to remove the tinning—I think you would find acid marks without question. I don't think myself it is possible to remove all traces of tinning in any fire which would leave the plates in anything like the condition that they now are. I think you have that shown very clearly on another exhibit. I think it is 159—where at the end—each end of that exhibit—and running in both cases right up to the edge of the plate, you have the tinning adjacent to where a very fierce heat had been applied by the oxyacetylene torch, which was used for cutting this sample out.

Q. How much heat is represented by the cutting operation?

A. I have never actually tested it, but I know it is considerably in excess of the melting point of steel, and I heard two witnesses say 3000, and in my opinion it would be quite considerably in excess of that. I think the melting point of steel is slightly lower than 3000, and I know the way this metal flows when the oxygen is blown through the melting point at the edge of the plate, that is considerably in excess of the melting point of steel.

Q. Referring to Exhibit 158, there has been testimony that that seam on the outside at the top of the tank had been soldered, that possibly the solder had been reduced to powder by the heat of the fire and dissipated by action of the elements. What is your opinion with respect to that?

A. I don't think that is correct, Mr. Matteson. I am perfectly satisfied there has been no solder in that joint at any time.

Q. Why do you say that?

A. Because I would expect either some remains of tinning or mark of acids. I see no trace of acid there at all. The condition of the plate seems to be the same more or less all over, there is no acid line, there is no tinning line, and the seam itself seems to be as badly corroded inside, where I can see it in between the plates, as it does in any other part of the plate.

Q. What does that indicate?

A. I think if we had soldered there we would have indications of either tinning—if you didn't have part of the solder left in the plate—I think if solder had been there it would have run down part into the seam itself, and there is no trace of solder at all there.

Q. You were speaking of acid marks. Referring to Exhibit 160, do you see any signs of any acid marks there?

A. No, sir. It is true there is an appearance of a marking which extends out from the edge of the plate to a distance of probably an inch and a half in places, but I do not consider that an acid mark.

Q. Can you determine what that is?

A. I couldn't say definitely, it may be that those tanks were soaped along the edge at one time, in order to test the tightness of the tanks, and it is possible that that mark is left there, maybe, from the fact of the alkalies in the soap, I don't know. I am satisfied there is not an acid mark as we use for cleaning the plate.

Q. Since you were testifying last, Mr. Thompson, I think these rivets, or the remains of rivets constituting Pilkington Exhibit 17, have been marked in evidence. Have you examined those?

A. Yes, I have examined these carefully on several occasions.

Q. What do you observe with respect to them?

A. They have apparently partly drilled and partly burned them out of the tank, and from the appearance of the shank relative to the head, I am satisfied that these came out of unfair holes—holes that probably had been drifted. That is the evidence on the rivets themselves.

Q. What do you observe that indicates that?

A. As I say, the angle of the shank to the head shows that they have been driven in at an angle varying from a pure right angle, which they should normally have been driven in at—that the rivet has been strained, consequently. Furthermore, there is evidence underneath the heads of the rivets of what I call considerable corrosion showing that the joint at that head was not gas tight at the time it was taken out.

Q. How would the corrosion affect that—the corrosion that you see there?

A. The corrosion would cause the joint between the head of the rivet and the plate to become other than tight.

Q. Why?

A. Because it has space through which gasoline can pass.

Q. What makes it?

A. You will notice that the underside of the head of the rivet is pitted, thereby forming passages for gasoline to pass underneath the head and down the shank of the rivet.

Q. Can you illustrate what you mean by an unfair hole?

A. Yes, I have prepared a sketch here (producing same) It has been considerably enlarged in scale in order

to make the matter clear. This sketch is marked diagram A. Now, on the top of the diagram there is a sub-diagram —the mark No. 1—indicating two plates in section and showing the rivet holes in proper alignment.

Q. That is what you call a fair hole?

A. That is what I call fair holes. On sub-diagram 2 immediately below it: On the upper part of this is a plan view of those two holes showing as one complete circle. On the lower part of the same diagram, sub-diagram 3, there is a cross section through two plates, showing unfair holes, and immediately above it, in plan, you will see two circles showing the overlap of one plate, the extent of the overlap is shown in this plan marked in red. On the lefthand side of the diagram, in figure 4, there is indicated what is known as a snaphead swell neck rivet. Good practice in ship work and tank work generally is to employ the panhead rivet with swell neck, as shown in sub-diagram 6. This diagram also shows this panhead rivet riveted into a countersunk hole, which is the usual practice in watertight and oiltight work.

Q. Is that the type of rivet that is used in Exhibit 164?

A. In as far as the riveted head is, but not as far as the original snaphead of the rivet. That exhibit has the points hammered down into countersunk holes as shown in the sub-diagram 6 I have just referred to. In sub-diagram 5, there is shown a plain neck snaphead rivet, which is the type of rivet used in the tanks of the Seminole.

Mr. Matteson:

I offer the diagram in evidence.

It is marked Libelants' Exhibit 165.

Q. Can you illustrate for us how the rivet is driven in an unfair hole?

A. Yes, I have a further diagram here which I call diagram B. Here again the scale is enlarged to make the

illustration clear. Under figure 1 of diagram B there is shown a drift in two positions: First, at the start of the drive—that is, immediately the drift is put into the unfair holes. That drift consists of a piece of round tool steel tapered towards its lower end, and with a head at the top. That drift is driven by force into the two holes, and the time it reaches well in, it distorts the upper hole in the diagram of the left side and the lower hole of the diagram to the right side to the extent as shown in red. In figure 2 of diagram B I have indicated a rivet inserted in such distorted holes, showing the shank of the rivet at an angle greater than 90 degrees, a normal angle of a shank to a head, and riveted on the outside I have given here the most favorable condition that this rivet could be inserted, inasmuch as I have completely covered the open space in the lower plate by the riveted head or point of the rivet, but this sketch indicates what is left in the hole—that is the spaces left in the two holes, not filled by the rivet. The tightness of such a rivet will depend entirely upon the surface of the underside of the head of the rivet marked "A-A", and the upper side, or the inside of the riveted head marked "B-B", and if you use such a rivet even with a caulked plate, that is caulked on the outside, you are liable to get seepage from inside of the tank, passing into those spaces left in the distorted holes, and if the riveted head or point of the rivet is not thoroughly brought home to the plate you will get seepage past the shank of the rivet. And in figure 3 of diagram B I have shown the effect of a slack head on such a rivet. It will be noted you get a seepage point under the rivet communicating with the space left in the distorted holes.

Mr. Matteson:

I offer the diagram in evidence.

It is marked Libelants' Exhibit 166.

Q. You spoke of the impossibility of caulking a seam such as is shown on Exhibit 158. Can you illustrate that to us?

A. Yes, I prepared another rough diagram here, which I call diagram E. On the lower part of this diagram in figure 4 is shown a crown such as we have in Exhibit 158—that is where the side plate extends upwards beyond the point where the crown leaves the side plate. It indicates the space between the crown plate and the side plate, and shows the impossibility of that particular joint being caulked. On figure 5 of diagram E, I show the proper way of fitting a crown plate to a side plate. It will be noted that in this case the straight part of the flange of the crown extends up and slightly beyond the top of the side plating. That is a type of joint that we can caulk, and that is standard practice—the type shown in figure 5 is standard practice.

Q. There has been some testimony, Mr. Thompson, with respect to the lap seam at the top of the tank where the overlap of the plates join the crown. Can you illustrate to us the condition you observed there?

A. Yes, on the same diagram E, in figure 1, is shown one method of dealing with what we call the jointer rivet. That jointer rivet has to go through three thicknesses, and is known as a three-ply joint. You can do that satisfactorily in two ways: First, as shown in figure 1, where there is a joggle plated lap seam, and in figure 2 is another satisfactory way of doing it, where we have a plain lap seam, but where in the tank's side plating—I will mark that "tank side"—the outer edge at the top of that plate is thinned out in a fire until it becomes a knife edge. That fills up the space between the other tank side plate and the lap of the crown plate and leaves a condition which can be caulked or dealt with. In figure 3 of diagram E, I show the condition which I found in the tanks of the Seminole, whereby it can be seen—at least whereby I notice—that the tank's side plate had not been properly

thinned out in the way of the jointer rivet, and left a gap which can be noted in one of the photographs, because I had a photograph taken showing the insertion of the knife at that particular point. (Referring to Libelants' Exhibit 152) the knife here shows clearly the jointer rivet, because I observed that the space extended beyond—the space I have already referred to, that is the space between the improperly thinned side plate adjacent to the jointer rivet—that space could not have been caulked even if the crown had been built in a proper way, as shown in figure 5 of diagram E. So, in my opinion, this crown plate shows very bad workmanship, not only in regard to the way in which the crown plate itself was fitted to the side plating, but also in regard to the way the jointer rivet was fitted.

Mr. Matteson:

I offer the diagram in evidence.

It is marked Libelants' Exhibit 167.

Q. Referring back to Exhibit 160, there has been some suggestion in the testimony that the conditions now observed, both with respect to the seam and the side plate there shown, may be accounted for by the fact that this tank was exposed to fire. Will you tell us what your opinion is with respect to that?

A. Well, I formed that opinion apart from these exhibits—I formed my opinion from the appearance of the tanks themselves.

Q. Will you tell us what you observed?

A. What I observed from the whole tanks: I saw no distortion whatsoever in those tanks as a result of any fire they may have been subjected to.

Q. Referring particularly to this exhibit, do you find any evidence of distortion there?

A. No, sir. I may say, Mr. Matteson, that if a fire of anything like the nature one could expect at the ware-

house, from conditions such as the Seminole went under, could distort a tank of this structural strength, we would be unable to fit steam superheaters for water-tube boilers. There they are subjected to heat much in excess of what one could expect from such a fire as we had in the Seminole, and those superheater tanks have no water in them at all, they have to stand up to heat conditions much in excess of the fire on the Seminole, and have to stand up to that for years on end. Most superheaters we get temperatures of steam rising up to 800 degrees and above that.

Q. Referring to Exhibit 6-A, there has been some suggestion that there is a distortion in the piece of side plate there shown that might be accounted for by fire.

A. There is distortion there, but that is due to poor workmanship at the start.

Q. In what respect?

A. Well, when this shell was rolled—I am referring to the shell as the vertical plates of the tank—the orifice at the bottom was slightly less than the outside diameter of the lower crown, and it had to be forced over to a certain extent to get the crown in—that is the distortion there—that is a manufacture distortion—you see that quite plainly on the edge of the plate without looking at the flat of the plate—you will notice that the angle is quite different. That is a distortion due to manufacture, which is not unusual, and I don't think very detrimental to a tank itself. I am not criticising the tank on account of the distortion, I am just merely stating what in my opinion is the cause of that slight distortion. That incidentally illustrates why it would be impracticable to caulk the inside of the tank—that is the side seams and the top seam—before the lower crown had been inserted, because those tanks have no manholes, you have to have an inverted end in order to complete the riveting, but if you attempted to caulk the inside edges of a plate of this character, the liability of such distortion would open up the

caulking again in the side seams and the caulking would be gone. I haven't taken any notice of the fact that there is still some soldering remaining in the lower seam, about an inch or an inch and a half away from that alleged distortion—and if the heat had been great enough to distort the plate there, I am quite certain that solder would have run to the bottom.

Q. There has been some suggestion that an explosion and fire, such as occurred on the Seminole, might have been due to kerosene—what is your opinion with respect to that?

A. Well, I don't know what the temperature conditions were at the time just prior to the fire, but I have never had a kerosene explosion case, not in the whole of my career, I have never heard of a kerosene explosion under conditions such as we had in the Seminole, but I do not think it is possible that that was a kerosene explosion.

Q. You spoke of a correction that you wanted to make in your testimony: What was that with respect to?

A. That was something I mentioned. I haven't found that by going through the testimony, but it occurred to me, when doing one of these sketches one day—I have a sketch here which I was preparing for another purpose—and then it occurred to me that I had been working under a misapprehension as to the molded depth of this boat. I took the figure as given, I believe in some paper or other—I think Mr. Bernard's report—that this boat had a molded depth of something between six and seven feet, I believe—I haven't looked up the figure—but this boat only had a depth of not exceeding four feet. The molded depth of a boat is taken from the top of the keel—whether it is the bow keel or a flat plate keel to the underside of the deck stringer plate. Well, I find this boat has a molded depth of something less than four feet, and the remarks I passed as to her liability to weave or move, due to action of the engines or water outside of the boat, or both, the liability would be much greater with this molded

depth of something under four feet, to what I originally thought the boat had.

Q. Can you illustrate what you mean by the molded depth?

A. The molded depth—that is the lower part—that is the top of the keel I mark "top keel", and the deck stringer is shown on this diagram marked "deck stringer", so the molded depth of this boat will be from a point I now mark on the starboard side to the bottom of the boat. I will mark two arrows and call that "molded depth". That dimension, as I said, is something less than four feet. If we assume it to be four feet, on a length of 110, she has then depth to length proportions of 1 to 27.5. I have never built a boat of those proportions without using, from fore to aft, trussing for the full molded depth of the boat. In my opinion she would be very subject to movement in the hull, in any seaway at all and also when under motion from the engines.

Q. What would be the effect of that?

A. The effect of motion?

Q. Yes.

A. I think that would create another hazard on the piping joints.

Q. In what respect?

A. That the motion or vibration—call it what you will, we generally call all those motions vibrations in shipbuilding—would have the effect, in my opinion, of breaking the joints or making them non gastight, particularly those air-tight joints in the top of the tank, as those joints could not be gotten at to be seen or adjusted—that is to be made tight.

Q. Why could they not be gotten at?

A. Well, they could be gotten at if you removed the deckhousing or the deck above, but I mean a normal inspection of the boat, it is impossible to get at them because those tanks are naturally closed on the top, bottom and ends.

Q. Does your diagram illustrate the position of the housing above?

A. Approximately, it does.

Mr. Matteson:

I offer the diagram in evidence.

It is marked Libelants' Exhibit 168.

Q. Is this diagram you have drawn intended to be to scale?

A. Approximately—all free-hand sketches—but I use the scale in connection with them. Obviously they are not entirely to scale, but I think they are near enough for all practical purposes.

Cross Examination.

By Mr. Underwood:

Q. You did observe solder partway up the side seams of three of the tanks, did you say?

A. Yes, 1, 2 and 4, I think.

Q. And did you see any solder at all in the side seams of No. 3 tank?

A. Not in the side seams—in the bottom seam I did.

Q. Either side seam?

A. No, sir.

Q. Does that photograph, Libelants' Exhibit 139, which is a picture of No. 4 tank, show the solder up the seam?

A. Yes, I should say it does.

Q. Will you indicate on there where the solder stops.

A. I can do it approximately?

Q. Yes.

A. Write it on?

Q. Yes, and if your memory differs from the photograph, will you tell us about it?

A. I am afraid I couldn't give it from memory. I will mark it with an arrow and write "Apparent end of solder".

Q. Mr. Thompson, you notice the difference in the color of the tank in the foreground and in the background?

A. Yes, I do, it is quite noticeable.

Q. And that takes place on a pretty well defined line, doesn't it?

A. Yes, I should say that is pretty well.

Q. And that pretty well defined line is just about the same place as the end of the solder?

A. As the top end of the solder?

Q. Yes.

A. I should think about three inches above the solder there, as far as I can see from the photograph.

Q. A matter of a couple of inches?

A. Two or three inches, yes.

Q. How do you account for that discoloration of the tank—perhaps I should say the difference in the surface condition of the tank above and below that fairly well defined line?

A. I couldn't account for it, I don't know how to give a definite account of that.

Q. In your opinion, is it possible that fire conditions could cause that—the difference in the effect of fire above and below it?

A. No, I wouldn't say that. I am not only giving an opinion from the photograph, I am also giving it from the appearance of the tank itself which I have seen so many times. I formed the opinion—not from this photograph—when I saw the mark on the tank, the difference in the discoloration, I thought that difference was due to probably the fact that the tank had been in water subsequent to the fire for some considerable time.

Q. Did you notice any similar line on No. 3 tank?

A. Yes, my memory—I am speaking from memory—I think all the tanks had more or less that line.

Q. Do you remember whether the corresponding line on No. 3 tank was well defined and approximately parallel to the bottom of the tank, as that line is there (indicating Libelants' Exhibit 139), or whether it was otherwise?

A. Speaking from memory only now, I think they were all more or less the same.

Q. Did you notice any relation between that line we are speaking about on Exhibit 139, and the height of the ash in the bottom of the tank in the tank space?

A. No, sir, I didn't notice that. I wouldn't have taken any—if I had noted it—I wouldn't have placed much reliance on it, because that boat has been under water and I don't know what the ash height might have been at any particular time.

Q. You wouldn't expect any substantial increase in the height of the ashes after the fire once burned out, would you?

A. They might have floated along from other parts—the tide rose and fell—

Q. Do you think it could float into the tank compartment?

A. Well, it had that square opening there, and the tide rose and fell in the boat—it had an opening in the bulkhead—that is the after bulkhead of the tank compartment—which we refer to as the old bunker door, so I didn't place—I didn't think it was worth noting, Mr. Underwood, so I can't say more than that.

Q. Looking at Exhibit 141, you see the same line that you see on Exhibit 139, except you see more of it, isn't that right?

A. That is right. This photograph (Exhibit 141) is an excellent illustration of the fact that that tank is not distorted by heat.

Q. Look at the edge of the upper plate in Exhibit 157—I mean the upper in the same sense that Mr. Matteson used it—the overlapping plate—

A. The edge below the letters "4 B", is that right?

Q. Yes. What is that bright surface?

A. Steel metal.

Q. And along the other end?

A. Steel metal.

Q. Just steel?

A. Yes, that is a metal—actual steel.

Q. Bare steel?

A. Yes, that is not wide enough for solder, that is merely steel—been brushed along there.

Q. When rivets are driven hot, they are soft, aren't they?

A. Yes, they are something, I should think, slightly over cherry red.

Q. Well, they are pretty soft compared with the power of a rivet hammer, aren't they?

A. Depends on what power is exerted.

Q. I don't mean you can squeeze them in your hand.

A. They are ductile with the use of a hammer and moderate pressures.

Q. And when you hammer the riveted head, of course there is a man holding the snap head?

A. Oh, yes.

Q. What is to prevent the metal of the shank of the rivet from being forced into the spaces which you have marked "S" on figure 2 of Exhibit 166?

A. With a hot rivet?

Q. Yes.

A. Partly it could, and then that is a rivet that must be taken out immediately, because there is a rivet then in which you have points where you can get concentration of stress, and that is one of the main reasons why we always refuse to accept rivets in distorted holes.

Q. You mean that you refuse to accept them because the metal of the shank swells up and fills the drifted space such as you have indicated by the lower "S" on figure 2 of Exhibit 166?

A. In the first place it doesn't fill the space.

Q. What prevents it from doing that?

A. In the first place it is not sufficiently hot for that. In order to do that, it would have to be white hot.

Q. It is sufficiently hot so that you can take a plain point and round it over to such a condition as appears, for example, on Exhibit 5-X—it is sufficiently hot to do that, isn't it?

A. You can do that when it is cold riveting.

Q. You can do that with hot riveting all the more easily?

A. On the outside, but you cannot get it sufficiently hot in the shank inside the holes to do that.

Q. It is the same termperature all over, when you start to drive it, isn't it?

A. Yes, but I say you can do this cold.

Q. I am talking about hot rivets.

A. I say definitely that you cannot fill an uneven hole even with a hot rivet.

Q. Of course, I fully appreciate that you say that, I don't expect to get you to change it, but I just want to know why it is that if one end of the shank of the rivet is ductile enough to be hammered into a nice round point, why it is that the balance of the shank is not also sufficiently ductile to be hammered into the space you have marked "2" on Exhibit 166.

A. Because you apply the hammer to the actual point when you are riveting, you are not applying the blow to the shank inside of the hole.

Q. Of course, when you drive a rivet, you are applying the pressure on the end of the shank, aren't you?

A. That is right.

Q. On a line that is in the same plane with the axis of the shank?

A. No, sir, you do nothing of the kind in riveting.

Q. Well, you apply your pressure to the point of the rivet in the direction of the head of the rivet, don't you?

A. Approximately—not in direct line of the head.

Q. And the tendency of pressure in that direction is to shorten the rivet, isn't that right?

A. The tendency is to—well, if riveting is applied in that way, hot, it would be a frightfully poor way of riveting, your plates are supposed to be draw right up tight first, and in my opinion you do not shorten the shank in riveting.

Q. Well, Mr. Thompson, the tendency of a blow exerted on the point of the rivet, in riveting hot rivets, is to shorten the shank, isn't that so?

A. No, sir, I would not agree.

Q. Doesn't it actually shorten the shank?

A. No, sir.

Q. Isn't a rivet, when driven, shorter than it was when first put in the hole?

A. Yes, because you flatten the head, it is not shortened by the fact that you lengthen the shank—draw the shank—you were talking about drawing the shank.

Q. Let's look at this countersunk rivet here, the diagram at the lower left hand corner of Libelants' Exhibit 165: Of course, before that rivet was driven or heated or pointed, the sides of the shank were fair all the way out to the point, weren't they?

A. That is right, just like that (indicating figure 5).

Q. And that was reduced to that shape by blows on the point of the rivet?

A. That is right.

Q. And that rivet assumed the shape of the countersunk hole, didn't it?

A. It did, yes.

Q. Now, what is there to prevent the rivet illustrated on figure 2 of Exhibit 166, asuming the shape of its hole when hammered hot?

A. Any rivet you mean—a hypothetical case now?

Q. Take that particular rivet that you are looking at on your sketch.

A. That is a large sized rivet, the conditions are entirely different. If you will apply your question to a 5/16 rivet, as used in this tank, the conditions are entirely different. I will have to have the conditions put up to me to answer properly.

Q. Well, assume a 5/16 of an inch—we will assume rivets of the size of these tanks—

A. Those rivets could not have been used hot.

Q. Assuming rivets of that size are driven hot, what is there to prevent them from filling up that space shown in figure 2 on Exhibit 166, just the same as such a rivet would fill up the space shown in the diagram in the lower lefthand corner of Libelants' Exhibit 166?

A. If you could use a hot rivet of that diameter in a hole of the type we are discussing, in the first place you would have to use a considerably longer rivet. If that rivet then was so hot that it would squeeze up into the hole, that rivet would be too hot to pass through the hole, it would be badly injured passing through, and would not be a fit rivet to use.

Q. When you say badly injured, do you mean that it would be gouged out of shape by the unfair hole.

A. By the contact of the hole and the holder-up. It would be impossible for a holder-up to pass a rivet through a hole of that description at that heat without ruining the rivet in attempting to pass it through the hole.

Q. And just how would the rivet be ruined?

A. Because it would be too hot, too soft for the holder-up to apply sufficient pressure to pass it through the hole. You would distort the rivet before it came through.

Q. And what would do the distorting?

A. The force the holder-up applies to the rivet in such a state of heat. Rivets can be too hot in applying and more rivets are ruined by such means than any other way. I know. A rivet that is not hot enough can be dealt with, but a rivet that is too hot is thrown away by the

holder-up, if the rivet boy is foolish enough to pass such a rivet to him.

Q. Just who is the holder-up—what does he do?

A. He holds up the rivets inside of the tank, in this particular case. A riveting squad consists of two riveters, a holder-up and a rivet boy. The rivet boy holds the rivet, passes the rivet to the holder-up, he forces it through the hole and holds onto the head while the riveters knock down the point.

Q. And what is it that the holder-up would do with such a rivet that will ruin it?

A. Passing it through the hole from inside.

Q. And just how does that ruin the rivet?

A. Because the rivet is too hot, too ductile.

Q. What does that?

A. Touching the edges of the hole would scrape so much of the metal off, and the head of the rivet would be distorted in the act of passing it through the hole, if it were hot enough in order to fill up that space below, as you have indicated. I say, from a long experience of riveting, that that process is impossible, and particularly if you connect that with a rivet so small as 5/16.

Q. Do you say that 5/16 inch rivets cannot be driven hot?

A. It is not good practice to drive them hot.

Q. And do you say these were driven hot or cold?

A. I say they were driven cold, that is my opinion. I was not there, but that is my opinion from the appearance of the rivets (indicating Pilkington Exhibit 17).

Q. Have you made any inquiries to find out where these tanks were made?

A. Yes, I made inquiries.

Q. What did you find out?

A. I asked all around Miami, and finally got to Captain Nelson who installed those tanks, and he refused to tell me, but I heard from other people that Merrill

Stevens of Jacksonville had built the tanks, so I got in touch with Merrill Stevens and they knew nothing about it—they denied too, ever having made or supplied the tanks.

Q. So you came to a dead end?

A. Absolutely, it was.

Q. You have said something about the lap seam at the tops of these tanks, where they should be, as you have said, a knife edge on the under plate. Of course, you wouldn't expect any leakage of liquid gasoline there, unless the tank was full and pressed up?

A. That is right, when the tanks were filled completely up.

Q. Above the level of the filler hole?

A. Above the level of the filler hole. Of course, they could have been filled up above the level of the filling pipe at the tank, because the top end of the filling pipe was well above the tops of the tanks, being on the upper deck.

Q. This diagram that you have made showing the molded depth, I want to ask you a question or two about that Exhibit 168: This deck stringer plate that you referred to—let's see if we can find that on a photograph, that I can be sure I understand what you are talking about.

A. It is the plate underneath the passageway.

Q. I show you Exhibit 10, which shows the port side—not the starboard side—and ask if this plate over here running approximately horizontally is what you referred to as the deck stringer plate?

A. That is right. This shows the port side only—that is not the deck stringer plate here, but I believe it is the same level as the deck stringer plate I referred to on the starboard side (marking same).

Q. I don't know whether you can see it or not on this photograph, Libelants' Exhibit 41, but tell me whether or not you can see that deck stringer plate there.

A. No, but I think you can see the height of it, it is the top of that beam there, it is over here somewhere in the shadow.

Q. Isn't that it here (indicating)?

A. That might be it, yes, that little bit here, but it is the same level, you see.

Q. The same level—

A. As the top of that bulkhead.

Q. As the top of that bar?

A. Yes.

Q. If you think it is a fair way to do it, mark that "deck stringer plate".

A. Shall I put it on the beam?

Q. Yes.

(The witness writes "deck stringer level").

Q. You have drawn an arrow on Libelants' Exhibit 141 to a cross member and written below that "deck stringer level"?

A. That is right.

Q. And would there be a similar cross member—

A. The underside of that deck.

Q. Appears—

A. Where I have the arrow "deck stringer," the same height, it is the level of the longitudinal bulkhead along the passageway.

Q. And if I understood correctly, this diagram is based upon some information which you have had that the distance between the top of the keel and the deck stringer plate is how much?

A. Something less than four feet.

Q. Have you calculated the block coefficient of this hull?

A. No, sir, I estimate it to be somewhere in the neighborhood of .6, but that is merely looking at the boat afloat.

Q. Did I understand you to say that you had never had a case involving a kerosene explosion?

A. That is right, I never had in my thirty odd years of experience. Furthermore, I say I never heard of one in that time. I have heard of kerosene lamps, where temperature has gone up in lamps, but I was referring to boats.

Q. Of course, you know that kerosene will explode?

A. Yes, but with kerosene engines in England we have a constant burning lamp, and the Gardner is the most—those lamps are going regularly in the enginerooms where we have gasoline as fuel, and kerosene pipe lines coming in, and I have had probably more experience with kerosene engines—I am going to make an admission now—than with gasoline engines. I think I have built more kerosene or paraffin engine boats than gasoline.

Q. I don't mean to cut you off, but I don't think that is an answer to my question. I think all I asked you was this: Kerosene will explode, won't it?

A. Oh undoubtedly, I have no doubts about that at all, given the right conditions.

Q. I think you already admitted that you are not a chemist?

A. That is right.

Q. Have you ever performed any tests with kerosene to ascertain at what temperatures they give off a vapor that will explode?

A. No, sir, I haven't, but I think I have a fair idea of the flash point.

Q. Well, what is your fair idea of the flash point?

A. I think it is something over 120.

Q. What do you mean by flash point?

A. Well, flash point—I am not a chemist, I have never carried out any flash point experiments—flash point, I believe, is the temperature at which under one or the other of the various flash point experiments, each I be-

lieve involving a closed cup test, giving the temperature at which the liquid will give off an explosive gas.

Q. This closed cup test is something that is performed with some delicate chemical apparatus, isn't that right?

A. I believe it is, I have never been present at one, so I haven't much information on that actually.

Q. Do you know there is such a thing as an open cup test for flash point?

A. No, sir, I understood they were a special form of closed cup they carry them on with, but you may be right.

Q. You don't know whether there is such a thing as an open cup test for flash point, or not, do you?

A. No, I have never been present and concerned with those tests.

Q. Do you know what the apparatus is—the cup apparatus?

A. No, sir.

Q. You expressed the opinion that this was not a paraffin explosion, I take it from what you say that the basis for that opinion is that you have never seen one or heard one, is that right?

A. Yes, in spite of the large experience with vessels burning kerosene as fuel, I think that would be a fair answer to you.

Re-Direct Examination.

By Mr. Matteson:

Q. Mr. Thompson, one of the questions that you were asked with respect to the molded depth was with reference to information which you had received. What is the information on which you estimated the molded depth of the Seminole?

A. Oh, I didn't receive any information from anyone else. I really meant to imply that it had come to my

memory, going over the case, that I made a mistake in molded depth, and I took the measurement given in the report as the molded depth, and it suddenly occurred to me that that was wrong.

Q. What I mean is: What is the information on which you have calculated it now?

A. From measurements I actually made on the ship. It was inadvertent on my part not to mention it before, and I frankly overlooked it, and I was misled to that degree.

Re-Cross Examination.

By Mr. Underwood:

Q. Let me see if I understand you now, Mr. Thompson: Nobody else told you that the molded depth was four feet?

A. No, sir.

Q. You made some measurements on the vessel and you calculated that her molded depth was four feet, is that right?

A. Well, actually I know from measurements I took, it is a little lower than 46½ inches from the depth of the keel to the outlet of the tanks, I know it is less than that. I said four feet—it is actually less than 45½ inches.

Q. From your measurements, you have calculated that the molded depth of the Seminole amidships is something less than 45 inches?

A. 45½ inches, that is the measurement I took, and I know the molded depth is less than that, and that figure was agreed with Mr. Munroe at that time—that 45½—at least I think it agrees with this figure. That could be easily checked up on the vessel now.

Q. I have forgotten what you testified before as to whether this vessel had a flat keel or a bow keel.

A. I said before I didn't know, I hadn't seen the bottom of the boat. That was some time previously I mentioned that. I think you asked me the question.

Q. And you don't know now?

A. I don't know now, I haven't seen the bottom of this boat.

Q. Perhaps what I am thinking of is when you drew this sketch, Libelants' Exhibit 148, you drew a flat keel.

A. I assumed for a shallow-draft vessel she would have a flat keel.

Q. You assumed that?

A. I assumed that.

On June 5th, 1941, the Court filed its Findings of Fact and Conclusions of Law, which is in words and figures as follows:

4795 FINDINGS OF FACT AND CONCLUSIONS OF LAW.

(Title Omitted.)

1. On June 24, 1935, an explosion and fire occurred on the houseboat Seminole, then lying in dead storage in the yacht storage basin and under the shed of respondent Pilkington, at Fort Lauderdale, Florida. The fire was communicated to other vessels similarly situated, some of which were consumed, and some of which were damaged by the fire which likewise destroyed Pilkington's shed.

2. Prior to February, 1915, the Seminole had been owned by H. C. Phipps, a brother of respondent Phipps. In February, 1915, respondent Phipps bought from his brother a one-half interest in the Seminole. Prior to 1922

she was propelled by steam, but in that year her steam plant was removed and gasoline engines and their necessary appurtenances were installed. In 1927-1928 she was largely rebuilt at the Merrill-Stevens yard at Miami, many of her bottom and side plates being renewed, her electric wiring placed in conduit or wire mold at a total cost of about Thirty-seven Thousand ($37,000) Dollars.

3. In late 1928 or early 1929 H. C. Phipps and the respondent, J. S. Phipps, each sold his one-half interest in the Seminole to the Seminole Boat Company, a Delaware corporation, which had been formed for the purpose of taking title to the Seminole and operating her under charter for hire. H. C. Phipps and respondent Phipps each received one-half of the outstanding stock of the Seminole Boat Company in payment for his half interest in the vessel. The Seminole Boat Company promptly made a contract with William P. Baker, an experienced master of charter boats, well-known in the charter business, to operate the Seminole under charter for hire and in 1929 and 1930 she was so chartered on several occasions. Thereafter, while she was always available in the charter market, she was too big and too expensive to operate during the depression years, and no charterer was actually found for her after 1930.

4. From the beginning and down to and including the time of the fire the directors and officers of the corporation were Paul Scott, R. C. Alley and Roy H. Hawkins, who were, respectively, President, Vice-President and Secretary-Treasurer. These men, as officers of the corporation, assisted by James F. Riley, and advised by Captain Baker and other boat captains, operated, controlled, maintained, and managed the vessel from the time of her purchase by the corporation down to and including the time of the fire.

5. In February, 1935, Hawkins, upon his own initiative, decided to remove the Seminole from dead storage at Pilkington's basin where she had been most of the time since 1930, and to bring her to Miami, put her in commission and offer her for charter or for sale. No charterer could be found, and the only offer to purchase was for an amount considered too small by at least one of the stockholders, respondent Phipps. The other stockholder, H. C. Phipps, on March 23, 1935, sold his stock in the corporation, one-half the outstanding stock, to Mrs. Amy Guest, his and respondent Phipp's sister. From that time on down to and including the time of the fire, the stock of the Seminole Boat Company was owned one-half by Mrs. Guest and one-half by respondent Phipps. No change in the operation, control, maintenance or management of the vessel occurred, nor in the official personnel of the corporation.

6. In April, 1935, when the charter season was over and no charterer had been found, the two stockholders, Mrs. Guest and respondent Phipps, and members of their family and friends went on a fishing trip in the Seminole to the Florida Keys. The crew was hired by Hawkins, except for the engineer and one sailor who were procured by Riley. On this occasion the operating expenses of the Seminole were voluntarily assumed and paid by respondent Phipps, but the expenses of the maintenance of the vessel on this occasion, and at all times following the sale to the corporation, were borne by the Seminole Boat Company, its deficits being made good in equal shares by the stockholders.

7. The cruise ended at Lower Matecumbe where respondent Phipps, Mrs. Guest, and the entire party left the vessel. Hawkins instructed the master to take the vessel to Miami and thence to respondent Pilkington's for

storage. She arrived and was left at Pilkington's pier outside his shed on April 15, 1935, having been prepared for lay up there by her crew upon the instructions of Hawkins and without any instructions from respondent Phipps, who was not present and took no part in such preparation.

8. On June 24, 1935, Riley arranged for R. C. Abel, who was Captain of Phipps' fishing boat "Clip", and sometimes of his boat "Iolanthe" to proceed to the Seminole on behalf of the Seminole Boat Company, and there to pay to Pilkington a small balance due from the Seminole Boat Company to Pilkington on account of storage charges, to inspect the Seminole, and to bring back certain property belonging to the Seminole Boat Company. Abel was accompanied by John Thomas, with whom a contract had been made to make a piece of rope work for a vessel owned by respondent Phipps, Thomas to use a similar piece of rope work on the Seminole as his pattern. He and Thomas proceeded to Pilkington's basin where Abel obtained from Pilkington the keys to the Seminole, after which he and Thomas boarded the Seminole. After Thomas had finished his inspection of the rope work which was to serve as his pattern, Abel and Thomas gained access to the interior of the vessel by means of the keys given to Abel by Pilkington, and, after inspecting the spaces abaft the engine room, proceeded to the starboard engine room window between the engine room and the fore and aft alleyway. There Abel entered the engine room and proceeded directly aft to the switchboard, Thomas remaining in the alleyway at the window.

9. Abel lit a match to obtain light so that he might see the labels on the switches. He manipulated three to five switches, at or near one of which a spark occurred. Following all of this the explosion occurred, which was followed by the fire and general conflagration.

10. A day or two after the fire, a diver found the four gasoline tank valves wide open, and the two valves on the gasoline drain line open one-third of a turn.

11. The contract pursuant to which the Seminole was left with and received by respondent Pilkington, was neither in writing nor oral, but implied, and the only parties to it were respondent Pilkington on the one hand and the Seminole Boat Company on the other. It contained no warranty or representation as to the condition of the Seminole, and Pilkington did not rely upon any warranty or representation, but rather relied upon his own familiarity with the vessel over a period of seven (7) years, when she had been stored with him on other occasions, both by her present and former owners, and his frequent inspections of her.

12. The Seminole Boat Company was incorporated in good faith for the *bona fide* purpose of taking title to the Seminole, and operating her in the charter business, and long prior to June 24, 1935. While it made no profits and no charters after 1930, it continued in existence as a *bona fide* corporation, and there is no fraud or other reason to disregard the corporate entity, pierce the corporate veil, or regard it as an agent of either of its stockholders. It stands as a non-conductor between the libelants and Pilkington on the one hand, and the stockholders on the other.

Discussion.

This case has been very thoroughly presented, in the introduction of evidence, in the interrogation of witnesses, and by careful, painstaking, and exhaustive arguments, impelling me to discuss somewhat in detail the questions of liability, proximate cause, and limitation of liability, and not content myself with the conclusion reached that

respondent Phipps is not liable. The organization of the corporation, Seminole Boat Company, was a natural, normal development of ownership of a pleasure yacht, free from any fraud or ulterior motive in the inception of its chartering and creation. Likewise, it was free of any of the other elements, treated in the reported and cited cases incident to the presence of bad faith, which apply the doctrine of piercing the corporate veil. Furthermore, the character of the negligence which this record discloses is the failure to do or perform a duty, or nonfeasance. Such failure of duty does not give rise to an application of the alter ego or agency doctrine. I can well conceive of cases where a positive wrong, an act of positive negligence, may lead to individual liability of a stockholder in a corporately owned offending vessel, but this is not such a case.

The presence of gasoline fumes in the engine room, I find was the proximate cause of the damage done to the vessels of libelants. Abel was the instrumentality which brought this defective condition into an active element proximately causing the damage, but Abel's acts were not the proximate cause. It is immaterial whether Abel was the agent of Phipps or Seminole Boat Company; his acts or conduct were not the proximate cause of the damage suffered.

The Seminole Boat Company was responsible for the proximate cause. It was not negligence to have converted a steam yacht into a gasoline propelled vessel, and from the evidence it is clear there was no negligence in the original installation of the tanks which were used on the Seminole for gasoline storage. But with the passage of time some part of the machinery or equipment did leak and the great possibility of damage attendant upon the use of gasoline, brings into play the principle that negligence may be based upon circumstantial evidence alone. The respondent argues that there must have been some third

person agency intervening which brought about the means whereby gasoline escaped with attendant fumes. There is no evidence of this, and we get into the realm of conjecture. Just when the defective condition of the tanks made them leaky is in doubt. Expert testimony on this is an unsatisfactory character of evidence. I am satisfied, and find, that there were gasoline fumes present in the engine room, and that their ignition into combustion and fire caused the damage. For this the Seminole Boat Company was liable. Whether the Seminole Boat Company could limit liability is not necessary to decide. That is not in the case.

As to Pilkington, he owed certain duties to libelants as owners storing their vessels with him as a warehouseman, and with his duty of inspection he may be criticized for not having detected and avoided the gaseous fumes on the Seminole, but I do not find that his dereliction in that regard was suffiicent on which to base liability.

As to respondent Phipps, he is not chargeable with the negligence, the proximate cause of the damage. For two reasons is this so. Firstly, because the negligence was that of the Seminole Boat Company and not of Phipps; and, secondly, he was without privity or knowledge, even though he should be considered as owner. The character of negligence shown by this record was such that Phipps, as an individual, would not be precluded from asserting as a limitation of liability under the statute. This limitation of liability is provided for by 46 U. S. C. A. Sec. 183, which is derived from Act of March 3, 1851, Section 9 of Ch. 43, 9 Stat. 635. Libelants insist that the six months limitation enacted June 5, 1936, is appliacble, with which contention I do not agree. The said six months limitation is a part of a substituted Section 4285 of the Revised Statutes (46 U. S. C. A. 185) and not Section 4283 Revised Statutes, which is 46 U. S. C. A. 183. Section 185 deals with voluntary action taken by an owner deposit-

ing the value of his interest in the vessel in Court, while a limitation defense pleaded in an answer is provided for in said Section 183.

Conclusions Of Law.

1. There was no negligence on the part of respondent Phipps or any person for whose acts or omissions he is responsible.

2. Seminole Boat Company, a Delaware corporation, was at all pertinent times a *bona fide* corporation, a valid creature of the law, not to be regarded as sham or fiction, or Phipps' agent, but as a legal non-conductor between Phipps on the one hand and libelants and Pilkington on the other, because there was no fraud or other improper conduct or purpose in the creation or continued existence of the corporation.

3. The Seminole was owned, operated, controlled and maintained by Seminole Boat Company, not respondent Phipps, and respondent Phipps is not liable for any acts or ommissions of the Seminole Boat Company, or any persons who acted on its behalf.

4. Respondent Phipps was without privity or knowledge of the events that led up to and brought about the explosion and fire, and if corporate liability be disregarded, which in my opinion should not be, Phipps would be entitled to limit his liability to the value of his interest in the wreck of the Seminole after the fire under the Limitation of Liability statutes.

5. Respondent Phipps is not liable to the libelants, or to Pilkington.

6. Respondent Pilkington is not liable to the libelants.

Final judgment should be submitted in accordance herewith, on notice to all counsel.

(Signed) JOHN W. HOLLAND,
United States District Judge.

At Miami, Florida, this 5th day of June, 1941.

On June 19th, 1941, an Order of Court was filed correcting the Findings of Fact and Conclusions of Law filed June 5th, 1941, which is in words and figures as follows:

4803 ORDER.

(Title Omitted.)

On this day, June 19, 1941, when the final decree was being considered by the Court, it was made to appear to the Court that in the findings of fact and conclusions of law, in finding of fact numbered 12, and in the fourth line thereof, the year 1940 was stated when it was intended to state the year 1930; and the Court having marginally made said correction in the original of said finding; and the Court desiring that said marginal amendment appear in the minutes of the Court;

It is now Ordered that the said marginal amendment as made be, and the same is hereby, ratified and confirmed.

Done and Ordered at Miami, Florida, this 19th day of June, 1941.

(Signed) JOHN W. HOLLAND,
United States District Judge.

On June 19th, 1941, the Court entered and filed its Final Decree dismissing the Libel, which is in words and figures as follows, to-wit:

4804 FINAL DECREE.

(Title Omitted.)

This cause having duly come on to be heard upon the pleadings and proofs of the respective parties and having been argued and submitted by the respective advocates, and the Court, after due deliberation, having on June 5, 1941 rendered its decision and filed its findings of fact and conclusions of law directing that the libel herein be dismissed with costs against both the respondents and that the petition of respondent Pillington against respondent Phipps be dismissed, and respondent Phipps' costs having been duly taxed by the Clerk at the sum of $1737.41.

Now, on motion of R. C. Alley, Loftin, Calkins, Anderson & Scott and Burlingham, Veeder, Clark & Hupper, proctors for respondent Phipps, it is

Ordered, Adjudged and Decreed that the libel herein be, and the same hereby is, dismissed with costs as against both respondents, and that respondent Phipps recover of and from libelants Charles Coryell, Julien J. Marks, J. Frank Guyton, J. M. Frere, Frank Vogt, William A. and Dorothy M. Cassidy, Leon Sigman, Albertis C. Taylor, Gertrude Brandt Orthwein, executrix of the estate of Ralph H. Orthwein, deceased, N. L. Noteman, Charles A. Sargeant, E. R. Pillars, J. S. Stevens, Walter R. Kuhn and Catherine O. Grau, executors of the estate of W. H. H. Childs, deceased, Anna Kramer, Zackary Miller, L. K. Cone, Wendel Andreas, E. R. Newland, H. S. Thomas, John Lochrie, Henry Bogaards, John Patton, Gleason Wood, Sophia Hillenbrand and Fletcher Trust Company, executors of the estate of George M. Hillenbrand, deceased, R. Guastavino, C. T. Lassen, H. C. Saltonstall, W. S. Leeds, Rosa T. Ludvigh, executrix of the estate of Clif-

ford G. Ludvigh, deceased, William B. Guerard, Stewart Raynor, George A. Dobyne, J. Wesley Pape, McCoy Brothers Indian River Navigation Company, William Stevens, Theophilus de Mott, Albert Park, A. H. Bower and Harry B. Rampe, the sum of $1737.41, his costs as taxed, which sums shall bear interest from the date of the entry of this final decree until paid and that said respondent Phipps have execution therefor; and it is further

Ordered, Adjudged and Decreed that the petition of respondent Pilkington against respondent Phipps be, and the same hereby is, dismissed; and it is further

Ordered that unless this decree is satisfied or an appeal is taken within thirty (30) days after service of a copy thereof, with notice of entry upon the proctors for libelants, the stipulators for costs on behalf of libelants shall cause the engagement of their stipulation to be performed, or execution may issue against their goods and chattels, lands and tenements or other real estate to satisfy this final decree.

(Signed) JOHN W. HOLLAND,
United States District Judge.

On September 17th, 1941, a Stipulation and Order was filed amending the Final Decree of June 19th, 1941, which is in words and figures as follows:

4806 STIPULATION AND ORDER.

(Title Omitted.)

Inasmuch as H. N. Hollinger was made a party libelant in this cause by order of Court dated May 9, 1939, and in the preparation of the Final Decree this was overlooked

and his name inadvertently was omitted as one of the parties whose libel was dismissed,

It is Stipulated that the Final Decree of June 19, 1941 may be amended so as to include the said H. N. Hollinger as a party libelant and dismiss his libel in like manner as the libels of the parties named in the Decree of June 19, 1941 were dismissed.

Dated this September 12, 1941.

BIGHAM, ENGLAR, JONES & HOUSTON,
BATCHELOR & DYER,
Proctors for Libelants.
FRED BOTTS,
Proctor for Respondent Pilkington.
BURLINGHAM, VEEDER, CLARK & HUPPER,
LOFTIN, CALKINS, ANDERSON & SCOTT,
Proctors for Respondent Phipps.

Upon the foregoing stipulation, It is Ordered that the Final Decree of June 19, 1941, be and it is hereby amended so as to include H. N. Hollinger who was made a party libelant by Order of May 9, 1939, and that the libel of the said H. N. Hollinger be, and it is hereby, dismissed, in like manner as were the libels of the parties named in the Final Decree of June 19, 1941.

Done and Ordered at Tampa, Florida, this 16th day of September, 1941.

WILLIAM J. BARKER,
District Judge.

On September 17th, 1941, an Order of Court was filed substituting certain Libelants, which is in words and figures as follows:

4808 ORDER.

(Title Omitted.)

By consent of proctors for the libelants and the respondents, as shown by the stipulation filed in the papers of this cause, and it appearing therefrom that L. K. Cone, one of the libelants, having died, and Mrs. L. K. Cone having qualified as his executrix; and that Stewart Raynor, one of the libelants, having died and Edna M. Raynor having qualified as his executrix; and that J. H. Bauer, one of the libelants, was named as J. H. Bower, the same being a typographical error; and that William P. Guerard, one of the libelants, was named as William B. Guerard, the same being a typographical error; and that Gertrude Brandt Orthwein, as executrix, was substituted as a libelant by amendment dated March 15, 1939, Ralph H. Orthwein, the original libelant, having died and she having qualified as such executrix; and she having subsequently remarried so that her present name is Gertrude Brandt Orthwein Cave; and that Walter R. Kuhn and Catherine O. Childs, as executors, were substituted as libelants by amendment dated March 15, 1939, W. H. H. Childs, the original libelant, having died and they having qualified as such executors, and Catherine O. Childs having subsequently remarried so that her present name is Catherine O. Grau;

It is Thereupon Ordered that the libel be and the same hereby is amended as hereinabove set forth.

It is Further Ordered that said substituted libelants are bound by all the proceedings and decrees heretofore had and made in this cause.

Done and Ordered this 16th day of September, A. D. 1941.

WILLIAM J. BARKER.
U. S. District Judge.

On September 17th, 1941, the libelants filed their Notice of Appeal, which is in words and figures as follows:

4810 NOTICE OF APPEAL.

(Title Omitted.)

To: Burlingham, Veeder, Clark & Hupper, and Loftin, Calkins, Anderson & Scott, Proctors for Respondent Phipps;

Botts & Field, Proctors for respondent Pilkington.

Sirs:

Please take notice that the libelants in the above entitled cause hereby appeal to the United States Circuit Court of Appeals for the Fifth Circuit from the final decree entered herein on the 19th day of June, A. D. 1941, and from each and every part of said decree.

Dated this 12th day of September, A. D. 1941.

BIGHAM, ENGLAR, JONES & HOUSTON,
BATCHELOR & DYER,
LEONARD J. MATTESON,
By DAVID W. DYER,
Proctors for Libelants.

Acknowledged and accepted this 15 day of September, A. D. 1941.

BURLINGHAM, VEEDER, CLARK & HUPPER,
LOFTIN, CALKINS, ANDERSON & SCOTT,
By ROBERT H. ANDERSON,
Proctors for Respondent John S. Phipps.
BOTTS AND FIELD,
By FRED BOTTS,
Proctors for Respondent, George J. Pilkington.

On September 17th, 1941, libelants filed their Petition for Appeal, which is in words and figures as follows:

4812 PETITION FOR APPEAL.

(Title Omitted.)

The undernamed libelants and Indemnity Insurance Company of North America, their surety, considering themselves aggrieved by the final decree made and entered in this cause on or about June 19, 1941, hereby appeal from the said decision and decree to the United States Circuit Court of Appeals for the Fifth Circuit, and file herewith their assignment of errors as required by law, and thereupon pray that said appeal may be allowed and that a transcript of the record, testimony, proceedings and papers on which said final decree was made may be sent up, duly authenticated, to the said United States Circuit Court of Appeals for the Fifth Circuit at New

Orleans, Louisiana, and that a citation in due form be issued, citing the respondents, John S. Phipps and George J. Pilkington, to appear in answer to said appeal.

CHARLES CORYELL;
JULIEN J. MARKS;
J. FRANK GUYTON;
J. M. FRERE;
FRANK VOGT;
WILLIAM A. and DOROTHY M. CASSIDY;
LEON SIGMAN;
THE UNION SAVINGS & TRUST COMPANY OF WARREN OHIO,
As Trustee;
GERTRUDE BRANDT ORTHWEIN CAVE,
As Executrix of the Estate of Ralph R. Orthwein, Deceased;
N. L. NOTEMAN;
CHARLES A. SARGEANT;
J. S. STEVENS;
WALTER R. KUHN and CATHERINE O. GRAU,
As Executors of the Estate of W. H. H. Childs, Deceased;
MRS. L. K. CONE,
As Executrix of the Estate of L. K. Cone, Deceased;
WENDELL ANDREAS;
E. R. NEWLAND;
H. S. THOMAS;
CATHLEEN LOCHRIE;
D. T. PRICE,

ROBERT B. LOCHRIE,
CATHLEEN BOOZ and
MINNIE DICKEY,
As Executors of the Last Will and Testament of John Lochrie, Deceased;
HENRY BOGAARDS;
JOHN PATTON;
GLEASON WOOD;
SOPHIA HILLENBRAND and
FLETCHER TRUST COMPANY,
Executors of the Estate of George M. Hillenbrand, Deceased;
R. GUASTAVINO;
C. T. LASSEN;
H. C. SALTONSTALL;
W. S. LEEDS;
ROSE T. LUDVIGH,
Executrix of the Estate of Clifford G. Ludvigh, Deceased;
WILLIAM P. GUERARD;
EDNA M. RAYNOR,
As Executrix of the Estate of Stewart Raynor, Deceased;
GEORGE A. DOBYNE;
J. WESLEY PAPE;
McCOY BROTHERS INDIAN RIVER NAVIGATION COMPANY;
J. H. BAUER;
WILLIAM STEVENS;
THEOPHILUS de MOTT;
H. A. HOLLINGER;
HARRY B. RAMPE;
E. R. PILLARS;
Libelants,

By BIGHAM, ENGLAR, JONES & HOUSTON and
BATCHELOR & DYER,
Their Proctors.
DAVID W. DYER,
By LEONARD J. MATTESON.

Dated this 12th day of September, A. D. 1941, at Miami, Dade County, Florida.

Receipt of a true copy of the foregoing Petition for Appeal is hereby acknowledged this 15 day of September, 1941.

BURLINGHAM, VEEDER, CLARK & HUPPER and
LOFTIN, CALKINS, ANDERSON & SCOTT,
By ROBERT H. ANDERSON,
Proctors for Respondent John S. Phipps.
BOTTS & FIELD,
By FRED BOTTS,
Proctors for Respondent George J. Pilkington.

On September 17th, 1941, an Order of Court was filed allowing an apepal, which is in words and figures as follows:

4814 ORDER ALLOWING APPEAL.

(Title Omitted.)

The above named libelants having filed herein their Notice of Appeal from the final decree and judgment entered

thereon on the 19th day of June, A. D. 1941, now on petition of Bigham, Englar, Jones & Houston, and Batchelor & Dyer, proctors for petitioners, it is

Ordered that an appeal to the United States Circuit Court of Appeals for the Fifth Circuit from the final decree and judgment thereon heretofore entered herein be and the same is hereby allowed, and that a certified transcript of the record be forwarded to the United States Circuit Court of Appeals for the Fifth Circuit, at New Orleans, Louisiana.

Done and Ordered this 16th day of September, A. D. 1941

WILLIAM J. BARKER,
U. S. District Judge.

On September 17th, 1941, the libelants filed their Assignment of Errors, which is in words and figures as follows:

4815 ASSIGNMENT OF ERRORS.

(Title Omitted.)

The libelants assign error to the decision and decree of the United States District Court for the Southern District of Florida, Miami Division, as follows: The Court erred—

1. In entering a decree in favor of the respondent John S. Phipps dismissing the libel.

2. In failing to hold that the respondent John S. Phipps is liable to the libelants for the damage sustained by their various vessels as described in the libel.

3. In failing to grant an interlocutory decree to the libelants against the respondent John S. Phipps.

4. In holding that there was no negligence on the part of respondent Phipps or any person for whose acts or omissions he was responsible.

5. In failing to hold that the respondent John S. Phipps operated and controlled the yacht "Seminole".

6. In holding that the corporation Seminole Boat Company stands as a non-conductor between the libelants and Pilkington on the one hand, and the respondent John S. Phipps as stockholder on the other.

7. In holding that the corporation Seminole Boat Company was not to be regarded as sham or fiction or agent of the respondent John S. Phipps but as a legal non-conductor between the respondent Phipps on the one hand, and the libelants and Pilkington on the other, because there was no fraud or other improper conduct or purpose in the creation or continued existence of the corporation.

8. In holding that the yacht "Seminole" was owned, operated, controlled and maintained by Seminole Boat Company, not respondent Phipps, and respondent Phipps is not liable for any acts or omissions of the Seminole Boat Company, or any person who acted on its behalf.

9. In holding that while the corporation made no profits and no charter after 1930, it continued in existence as a bona fide corporation and that there was no fraud or other reason to disregard the corporate entity, pierce the corporate veil or regard the corporation Seminole Boat Company as an agent of either of its stockholders.

10. In failing to hold, on the undisputed testimony, that the corporation, Seminole Boat Company, was the alter ego, corporate agent or corporate instrumentality of its two stokholders, the respondent John S. Phipps and his brother H. C. Phipps (and later of his sister Mrs. Amy Guest who acquired the interest of H. C. Phipps) because

(a) The corporation was merely an instrumentality through which the stockholders acted.

(b) Because the actions of the corporation were dominated and controlled by the stockholders to the extent that the corporation was a mere puppet.

(c) Because the officers of the corporation who were selected by the stockholders were the personal agents and servants of the stockholders, received no compensation from the corporation for the performance of their duties as such officers and accepted their offices and duties solely because of their obligations by reason of their relationship to the stockholders to attend to the personal business of the stockholders.

(d) The officers of the corporation had limited authority and were dominated and controlled in their actions by the stockholders.

(e) The corporation was not supplied with adequate capital to permit independent operation of the corporation by its officers and directors.

(f) The corporation did not charter the "Seminole" after April 1930, and had no bank account and no funds after June 2, 1931, that is, for approximately four years before the fire.

(g) The supposed transactions of the corporation both before and after the fire were in fact the personal transactions of the stockholders.

(h) Prior to June 2, 1931, the Seminole Boat Company was operated on funds advanced on the credit of the stockholders who also periodically made good the deficits incurred in the operation of the vessel. After June 2, 1931, the expenses of the "Seminole" which was in semi-permanent storage were paid by other Phipps corporations who were reimbursed directly by the stockholders for these expenditures and the so-called books of the Seminole Boat Company were a mere record of these transactions made up periodically sometime after the transactions had been completed.

(i) At the time of the fire on June 24, 1935, the corporation Seminole Boat Company was dormant, if not defunct.

(j) The transfer of legal title to the yacht "Seminole" by the stockholders of the corporation was nominal only and the stockholders particularly the respondent John S. Phipps did not part with the right to use the vessel and direct its use, and continued to deal with the yacht "Seminole" as their own vessel, and the respondent John S. Phipps did on various occasions use the yacht "Seminole" for his own purposes without any formal permission on the part of the corporation.

(k) The formation of the corporation made no substantial difference in the relationship of the stockholders or the respondent John S. Phipps to the vessel either in the payment of the expenses of the "Seminole" or in the use of the "Seminole" by the said respondent.

(1) The respondent John S. Phipps interferred directly, exercising authority in the management of the affairs of the corporation.

11. In failing to hold that the Seminole Boat Company cannot be a legal non-conductor or insulator against liability to the respondent John S. Phipps when the following circumstances exist:

(a) The respondent John S. Phipps owns 50% of the entire capital stock of the corporation which has been exchanged for his 50% interest in the vessel as former owner.

(b) The officers of the corporation and those to whom the management of the vessel is entrusted, receive no compensation for their services. They have no interest in the corporation or in the vessel. They accept and perform their functions as officers and directors of the corporation, solely because of their obligations to the shareholders, either as individuals, or as employees of other corporations owned by those shareholders, to attend to the personal business of the former owners of the vessel. They are persons who, by reason of the conditions of their general employment, are necessarily subject to the orders of the former owners.

(c) The purse strings of the corporation are tightly held by the former owners of the vessel to the extent that the corporation has no funds except those which are advanced or loaned to the corporation by the former owners of the vessel or are provided on their credit. The payment of the expenses of the vessel and of the corporation is dependent on such advances or on the reimbursement of disbursing corporations by the stockholders.

(d) The former owners of the vessel use the vessel for their personal purposes whenever they see fit.

(e) For approximately six and a half years the corporation has earned no profits but has incurred substantial and continuous deficits which would have forced the corporation out of existence except for the fact that the expenses of the vessel and of the corporation have been paid regularly by the stockholders.

(f) For more than five years the corporation has done no business and made no charter of the vessel and has had no income whatever.

(g) For four years the corporation has had no bank account and no funds and the expenses of the vessel have been paid by other corporations which have been reimbursed directly by the shareholders.

(h) For four years the vessel has been continuously laid up in storage except for four short periods. On three of these occasions the vessel was taken out of storage solely for the personal use of the respondent John S. Phipps, and on the fourth, for exhibition for sale, and for personal use of the respondent John S. Phipps.

(i) The officers of the corporation have been restricted in incurring expense on account of the vessel in that they were, in effect, spending the stockholders' money and knew that they were dependent upon the willingness of the stockholders to recognize and pay any debts and expenses incurred by them; consequently they were not at liberty to incur expense even for repairs and maintenance beyond small sums unless after consultation with the stockholders, they received specific approval from them, the stockholders thus controlling the purse strings of the corporation.

12. In failing to hold that when such conditions exist, the stockholders cannot rightfully and legally escape liability for negligence in the maintenance, upkeep and operation of the vessel and the results of their neglect, by reason of which the vessel has become dangerous, and this condition has led to a major disaster in which the property of many innocent persons has been destroyed.

13. In failing to hold that under such circumstances a Court of admiralty, pursuant to its duty to administer the broadest equity, will look through such transactions to ascertain the truth.

14. In failing to follow and apply the principles of admiralty and the decisions of the admiralty Courts in like cases.

15. In holding that under such circumstances, the stockholder of a corporately owned offending vessel will not be liable unless in a case of positive wrong or an act of positive negligence.

16. In failing to hold on the undisputed testimony that John F. Riley, who was appointed by the officers of the corporation in 1931 to take charge of the "Seminole" and to make regular inspections of the vessel, was the personal agent and servant of the respondent John S. Phipps, since

(a) John F. Riley, like the officers of the Seminole Boat Company, received no compensation from Seminole Boat Company for the performance of the duties assigned to him.

(b) He accepted those duties and undertook to perform them solely because of his relationship to the re-

spondent John S. Phipps and his obligation to attend to the personal business of the respondent, John S. Phipps in addition to the other duties performed for the said respondent without additional compensation.

17. In failing to hold that John F. Riley, as personal agent and servant of the respondent John S. Phipps was negligent in failing to make proper inspections of the yacht "Seminole" and was incompetent to make such inspections.

18. In failing to hold that the officers of the Seminole Boat Company, Scott, Hawkins and Alley, were personal agents and servants of the respondent John S. Phipps in the performance of their duties as such officers; were negligent in the performance of their duties in respect to the yacht "Seminole"; and had no qualifications or competence for the management of such a vessel as the "Seminole".

19. In failing to hold that Captain R. C. Abel was negligent in entering the engineroom of the "Seminole" on June 24, 1935 and lighting matches and closing openknife electric switches which were likely to cause sparks, although the danger of the presence of explosive gases was, or should have been, readily observable, and although Abel was specifically warned by his companion Thomas, also a boat captain, of the danger.

20. In failing to hold that Captain R. C. Abel when he entered the engineroom of the "Seminole" on June 24, 1935 and negligently performed acts which resulted in the explosion and subsequent fire was the personal agent and servant of the respondent John S. Phipps.

21. In failing to hold, in view of the conceded fact that Captain R. C. Abel was the general employee of the re-

spondent John S. Phipps that the respondent John S. Phipps failed to sustain the burden of showing that his general relation to Abel of master and servant had been suspended and a new like relation created between Abel and Seminole Boat Company on September 24, 1935, the day of the fire.

22. In finding that on June 24, 1935 Riley arranged for R. C. Abel to proceed to the "Seminole" on behalf of Seminole Boat Company and there to pay to Pilkington a small balance due from Seminole Boat Company to Pilkington on account of storage charges, to inspect the "Seminole", and to bring back certain property belonging to Seminole Boat Company.

23. In failing to hold that the negligence of Abel was a contributory cause of the explosion and fire.

24. In failing to hold that the respondent John S. Phipps is liable for the negligence of Abel.

25. In failing to hold that the respondent John S. Phipps is not entitled to limitation of his liability resulting from the negligence of his personal agent and servant Abel.

26. In failing to hold that the electric wiring system of the "Seminole" was defective and that the defective electric wiring on the "Seminole" was a contributory cause of the explosion.

27. In failing to hold specifically that the gasoline tanks of the "Seminole" were from the time of their installation improper, inadequate and unsafe for the storage of gasoline in a vessel of the type of the "Seminole" or any vessel.

28. In failing to hold that the existence of valves in the engineroom on the "Seminole" for the purpose of drawing off free gasoline in the engineroom of the "Seminole" from the tanks and gasoline supply system was an improper; unsafe and dangerous condition which had existed prior to the formation of the corporation by the respondent John S. Phipps who was then an active owner of the "Seminole", and which were permited to exist down to the time of the fire.

29. In failing to hold that there was no adequate provision for the ventilation of the enginercom and tank compartments of the "Semmole".

30. In failing to hold that the existence of such serious defects leads to the natural inference that they were contributory causes of the explosion and fire.

31. In finding that the electric wiring of the yacht "Seminole" was placed in conduit or wire mold at Merrill Stevens Yard in 1927-8.

32. In failing to hold that John F. Riley and the officers of the corporation were negligent in failing to ventilate and make proper inspections of the "Seminole" and that such negligence is attributable to respondent John S. Phipps.

33. In failing to hold that the respondent John S. Phipps did not sustain the burden of showing freedom from privity and knowledge with respect to the defective and dangerous conditions of the "Seminole".

34. In failing to hold that the respondent John S. Phipps had privity and knowledge with respect to the defective and dangerous conditions of the "Seminole"—(a)

because the respondent John S. Phipps had personal knowledge of the dangerous and defective conditions on that vessel; (b) because the respondent John S. Phipps failed to appoint competent agents to manage the yacht "Seminole"; (c) because the respondent Phipps cannot shift his responsibility to agents of limited authority; (d) because the respondent Phipps is responsible for failure to provide a regular system of competent and adequate inspection; (e) because the respondent Phipps is chargeable with knowledge of the defective and dangerous conditions which could have been discovered by proper inspection; (f) because Riley, Alley, Scott and Hawkins were the alter ego of the respondent, John S. Phipps, and their negligence, knowledge and privity are his.

35. In finding that the presence of gasoline fumes in the engineroom was the sole cause of the fire and explosion which caused libelants' loss.

36. In finding that the respondent Phipps was not chargeable with negligence which was the proximate cause of libelants' loss.

37. In finding that the negligence which caused the loss of the "Seminole" was without the privity or knowledge of respondent Phipps.

38. In finding that the character of the negligence which caused the libelants' loss was of such a character as not to preclude respondent Phipps from asserting limitation of liability under 46 U. S. C. A. Sec. 183, Act of Congress of March 3, 1851, Sec. 8 Ch. 43, 9 Stat. 635.

39. In that after the Court found that with the passage of time some parts of the machinery or equipment of the

"Seminole" did leak, and that such leakage created danger of gasoline explosion in the engineroom of the "Seminole", the Court failed to hold respondent Phipps liable—(a)for failing to make proper and periodic inspections to ascertain the condition of the said machinery and equipment and thus prevent leakage; and (b) for permitting the yacht "Seminole" to be stored adjacent to crafts belonging to libelants when the machinery and equipment of the said yacht ""Seminole" was in said dangerous condition.

40. In holding that respondent Phipps was not liable to respondent Pilkington.

41. In holding that respondent Pilkington was not liable to libelants.

42. In finding that the yacht "Seminole" was stored with the respondent Pilkington on an implied contract with Seminole Boat Company and that respondent Pilkington did not rely upon any warranty or representation.

43. In failing to find that the yacht "Seminole" was stored with the respondent Pilkington under a contract between the respondent John S. Phipps and the respondent Pilkington and that the respondent Phipps impliedly represented and waranted that the yacht "Seminole" was in a safe condition for storage in the covered yacht basin of the respondent Pilkington together with libelants' vessels and that respondent Pilkington relied on such representation and warranty.

44. In holding that the six months limitation of time in the Act of June 5, 1936 is not applicable to the defense of limitation of liability raised by the respondent John

S. Phipps by amendment to his answer on March 10, 1937, more than six months after June 5, 1936.

BIGHAM, ENGLAR, JONES & HOUSTON,
BATCHELOR & DYER,
DAVID W. DYER,
By LEONARD J. MATTESON,
Proctors for Libelants-Appellants.

Miami, Florida, September 12th, 1941.

To: Burlingham, Veeder, Clark & Hupper, Loftin, Calkins, Anderson & Scott, Proctors for respondent-appellee John S. Phipps.

Botts & Field, Proctors for respondent-appellee George J. Pilkington.

Service of above Assignment of Errors and receipt of copy thereof hereby acknowledged this 17 day of September, A. D. 1941.

LOFTIN, CALKINS, ANDERSON & SCOTT,
Proctors for Respondent Phipps.
FRED BOTTS,
Proctors for Respondent Pilkington.

On October 15th, 1941, the Court filed its order extending the return date in the Citation, which is in words and figures as follows:

4830 ORDER.

(Title Omitted.)

By consent of proctors for libelants and respondents, as shown by the stipulation filed in the papers of this cause on the 15th day of October, 1941,

It is Hereby Ordered that the return date in the Citation, towit, October 16, 1941, be and the same hereby is extended to and including November 1, 1941.

Done and Ordered at Miami, Florida, this 15th day of October, A. D. 1941.

JOHN W. HOLLAND,
United States District Judge.

On Nov. 1st, 1941, the Court filed its order extending the return date in the Citation, which is in words and figures as follows:

4831 ORDER.

(Title Omitted.)

By consent of proctors for libelants and respondents as shown by the stipulation filed in the papers of this cause on the 31st day of October, 1941,

It is Hereby Ordered that the return date in the Citation, towit, October 16, 1941, be and the same hereby is extended to and including December 1, 1941.

Done and Ordered at Miami, Florida, this 31st day of October, A. D. 1941.

JOHN W. HOLLAND,
District Judge.

On November 28th, 1941, the Court filed its order extending the return date in the Citation, which is in words and figures as follows:

4832 ORDER.

(Title Omitted.)

By consent of proctors for libelants and respondents, as shown by the stipulation filed in the papers of this cause on the 26th day of November, 1941,

It is Ordered that the return date in the Citation, towit, October 16, 1941, be and the same hereby is extended to and including the 20th day of December, 1941.

Done and Ordered at Miami, Florida, this 28th day of November, A. D. 1941.

JOHN W. HOLLAND,
District Judge.

On Nov. 28, 1941, a stipulation was filed as to settling and correcting the record and omitting certain exhibits, which is in words and figures as follows:

(Title Omitted.)

The libelants having appealed to the United States Circuit Court of Appeals for the Fifth Circuit from the final decree entered herein on or about June 19, 1941 dismissing the libel, and the parties having agreed upon the omission of certain portions of the testimony and evidence from the transcript of record to be certified by the Clerk for the purpose of this appeal on the terms and conditions hereinafter set forth, it is now

Hereby Stipulated and Agreed between the parties hereto that for all purposes in this case the following are facts:

When, on the morning of June 24, 1935, R. C. Abel purchased the gasoline represented by the purchase slip marked Exhibit S, he wrote on the purchase slip, Exhibit S, his signature, "R. C. Abel", and the words "Seminole Boat Co.", appearing immediately below the same.

And It is Further Hereby Stipulated and Agreed that no question of the authenticity or genuineness of the gasoline slip, Exhibit S, or any of the writing thereon, will hereafter be raised in this case.

In consideration of the foregoing stipulation, it is further stipulated and agreed:

(1) That the portions of the transcript of the record of the trial in the District Court, set forth in the attached Schedule A, be omitted by the Clerk from the record to be transmitted to the United States Circuit Court of Appeals for the Fifth Circuit;

(2) That the corrections set forth in the attached Schedule B shall be made in the transcript of the testimony at the trial; and

(3) That the exhibits listed in the attached Schedule C and no others shall be included by the Clerk in the record to be transmitted to the United States Circuit Court of Appeals for the Fifth Circuit; and that the Clerk shall certify the record, with the omissions and corrections as aforesaid as the complete transcript of record in this case.

Dated: November 28th, 1941.

BIGHAM, ENGLAR, JONES & HOUSTON,
BATCHELOR & DYER,
Proctors for Libelants.
FRED BOTTS,
Proctors for Respondent
George J. Pilkington.
LOFTIN, CALKINS, ANDERSON & SCOTT,
Proctors for Respondent,
John S. Phipps.

Schedule A:

Testimony To Be Omitted From The Record On Appeal.

1. Omit preliminary statements and colloquy pages i to xii with the following exceptions:

(a) Page vii beginning 7th line from the bottom to page x end of line 6th.

(b) Page x beginning 10th line from the bottom through page xii:

2. Page 3, omit beginning "there" 3rd line from the bottom through "required" page 4, line 15.

3. Page 78:

(a) Beginning line 7 through page 79, line 2.

(b) Omit page 79, lines 4, 5 and 6.

(c) Omit page 79, line 12, through page 80, line 7.

4. Page 170, omit from top through 8th line from bottom.

5. Page 196, omit beginning line 8 through line 3, page 198.

6. Page 270, omit beginning line 7, through line 4th from the bottom.

7. Page 284, omit line 15 through line 2, page 285.

8. Page 385, omit beginning line 6 through line 18.

9. Page 404, omit beginning line 11 through line 12, page 407.

10. Page 410, omit beginning line 3 through line 6th from the bottom.

11. Page 414, omit beginning line 3 through page 415, line 11.

12. Page 425, omit parenthesis, four lines, beginning line 5.

13. Page 426, omit beginning line 5 through page 429, line 7.

14. Page 526, omit beginning line 8 through page 527, line 5th from bottom.

15. Page 578, omit line 8 beginning with the word "and" through page 583.

16. Page 584, omit beginning line 2, beginning with the word "but" through line 7th.

17. Page 584, omit line 13 beginning with word "and" through line 19.

18. Page 584, omit direct and cross-examination of Joseph F. Anderson through page 598, including Libelants' Exhibit 36.

19. Page 611, omit beginning line 3 through line 13.

20. Page 611, line 14, omit beginning "I" through "Matteson".

21. Page 630, line 15, omit beginning word "I" through page 633, line 4.

22. Page 642, omit beginning last line through page 643, 8th line from bottom; also last two lines.

23. Page 754, omit beginning line 6th from bottom through page 759, line 5.

24. Page 791, omit beginning line 9 through page 795, line 9.

25. Page 894, omit beginning line 5 through line 4th from the bottom.

26. Page 929, omit through page 932 (testimony of Wendel Andreas).

27. Page 1095 omit through page 1119 (testimony of John Cunningham, direct testimony incorporated in stipulation) except page 1100, line 6, through page 1101, line 4 to remain.

28. Page 1578, omit beginning line 15 "By Mr. Botts" through page 1584, line 5.

29. Page 1601, omit beginning line 7 "Mr. Botts" through page 1610, 7th line from the bottom.

30. Page 1624, omit beginning last line through page 1632, 3rd line from bottom.

31. Page 1755, omit beginning line 5 through page 1758.

32. Page 2138 through page 2150 omit testimony of Mae Abel.

33. Page 2151, line 3, through page 2186 omit entire testimony of G. B. Harkins beginning "Mr. Glenn Buren Harkins".

34. Pages 2593—2684 inclusive; page 2748—3028 inclusive, omit testimony of Charles F. Goodspeed, Elbridge W. Stein and Albert S. Osborn.

35. Page 3029 omit beginning line 5 through page 3030, line 2.

36. Page 3400 omit beginning line 7 through page 3407, line 4.

37. Page 3501, omit beginning 5th line from the bottom through page 3506, line 7.

Schedule B.

List Of Corrections In Transcript Of Testimony In Addition To Those Noted By Stenographer.

1. Page 6, line 6, change "bow" to "boat".

2. Page 13, after line 8, insert "(By Mr. Underwood)".

3. Page 154, line 9 change "engine" to "Jenkins".

4. Page 155, 3rd line from bottom, strike out ";" insert "A".

5. Page 171, 2nd line from bottom change "Mr. Underwood" to "The Court".

6. Page 625, line 5, change "92" to "91".

7. Page 638, line 10, change "Bill" to "Abel".

8. Page 805, line 8 from bottom, strike out "no".

9. Page 956, line 3 after "have" insert "not".

10. Page 973, line 13, change "moisture or" to "musty".

11. Page 981, line 6, change "is a" to "in the".

12. Page 1134, line 7, change "no" to "yes".

13. Page 1806, line 8, change "any" to "only".

14. Page 1806, lines 20, 23, change "pail" to "bale".

Schedule C.

Libelants' Exhibits.

2. Valve and attached pipe.

3. Photograph of valve on #1 tank, etc.

4. Photograph of valve, close-up.

5. Photograph of valve, closer-up.

6. Photograph of four tanks.

7. Plan of Yacht Seminole.

8. Diagram, outline of Seminole.

9. Photograph of forward engineroom bulkhead and after tank compartment bulkhead.

10. Photograph of auxiliary light plant ahead of port main engine.

11. Two drain valves.

12. Photograph of engineroom from port side.

13. Gasoline can.

14. Funnel.

15. Photograph taken between two main engines, of forward engineroom bulkhead & auxiliary plant.

16. Photograph taken toward forward port side corner of engineroom, showing auxiliary light plant, etc.

17. Trap, from gasoline manifold line.

18. Part of knife-switch.

19. Photograph of carburetor of port engine, etc.

20. Photograph of light plant on port side of vessel.

21. Diagram of tanks on Seminole drawn by witness Holm.

22. Photograph of deck above engineroom.

24. 1937 Rules.

25. 1930 Set of Regulations.

26. Compilation of data with respect to gasoline explosions.

27. Lloyd's Register of American Yachts for 1933 (Dupilcate #105).

28. Deposition of Carl Holm.

29. Deposition of E. D. Wright.

30. Consolidated Enrollment and Yacht License; Seminole; Miami, 4-18-'23.

31. Enrollment & Yacht License, Seminole; Miami, 11-5-'24.

32. Enrollment & Yacht License, Seminole; Miami 2-16-'29.

33. Enrollment & Yacht License, Iolanthe; Miami, 7-7-'26.

36. Photograph of yacht basin after fire.

37. Photograph of yacht basin, with fire still burning.

38. Letter dated 2-11-'29, signed A. A. Simmon.

39. Letter dated 4-2-'29, signed Van E. Huff.

40. Letter dated 1-18-'32, signed Geo. J. Pilkington, to Palm Beach Company.

41. Letter dated 5-18-'32, signed by J. F. Riley.

42. Copy of letter dated 5-20-'32 to J. F. Riley.

43. Letter, 3-17-'33, signed Pilkington, to Mr. Riley.

44. Letter dated 4-26-'33, Pilkington to Palm Beach Company.

45. Copy of telegram dated 4-30-'33, Pilkington to J. S. Phipps.

46. Letter dated 3-20-'34, to Pilkington, signed Roy H. Andrews.

47. Letter dated 5-7-'34, signed Palm Beach Company, J. F. Riley.

48. Letter dated 9-5-'34, signed J. F. Riley.

49. Letter dated 8-26-'31, signed J. F. Riley.

50. Letter dated 9-13-'32, signed J. F. Riley.

51. Letter dated 12-1'33, signed Palm Beach Co. by Roy H. Hawkins.

52. Letter dated 4-17-'35, signed Seminole Boat Co. by Roy H. Hawkins.

53. Letter dated 4-16-'35, signed J. F. Riley.

54. Letter dated 4-20-'35, signed Seminole Boat Co. by W. L. Webber.

55. Letter dated 1-21-'32, signed J. F. Riley.

56. Letter dated 3-21-'33, signed Riley.

57. Letter dated 5-3-'33, signed Riley.

58-A. Check, $50.00, dated 6-10-'35.

58-B. Voucher, storage Seminole, May.

59-A. Check, $10., dated 6-24-'35.

59-B. Voucher, accompanying.

60. Memorandum to Pilkington, signed J. F. Riley.

61. Letter, signed Geo. J. Pilkington.

62. Letter dated 9-30-'35 to Pilkington.

63. Sketch by witness Pilkington, showing berthing of boats, etc.

64. File, Seminole Boat Co., 1-1-'34 to 7-30-'35.

65. File, Seminole Boat Co., 1930-1933.

66. File, Seminole Boat, 1928-'29.

67. File, Seminole, 1925-1927.

68. Payrolls.

69. Payrolls.

70. Payrolls.

71. Payrolls.

72. Payrolls.

73. Payrolls.

74. Payrolls.

75. File of Palm Beach Co. vouchers.

76. Account Book of Seminole Boat Co.

77. File of Journal vouchers of Seminole Boat Co., numbered 1-22 with supports. (In evidence as Resp. Phipps' "Y".)

78**. File of Journal vouchers of Seminole Boat Co., numbered 23-103 with supports.

79. Stock certificate Book, Seminole Boat Co.

80. Minute Book, Seminole Boat Co.

81. Certificate of Incorporation of Seminole Boat Co.

82. Ledger; page 57 & index page "S" (1928).

83. (Ledger, pages 19 & 43 (1929).

84. Ledger, pages 52 & 53 (1930-31-32).

85. Ledger, pages 10, 11, 52, 53, 54 (1932-33).

86. Ledger pages 3 and 4 (1934).

87. Ledger, page 2 (1935).

88. List of Bills.

(**Libelants' #78 is in evidence as Resp. Phipps' "Z".)

89. List of checks.

90. Photostat of check, $24.00.

91. Photograph, Seminole wreckage and tanks.

92. Photograph at basin, after fire.

93. Photograph, tanks of Seminole, etc., after fire.

94. Photograph, wreckage of Seminole and Blue Lagoon, after fire.

95. Typewritten memorandum of Thomas statement, prepared by McCoy.

96. Memorandum of Thomas statement.

97. Pamphlet, "Regulations governing marine hazards"

98. Photograph showing engineroom.

99. Diagram showing construction of tanks of Seminole.

100. Diagram of Mr. Underwood indicating tanks, bulkhead, lines, etc.

101. Rules for construction & classification, composite & steel yachts.

101-A. Rules for construction & classification, wood yachts.

104. Deposition of Ruth E. LeBar (and E. D. Wright).

105. Lloyd's Register (Duplicate #28).

106. Credit report.

108. Grocery list.

110. Drawing of switchboard (Schlappi).

111. Photograph.

112. Photograph.

113. Photograph showing rheostats.

114. Release.

118. Letter Simmon to Batchelor.

119. Letter Batchelor to Simmon.

120. Report by Bernard.

121, 122. Photostat of pamphlet, excerpt from Lloyd's Rules.

123. Sketch of valve (By Munroe)..

133. Exhibit to A. J. Smith deposition; Exhibit "Story of the Natl. Fire Pro. Assn."

134. Exhibit to A. J. Smith deposition.

135. Exhibit to A. J. Smith deposition.

136. Exhibit to A. J. Smith deposition.

138. Encyclopedia excerpt (See No. 147).

139. Photograph of #4 tank showing side seam.

140. Photograph from #1 tank, across tank compartment.

141. Photograph in passageway looking forward to tank.

142. Photograph of tank compartment bulkhead, between Tanks 1 and 2.

143. Photograph of space where #4 tank was taken out.

144. Photograph from #2 tank across top of tank space.

145. Photograph from Float, looking at starboard side of boat.

146. Photograph of starboard side of Seminole showing tank & tank compartment.

147. Encyclopedia excerpt; typewritten copy (See No. 138).

148. Sketch by Thompson; partial diagram of Seminole.

149. Deposition of Andrew J. Smith.

150. Sketch by Thompson; doubling plate.

151. Sketch by Thompson; rivet and hole.

152. Photograph of part of crown plate #2 tank.

153. Photograph of tanks.

154. Photograph of side seam #2 tank.

155. Photograph of #3 tank.

156. Section of metal, side seam, tank #4.

157. Section of metal, side seam, tank #4.

158. Section of metal, side-wall & crown sheet, tank #4.

159. Section of metal, bottom of side wall, tank #4.

160. Section of metal, side-wall Tank #2.

161. Sketch by Gibbs, of caulking.

162. Sketch by Gibbs of caulking-tool.

163. Caulking tool.

164. Sample sections of steel plate.

165. Sketch by Thompson.

166. Sketch by Thompson.

167. Sketch by Thompson.

168. Sketch by Thompson.

Respondent Pilkington's Exhibits.

1. Check dated 8-12-'31, $118.20, to Pilkington.

2. Bill.

3. Bill.

4. Check dated 5-21-'31, $34.20.

5. Receipted bill, $25.00 dated 4-30-'31.

6. Receipted bill, $59.20, dated 4-30-'31.

11. Sketch (Witness Baker).

12. Sketch (Witness Simmon).

15. Sketch by Munroe, indicating caulking.

16. Photograph of tanks, Aug. 13, 1935.

17. Rivets.

Respondent Phipps' Exhibits.

1. Receipt for $50.00.

2. Copy of report.

3. Regulations, 1930, N F P A.

A. Sketch or Plan of Seminole.

B. Photograph of Seminole.

D. Diagram showing construction of drain pans.

E. Letter dated 6-22-'34 signed Pilkington.

F. Letter dated 2-23-'35 to Pilkington.

G. Letter dated 6-13-'35 signed Pilkington.

H-1. Check, Seminole Boat Co.

H-2. Check, Seminole Boat Co.

H-3. Check, Seminole Boat Co. 2-11-'29.

H-4. Check, Seminole Boat Co. 4-24-'39.

H-5. Check, Seminole Boat Co. 9-11-'30.

H-6. Check, Seminole Boat Co. 11-4-'30.

H-7. Check, Seminole Boat Co. 12-5-'30.

H-8. Check, Seminole Boat Co. 12-31-'30.

I. Letter dated 7-5-'35 signed by Pilkington.

J-1. Face of check paid to Capt. Nelson.

J-2. Reverse of check paid to Capt. Nelson.

K. File of 4 bills & 4 checks (Iolanthe).

L. Portion of page showing outline of valve.

M. Diagram of witness Patton showing sides & bottom of tanks, and drain valve.

N. Diagram, plane view of bulkhead.

O. Letter dated 7-31-'35 to Pilkington.

P. Diagram of bottom of tank by witness Thompson.

Q. Sketch of ground plug, by witness Thompson.

R. Diagram of valve.

S. Slip for purchase of gasoline by R. C. Abel.

S-1. Duplicate of slip, Exhibit "S".

T. Certificate of incorporation, Seminole Boat Co.

U. Minute Book, Seminole Boat Co.

V. Stock Book, Seminole Boat Co.

W-1. Stock Cert. #4, Seminole Boat Co.

W-2. Stock Cert. #6, Seminole Boat Co.

W-3. Stock Cert. #8, Seminole Boat Co.

X. Journal-Ledger, Seminole Boat Co.

Y. File of checks & vouchers, Seminole Boat Co. (Libelants' #77 for identification).

Z. File of checks & vouchers, Seminole Boat Co. (Libelants' #78 for identification).

AA. Check book, Seminole Boat Co.

BB. Check-vouchers Seminole Boat Co.

CC. Contract, Seminole Boat Co. and Capt. Baker.

DD. Report of Capt. Bernard.

EE-1. Telegram to Capt. Baker.

EE-2. Telegram from Capt. Baker.

EE-3. Telegram to Capt. Baker.

FF. Letter 5-30-'32 to Pilkington.

GG. Voucher-check, personal property tax.

HH. Voucher-check, Capt. Abel.

II. Voucher-check employees & repairs.

JJ. Voucher-check Weinkle's.

KK. Voucher-check Miami Radio Service Co.

LL. Voucher-check, Bay Supply Co.

MM. Voucher-check, #299 to Kelly, Cashier.

NN. Voucher-check, Fla. East Coast Hotel Co.

OO. Voucher-check, Coconut Grove Boat Works.

PP. Voucher-check, purchase of Prigg boat.

QQ. Voucher-check, to Kelly, Cashier.

RR. Voucher-check, Hamlyn Mattress Co.

SS. Voucher-check, F. T. Budge Co.

TT. Voucher-check, D. L. Reisner, Inc.

UU. Voucher-check, Bernard.

VV. Voucher-check, F. O. Pruitt, Inc.

WW. Voucher-check, F. E. C. Hotel Co.

XX. Voucher-check, Paul's Boat Sup. C.

YY. Voucher-check, Hamlyn Mattress Co.

ZZ. Voucher-check, Kelly, Cashier.

3-A. Voucher-check, Biscayne Blvd. Co.

3-B. Voucher-check, Paul's Boat Sup. Co.

3-C. Voucher-check, Elect. Equipment Co.

3-D. Voucher-check, Edward Parkinson.

3-E. Voucher-check, Biscayne Blvd. Co.

3-F. Voucher-check, Hopkins-Carter Hardware Co.

3-G. Voucher-check, Capt. Baker.

3-H. Voucher-check, Bay Supply Co.

3-H-A. Charge slip of Bay Supply Co.

3-I. Voucher-check, No-Name Lodge.

3-J. Voucher-check, Southern Food Stores, Inc.

3-K-1. Letter from C. A. Weiss.

3-K-2. Same, enclosure.

3-L-1. Letter 1-30-'34 from Handley to Alley.

3-L-2. Copy of letter 1-30-'34, Handley to LeCount.

3-L-3. Balance sheets, Seminole Boat Co., 12-31-'33.

3-M. Photograph, after deck of Seminole.

3-N. Photograph, dining room of Seminole.

3-O. Charter of Seminole—E. J. Stehli.

3-P. Charter of Seminole—Ann Murdock.

3-Q. Insurance policy.

3-R-1. Chart of ownership.

3-R-2. Chart of ownership.

3-R-3. Chart of ownership.

3-S. List of accounts for which disbursements were made.

3-T-1. Vouchers & Bill.

3-T-2. Vouchers & Bill.

3-T-3. Vouchers & Bill.

3-T-4. Vouchers & Bill.

3-U. File of vouchers.

3-V. Checks & supporting data, etc.

3-W. Photograph.

3-X. Photograph.

3-Y. Photograph.

3-Z. Photograph.

4-A. Photograph.

4-B. Photograph.

4-C. Deposition, Anthony Schinigoi.

4-D. Analysis of Anderson.

4-E. Letter 6-23-'31 & account Blvd. Mtg. Co. & Phipps Realty Co.

4-F. Check-voucher; Palm Beach Co.; $200 charge of Capt. Bryant.

4-G. Blvd. Mtg. Co. voucher 350.

4-H. Letter 5-31-'35 from LeCount with statement Seminole Boat Co.

4-I. Orig. bill of Palm Beach Svc. Station, June 1935.

4-I-1. Check, J. S. Phipps, $22.67.

4-I-2. Palm Beach Co. triplicate voucher $2.19.

4-I-3. Check 8-9-'35.

4-I-4. Voucher 8499 (dup. copy).

4-J. Petcock.

4-K. Memo. OK'd by JSP.

4-L. File of bills.

4-M. Merrill-Stevens Dry Dock Co. bills.

4-N. Analysis.

4-O. Comparative statement by Simmon.

4-P. Photostat; ledger page, John S. Phipps.

4-Q. Photostat; ledger page, John S. Phipps.

4-R. Photostat; ledger page, John S. Phipps.

4-S. Photostat; ledger page, John S. Phipps.

4-T. Photostat; ledger page, H. C. Phipps.

4-U. Photostat; ledger page, H. C. Phipps.

4-V. Photostat; ledger page, H. C. Phipps.

4-W. Photostat; ledger page, Mrs. Guest.

4-X. Photostat; ledger page, H. C. Phipps.

4-Y. Photostat; ledger page H. C. Phipps.

4-Z. Photostat; ledger page, H. C. Phipps.

5-A-1. Photostat; ledger page, J. S. Phipps.

5-A-2. Photostat; ledger page, J. S. Phipps.

5-B-1. Photostat; ledger page, J. S. Phipps.

5-B-2. Photostat; ledger page, J. S. Phipps.

5-C-1. Photostat; ledger page, J. S. Phipps.

5-C-2. Photostat; ledger page, J. S. Phipps.

5-C-3. Photostat; ledger page, J. S. Phipps.

5-C-4. Photostat; ledger page, J. S. Phipps.

5-D. Photostat; ledger page, Mrs. Guest.

5-E. Analysis by Weiss.

5-F-1. Statement, 357.92.

5-F-2. Duplicate Voucher.

5-F-3. Check.

5-G-1. Check 1224.91.

5-G-2. Voucher.

5-G-3. Statement.

5-H-1. Check, 1224.90.

5-H-2. Duplicate voucher.

5-H-3. Statement.

5-I-1. Check, 2662.07.

5-I-2. Duplicate voucher.

5-I-3. Statement.

5-J. List of vessels and insurance companies.

5-J. Photograph of port end of tank compartment.

5-K. Photograph of tank compartment.

5-L. Photograph of tank compartment showing space between tanks and bulkhead.

5-T. Photograph of Exhibit #11.

5-U. Photograph of Exhibits 2 and 17.

5-V. Section of metal from #4 tank.

5-W. Section of metal from #4 tank.

5-X. Section of metal from #4 tank.

5-Y. Section of metal from #1 tank.

5-Z. Section of metal from #2 tank.

6-A. Section of metal from #3 tank.

6-B. Sketch by witness Thompson, of upper crown of tank.

On Dec. 13th, 1941, the Court filed its order directing the transmission of the original exhibits to the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, which is in words and figures as follows:

4855 ORDER.

(Title omitted.)

This matter coming on to be heard upon the stipulation of all the proctors for the respective parties, and it appearing to the Court that the nature of the exhibits in this cause precludes their incorporation in the transcript of record, upon consideration thereof

It is Ordered and Adjudged that the Clerk of the above entitled Court transmit to the Clerk of the United States Circuit Court of Appeals, Fifth Circuit, New Orleans, Louisiana, all the original exhibits designated in Schedule C attached to a stipulattion as to the record dated November 28, 1941.

Done and Ordered at Miami, Florida, this 13th day of December, A. D. 1941.

JOHN W. HOLLAND,
United States District Judge.

On December 13th, 1941, libelants filed their Motion to include in the transcript the petition under the 56th Rule in Admiralty of Respondent George J. Pilkington, which is in words and figures as follows:

4856 MOTION TO INCLUDE DOCUMENT IN RECORD ON APPEAL.

(Title Omitted.)

Come now the libelants above styled, and represent unto the Court that they have requested the clerk of this

Court to include in the transcript of record on appeal the petition under the 56th Rule in Admiralty of respondent George J. Pilkington against John S. Phipps; that respondent John S. Phipps has objected to the inclusion of said petition in said record.

Wherefore, libelants move this Court for an order determining whether said petition shall be included or omitted in said transcript of record on appeal.

BIGHAM, ENGLAR, JONES & HOUSTON,
BATCHELOR & DYER,
By DAVID W. DYER,
Proctors for Libelants.

On December 13th, 1941, the Court entered its order the Motion to include Respondent Pilkington's petition under the 56th Rule in Admiralty in the transcript of record, which is in words and figures as follows:

ORDER GRANTING MOTION TO INCLUDE DOCUMENT IN RECORD ON APPEAL.

4857 (Title Omitted.)

This cause coming on to be heard before me upon the motion of proctors for libelants for an order determining whether the petition under the 56th Rule in Admiralty of the respondent George J. Pilkington against respondent John S. Phipps shall be included or omitted in the transcript of record on appeal, and the same having been argued by proctors for the respective parties, and the Court being fully advised in the premises,

It is Ordered, Adjudged and Decreed that the petition under the 56th Rule in Admiralty of Respondent George J. Pilkington against respondent John S. Phipps be included in the transcript of record on appeal.

Done and Ordered at Miami, Florida, this 13th day of December, A. D. 1941.

JOHN W. HOLLAND,
District Judge.

4858 CLERK'S CERTIFICATE.

In the United States District Court in and for the Southern District of Florida, Miami Division.

Charles Coryell, et al., Libelants,
against No. 122-M-Adm.
John S. Phipps and George J. Pilkington, Respondents.

I, EDWIN R. WILLIAMS, Clerk of the United States District Court in and for the Southern District of Florida, do hereby certify that the foregoing volumes, A, pages numbered 1 to 123, both inclusive, B, pages numbered 1 to 142, both inclusive, C, introductory pages and pages numbered 1 to 539, both inclusive, D, pages numbered 540 to 1152, both inclusive, E, pages numbered 1 to 46, both inclusive, F, pages numbered 1 to 82, both inclusive, G, pages numbered 1 to 63, both inclusive, H, pages numbered 1153 to 1907, both inclusive, I, pages numbered 1 to 33, both inclusive, J, pages numbered 1908 to 2439, both inclusive, K, pages 2440 to 3028, both inclusive, L, pages 3029 to 3612, both inclusive, M, pages 3613 to 4223, both inclusive, N, pages 1 to 159, both inclusive, O, pages 1 to 48, both inclusive, present a true, full and correct copy of the proceedings had, and orders entered, as therein stated, in

Case No. 122-M-Adm., wherein Charles Coryell, et al., were libelants and John S. Phipps and George J. Pilkington were respondents, as the same appears of record and on file in this office, said contents of record being agreed upon by stipulation of proctors for the respective parties and included within said transcript.

Witness my official signature, and the seal of said District Court, at my office in the City of Miami, State of Florida, this 15th day of December, A. D. 1941.

EDWIN R. WILLIAMS,
(Seal) Clerk, United States District Court, Southern District of Florida,
By EARLE F. SPRIGG,
Deputy Clerk.

Citation omitted from the printed record, the original thereof being on file in the office of the Clerk of the U. S. Circuit Court of Appeals.

* * * * * * * * *

That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of May 11th, 1942

No. 10185

CHARLES CORYELL, et al.,

versus

JOHN S. PHIPPS and GEORGE J. PILKINGTON

On this day this cause was called, and, after argument by Leonard J. Matteson, Esq., for appellants, and Eugene Underwood, Esq., for appellees, was submitted to the Court.

OPINION OF THE COURT—Filed June 9, 1942

IN THE

United States Circuit Court of Appeals

FOR THE FIFTH CIRCUIT

No. 10185

CHARLES CORYELL ET AL.,
Appellants,

versus

JOHN S. PHIPPS AND GEORGE J. PILKINGTON,
Appellees.

Appeal from the District Court of the United States for the Southern District of Florida.

(June 9, 1942.)

Before SIBLEY, HOLMES, and McCORD,
Circuit Judges

HOLMES, Circuit Judge: The houseboat Seminole, while lying in dead storage in the yacht basin owned and operated by George Pilkington at Fort Lauderdale, Florida, caught fire following an explosion in her engine room. The fire spread to other vessels stored in the basin, and damaged or destroyed more than forty of them. Appellants, who were owners of vessels to which the fire spread, filed this libel against John S. Phipps (by whom the Seminole was alleged to be owned, operated, or controlled) and Pilkington (as

bailee of the vessels in the basin) to recover damages alleged to have been sustained by reason of the negligence of said defendants.

After a thorough trial in the court below, judgment was entered dismissing the libel as to both defendants. On this appeal therefrom, appellants disregard the respondent Pilkington, and concentrate their efforts upon reversing the judgment as to Phipps. It is contended that Phipps should have been held liable because, although the legal title to the housebboat was in the Seminole Boat Company, a Delaware corporation, the evidence clearly showed that Phipps was the actual owner and was in control and operation of the vessel, and that his negligent care of her, through his servants, was the proximate cause of the fire.

In 1915 Phipps acquired a one-half interest in the Seminole by purchase from his brother. In 1927 the boat was completely overhauled, and in 1928 the Phipps brothers organized the Seminole Boat Company, to which the boat was transferred in furtherance of the corporate purpose to enter the charter business for profit. The stockholders of the corporation held meetings, elected officers, kept minutes; and the corporation, through its duly elected officers, promptly took appropriate steps to launch the Seminole upon her career as a charter vessel. In 1929 and 1930 she was chartered several times, but she was too large and expensive to be operated successfully as a charter vessel during the following years of severe economic depression. As a consequence, she spent much of the time in dead storage at Pilkington's pier, and was listed for sale in Miami in 1935.

On March 23, 1935, H. C. Phipps sold his stock in the Seminole Boat Company to his sister, and, after the charter season was over in April, 1935, the two stockholders took the Seminole on a fishing trip to the Florida Keys.

After the cruise the Seminole was once more moved to Pilkington's, where she was prepared for storage by the crew and was turned over to Pilkington on April 15, 1935. It is undisputed that the vessel had been examined and pronounced fit by an experienced ship surveyor in February, 1935; that she developed no flaws during the cruise or prior to reaching Pilkington's; that the crew left her gasoline valves closed, her electric switches open, her gas tanks registering empty, and her bilges clean and free of gasoline or gasoline vapor; and that she was repeatedly examined by competent men between April 15 and June 24, 1935, who discovered nothing wrong with her. At all times after the title to the Seminole was transferred to the corporation her movements were directed by the officers of the corporation, she was manned by a crew employed by those officers, and all business dealings in connection with her operation and management were conducted by those officers.

On June 24, 1935, an officer of the Seminole Boat Company employed R. C. Abel to go to Pilkington's to inspect the Seminole and to bring back for storage some fishing gear that was on her. Abel obtained the keys to the boat from Pilkington, and boarded her in company with a man named Thomas. Abel entered the engine room through its window, and crossed to the main switchboard, where he struck a match and proceeded to close several of the switches. As he closed the last switch, sparks emanated from a point approximately a foot to his left, and an explosion occurred followed by the fire that caused the damage. After the fire a diver discovered that the gasoline valves and draw-off valves on the Seminole were open.

Upon these facts the court below found that the presence of gasoline fumes in the engine room was a defective condition that proximately caused the fire, but that the

negligence to which this condition was attributable was that of the Seminole Boat Company, which was not a party defendant to the suit; that the Seminole Boat Company was incorporated in good faith for a valid purpose, and no reason was shown to justify disregarding the corporate entity or treating it as agent and alter-ego of John S. Phipps; and that Phipps was not shown to have such privity or knowledge with respect to the defective condition as would make chargeable to him the negligence responsible for the loss.

The basic dispute turns upon the ultimate facts, for when they have been ascertained the principles of law applicable thereto are well settled. This being an appeal in admiralty, the findings of fact made by the court below are not binding upon us, but we think the evidence preponderates in favor of the findings made in each material instance. Under the evidence, the case presents itself in this aspect: Appellants' vessels sustained damages by reason of the negligence of the Seminole Boat Company. In order to hold Phipps to personal liability, appellants had the burden of establishing, by a preponderance of the evidence, that the corporation was an artifice and a sham designed to execute illegitimate purposes in abuse of the corporate fiction and the immunity that it carries, and that its activities in reality were those of Phipps personally.[1] This burden was not discharged.

If, however, appellants had established that the corporate veil should have been pierced and Phipps disclosed as the true owner of the vessel, an affirmance against them still would result. Section 4283 of the Revised Statutes, 46 U. S. C. A., Sec. 183, limits the individual

[1] McCaskill Co. v. U. S., 216 U. S. 504, 514; So. Pacific Terminal Co. v. Interstate Commerce Commission, 219 U. S. 498; Loomis v. Manhatten, 117 Fed. 325; U. S. v. Milwaukee, etc. Co., 142 Fed. 247; New York Trust Co. v. Carpenter, 250 Fed. 668; Cook on Corporations, Sections 6, 663, and 664; Powell's Parent and Subsidiary Corporations, page 2; Wormser's The Disregard of the Corporate Fiction and Allied Corporate Problems, page 84.

liability of any shipowner to the value of his interest in the vessel and freight in all cases of damage resulting from negligence without the privity or knowledge of the owner. The evidence affirmatively establishes that no actual privity to or knowledge of the defective condition obtaining upon the Seminole was attributable to Phipps personally, and that none could be imputed to him since he had exercised due care and diligence in selecting competent men to man the vessel, and had imposed upon them full duties as to inspection and maintenance of her.[2]

The judgment appealed from is

AFFIRMED.

[2] Lord v. Goodall S. S. Co., Fed. Cas. No. 8,506, 102 U. S. 541; The Annie Faxon, 75 Fed. 312; Van Eyken v. Erie R. Co., 117 Fed. 712; The Tommy, 151 Fed. 570; The Aloha, 228 Fed. 1006; The Erie Lighter 108, 250 Fed. 490; The Oneida, 282 Fed. 238; The 84-H, 296 Fed. 427, Cert. denied, 264 U. S. 596.

JUDGMENT

Extract from the Minutes of June 9th, 1942

No. 10185

CHARLES CORYELL, et al.,

versus

JOHN S. PHIPPS and GEORGE J. PILKINGTON

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Florida, and was argued by counsel;

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed;

It is further ordered, adjudged and decreed that the appellants, Charles Coryell, and others, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

MOTION AND ORDER STAYING MANDATE—Filed June 26, 1942

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 10185

CHARLES CORYELL, et al., Appellants,

against

JOHN S. PHIPPS and GEORGE J. PILKINGTON, Appellees

Now come the appellants, Charles Coryell, et al., and move this court on the transcript of record filed herein, on all proceedings had before this court, and on the decision and opinion of the court filed June 9, 1942, that the mandate of this court be stayed until after the decision of the United States Supreme Court on a petition for a writ of certiorari which the appellants propose to file in that court within the period limited by the statute and for such other and further relief as to the court may seem just.

Dated: New York, N. Y., June 22, 1942.

(Signed) T. Catesby Jones, Leonard J. Matteson, Counsel for Appellants.

Bigham, Englar, Jones & Houston, Proctors for Libellants, Appellants, 99 John Street, New York, N. Y.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH DISTRICT

No. 10185

CHARLES CORYELL, et al., Appellants,

versus

JOHN S. PHIPPS and GEORGE J. PILKINGTON, Appellees

On consideration of the application of the appellants in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable appellants to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, it is ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that certiorari petition, and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 26th day of June, 1942.

(Signed) Rufus E. Foster, United States Circuit Judge.

Clerk's Certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. 246

ORDER ALLOWING CERTIORARI—Filed October 12, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to

CLERK'S COPY.

Vol. VI

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 246

CHARLES CORYELL, ET AL., PETITIONERS,

vs.

JOHN S. PHIPPS AND GEORGE J. PILKINGTON

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 20, 1942.

CERTIORARI GRANTED OCTOBER 12, 1942.

VOLUME VI.

TRANSCRIPT OF EXHIBITS.

UNITED STATES
CIRCUIT COURT OF APPEALS

FIFTH CIRCUIT.

No. 10185

CHARLES CORYELL, ET AL.,

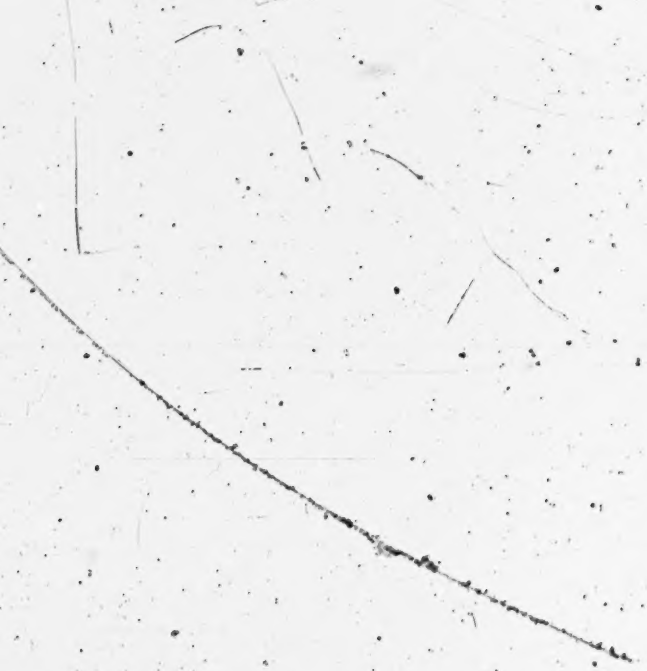
Appellants,

versus

JOHN S. PHIPPS and GEORGE J. PILKINGTON,

Appellees.

Appeal from the District Court of the United States for the Southern District of Florida.



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VOLUME VI.

TRANSCRIPT OF EXHIBITS.

LIB. #38.

1317 Biscayne Boulevard.

Captain Pilkington:

Miami, February 11th, 1929.

This will introduce Mr. Huff, concerning whom I spoke to you the other day, and who will now have complete charge of our boats. You will, of course, deal entirely with him in the future.

A. A. SIMMON.
(A. A. Simmon).

AAS-h.

Van E. Huff,
c/o Palm Beach Co.,
The Plaza,
Palm Beach.

403.
51 B.

LIB. 39.

Palm Beach Company.
The Plaza,
Palm Beach, Florida.

April 2, 1929.

Capt. George J. Pilkington,
P. O. Box 2516,
Ft. Lauderdale, Florida.

Dear Sir:

Since seeing you in Ft. Lauderdale and leaving instructions to send your bills to this office, different arrange-

ments have been made and you will please continue to send your bills to the Biscayne Blvd. Co., 1317 Biscayne Blvd., Miami.

Very truly yours,
VAN E. HUFF.
(Van E. Huff).

VEH/VVF.

LIBS. #49.

Palm Beach Company.
The Plaza,
Palm Beach, Florida.

August 26, 1931.

Pilkington's Boat Yard,
Ft. Lauderdale, Florida.

Gentlemen:

This will authorize the bearers of this letter, employees of the Sutcliffe Automotive Electric Company, to take batteries and magnetoes and such other electrical equipment as they see fit from the boat Iolanthe.

Yours very truly,
J. F. RILEY.
(J. F. Riley).

JFR:BH.

LIB 40.

Capt. Geo. J. Pilkington,
Drawer H. Covered Storage Yacht Basin,
Phone 92. Fort Lauderdale, Florida.

Jan. 18, 1932.

Palm Beach Co.,
Palm Beach, Fla.

Seminole Boat Co.

Gentlemen:

I notice in your letter of the 15th that you think the price for dtoring the "Seminole" should be $65.00

Would say that my rates for storing boats the size of the "Seminole" if you look at it right is only $2.50 per day and not saying any thing about the size of your boat is just half the price of other places Mr. A. J. Fay of Lowell Mass A man that has four boats hear has on last Monday brought his Yacht "Freedom" 105 Feet long which now is along side of your boat while this boat is not so large in size it is a $75.00 per month boat I have been doing business with mr. Fay for 18 years. Also fish boats like yours cost $25.00. in other places while I only charge $9.00. thease prices is the same to all. Also in the boom period I made no attempt to take advantage of easy money and my prices stayed the same. In my 45 years in the boat buisness this is the second time any one has spoken of prices not being right. I always have the same price to all. Also I now have boats in hear that has been hear for six years some four years always paying the same price as people know they are geting the lowest rates that can be had I hope you will look into thease rates and I think you will find that I am not taking any advantage of any one but giving them the service by keeping thear boats in good condation and trying to please every one in the same way. I thank you for this opportunity to explain my prices.

Yours very truly,
GEO. J. PILKINGTON.
(Geo. J. Pilkington).

[Written in margin]:

Thanks for letter. Storage charges same.

LIB. 55.

Palm Beach Company.
The Plaza,
Palm Beach, Florida.

January 21, 1932.

Capt. Geo. J. Pilkington.
Fort Lauderdale, Florida.

Dear Captain:

We have your letter of January 18th explaining storage charges on our various boats. The explanation is thoroughly satisfactory and appreciated.

We agree that the prices charged are not too much and wish to thank you at this time for the excellent care you have given the boats.

Yours very truly,
J. F. RILEY.

J. F. Riley/eh.

LIBS. 41.

Palm Beach Company.
The Plaza,
Palm Beach, Florida.

May 18, 1932.

Capt. Geo. J. Pilkington.
Fort Lauderdale, Florida.

Dear Captain:

Your bill of April 30th shows an item of $35.00 for men's time storing boat. Will you please itemize and explain this charge.

We sent Lula Johnson a check for $7.50 for laundry several weeks ago.

Yours very truly,
J. F. RILEY.

J. F. Riley/eh. EH.

LIB. 42.

May 20th, 1932.

Mr. J. F. Riley,
Palm Beach, Fla.

Dear Sir.

At your request I inclose explaintation of the Bill for $35.00.

Storage on Boat $17.50.

When Mr. Phips was hear on the day the Cap't was in a hurry to get the Boat redy to go he asked me to let him have my men to help him which I did.

He then wanted a man to help him on sunday so I gave him a man Which cost him $5.00. which was payed direct to the men.

The Lanndry I gave to my Wifes laundry Woman as it saved you as much again. I advanced her $5.00 on her bill but she did not receive your check untill the 14th last we did not learn this untill to day, my wife went to see her weather it is true or not this is what she told my Wife to day. Hopeing this is what you wanted explained I remain Yours Very Truly.

RESP. FF.

In Evidence 11-16-39.

May 20, 1932.

Pilkington Yacht & Storage Basin,
Ft. Lauderdale, Florida.

Gentlemen:

Will you please let the bearer, Mr. Frank Thill, inspect the Yacht Seminole.

SEMINOLE BOAT COMPANY,

By. .....

LIBS. 50.

Palm Beach Company.
The Plaza,
Palm Beach, Florida.

September 13, 1932.

Capt. Geo. J. Pilkington,
P. O. Box 2516,
Ft. Lauderdale, Florida.

Dear Sir:

We are returning herewith our check in the amount of $44.34 for storage on boats "Iolanthe" and "Clip" for the month of June.

We understand that this check does not include storage for July and August. These bills have been delayed in New York due to Mr. Phipps' trip to Florida but should be returned and check forwarded to you for them within the next week or ten days.

Yours very truly,
J. F. RILEY.
(J. F. Riley).

JFR:BH.
Enc. Ck.

LIB. 43

Capt. Geo. J. Pilkington,
Drawer H. Covered Storage Yacht Basin,
Phone 92. Fort Lauderdale, Florida.

March 17th, 1933.

The Pal Beach Co.,
Palm Beach, Fla.

Gentleman:

Wishing to treat all alike for one year from date I will make a reduction in the storage rate on the "Iolanthe"

and "Dorthy" to one cent per foot per day and the fish boat $9.00 even per Per month. The "Seminole" I have always stored for a very low rate but will make the charge $70.00 per month. hopeing this will be in keeping with the condations that exist to day. This is made on condation that all bills will be payed when presented I remain

Yours very truly,
GEO. J. PILKINGTON.
(Geo. J. Pilkington).

LIBS. 56.

Palm Beach Company.
The Plaza,
Palm Beach, Florida.

March 21, 1933.

Mr. Geo. J. Pilkington,
c/o Pilkington's Boat Yards,
Fort Lauderdale, Florida.

Dear Sir:

We are in receipt of your letter of March 17th advising new rates on boats Iolanthe, Dorothy and Seminole. These rates seem in line with present conditions and thank you very much for advising us of same.

Yours very truly,
J. F. RILEY.
(J. F. Riley).

JFR:BH.

LIBS. 44.

Capt. Geo. J. Pilkington,
Drawer H. Covered Storage Yacht Basin,
Phone 92. Fort Lauderdale, Florida.

April 26th, 1933.

Palm Beach Co.,
Palm Beach, Fla.

Gentleman:

As you wished a reply on the price of storage on the "Seminole" would say that I am always willing to co-operate and give the best that is in me and hope you will do the same. in making monthly payments

I am willing to make the price $600.00 per year and when things get better I hope you will return to the old rates. thanking you for your business I Remain,

Yours very truly,
GEO. J. PILKINGTON.
(Geo. J. Pilkington).

LIB. 45 FOR ID.

Western Union Telegram.

April 30/33.

Mr. J. S. Phipps,
Phone 5354,
N. Bold., Palm Beach.

Please give your man order to get Yacht Daughly out.
GEO. J. PILKINGTON.

LIB. 57.

Palm Beach Company.
The Plaza,
Palm Beach, Florida.

May 3, 1933.

Capt. Geo. J. Pilkington.
Fort Lauderdale, Florida.

Dear Sir:

We have your letter of April 26th quoting a price of $50.00 per month on the Seminole storage. Thank you very much for consideration shown and your excellent care of the boat in the past.

I assure you the bills will be paid promptly.

Yours very truly,
J. F. RILEY.

JFR:BH. (J. F. Riley).

LIBS. 51.

1317 Biscayne Boulevard,
Miami.

December 1, 1933.

Captain George Pilkington,
c/o Pilkington Yacht & Storage Basin,
Fort Lauderdale, Florida.

My Dear Captain:

Will you please deliver to Captain Willie Baker the yacht "Dorothy" you have stored in your basin. We expect to return the boat to you for storage again within thirty days.

Yours very truly,
PALM BEACH COMPANY,

RHH:dc. (Roy H. Hawkins).

LIB. #46.

1317 Biscayne Boulevard,
Miami.

March 20, 1934.

Captain George Pilkington,
Pilkington's Yacht Storage Basin,
Fort Lauderdale, Florida.

Dear Captain Pilkington:

Will you kindly deliver to Captain Willie Baker the yacht "Seminole". I would appreciate any assistance you can give him in getting her out immediately.

Thanking you, I am

Very truly yours,
JOHN S. PHIPPS,
By ROY H. HAWKINS,
(Roy H. Hawkins).

LIB. 47.

Palm Beach Company.
The Plaza,
Palm Beach, Florida.

5/7/34.

Pilkington Boat Yard,
Fort Lauderdale.

Dear Mr. Pilkington:

Please permit the bearer to board the Seminole to complete lay-up.

Yours very truly,
PALM BEACH COMPANY,
J. F. RILEY.

DEF. E.

Capt. Geo. J. Pilkington,
Drawer H. Covered Storage Yacht Basin,
Phone 92. Fort Lauderdale, Florida.

June 22d, 1934.

Palm Beach Co.,
Palm Beach, Fla.

Gentleman:

I sent you my bill for storage on the "Seminole" for the month of May $75.00. To day I received a check for $50.00. Which is not in acord with my letter of March 17th, 1933. and acknowledge by you March 21st 1933.

You called my attention to the fact that you had four boats in hear I then made you a further reduction on the "Seminole" this was only for one year.

My storage rates being the lowest in Florida I will say that my rates for any boats you may want to have stored hear will be One Cent Per Foot per Day up to ten foot beam over ten foot beam will be one cent and a half per foot per day. House Boats will Twenty dollars and up as to size.

Yours very truly,
GEO. J. PILKINGTON.

LIB. #48.

Palm Beach Company.
The Plaza,
Palm Beach, Florida.

9/5/34.

Pilkington Boat Yard,
Fort Lauderdale, Fla.

Dear Mr. Pilkington:

Please allow the bearer R. C. Abel access to the yachts Iolanthe and Seminole for repair work.

Yours very truly,
J. F. RILEY.

DEF. F.

February 23, 1935.

Captain Pilkington,
c/o Pilkington Boat Yards,
Ft. Lauderdale, Florida.

Dear Captain Pilkington:

This will be your authority to turn over to Captain Willie Baker the yacht "Seminole" which is now located in your boat yard.

Very truly yours,
SEMINOLE BOAT COMPANY,
By ROY H. HAWKINS,

RHH:J.

LIB. 53.

Palm Beach Company.
The Plaza,
Palm Beach, Florida.

April 16, 1935.

Pilkington Boat Yards,
Ft. Lauderdale, Florida.

Gentlemen:

Please allow, the bearer, Mr. L. Randell, permission to remove the two iron cots and mattresses from the Yacht Seminole.

Yours very truly,
J. F. RILEY,
(J. F. Riley).

JFR:BH.

LIB. 52.

1317 Biscayne Boulevard,
Miami.

April 17, 1935.

Captain Pilkington,
c/o Pilkington Yacht and Storage Basin,
Fort Lauderdale, Florida.

Dear Captain Pilkington:

Will you kindly allow the bearer to board the Yacht "Seminole" for the purpose of removing linen and silver, which we plan to keep at this office.

Yours very truly,
SEMINOLE BOAT CO.,
By ROY H. HAWKINS,
(Roy H. Hawkins).

RHH:dc.

LIB. 54.

1317 Biscayne Boulevard,
Miami.

April 20, 1935.

Pilkington Yacht & Storage Basin,
Fort Lauderdale, Florida.

Attention of Captain Pilkington.

Dear Sir:

In compliance with your request, we enclose herewith the keys to the Yacht "Seminole". We would appreciate your acknowledging receipt of same so that our records may be kept clear.

Yours very truly,
SEMINOLE BOAT CO.,
By W. L. WEBBER.
(W. L. Webber).

WLW:dc.

LIB. 60.

Capt. Pilkington:

Please let Capt. Abel take same equipment off the Seminole.

J. F. RILEY.

LIB. 61.

Capt. Geo. J. Pilkington,
Drawer H. Covered Storage Yacht Basin,
Phone 92. Fort Lauderdale, Florida.

April 23d, 1935.

Mr. W. L. Webber,
Miami, Fla.

Dear Sir:

This is to say that I received the keys and thank you very much. as the boat should be aired out after every rain or a spell of damp weather.

Yours very truly,
GEO. J. PILKINGTON.
(Geo. J. Pilkington).

DEF. G.

Capt. Geo. J. Pilkington,
Drawer H. Covered Storage Yacht Basin,
Phone 92. Fort Lauderdale, Florida.

June 13th, 1935.

Palm Beach Co.,
Palm Beach, Fla.

Gentleman:

I am returning your check of $50.00 by my Wife to day as it is not the amount of my statement to you for the

month of May for storages charges on your boat the "Seminole" also not in acord with the statement for April.

I notifyed you through my wife in person befor the Seminole was brought back hear on April 16th 1935. that my old prices wher in effect and if the "Seminole came back hear it would cost $75.00. per month to store it hear I am sorry the mistake on your part was made.

Yours very truly,

GEO. J. PILKINGTON.

(Geo. J. Pilkington).

DEF. EX. I.

Capt. Geo. J. Pilkington,
Drawer H. Covered Storage Yacht Basin,
Phone 92. Fort Lauderdale, Florida.

July 5, 1935.

Mr. A. A. Simmons,
Florida Farms,
Gainsville, Fla.

Dear Mr. Simmons:

I am writing to ask if you can give me as near as you can the year month and date you sent me the house boat Seminole to my place. I would like to be some whear near as I can to see if I am right on my books. Also if you knew who the real owners of the boat was it at that time help me in a way that I would thank you very much.

I suppose you have learned that the boat blow up in my basin and burnt me out. Thanking you in advance I remain yours very truly.

GEO. J. PILKINGTON.

(Geo. J. Pilkington).

Resp. Phipps Ex. "I".

LIB. 62.

9/30/35.

Pilkington Boat Yard:

Please allow Capt. Wm. Baker to remove hull of Yacht Seminole from your property.

J. F. RILEY,
PALM BEACH COMPANY.

LIBS. 120 ID.

Questions to Be Asked Mr. E. George Bernard Re Condition of Yacht "Seminole" in March, 1935, When He Surveyed Same for Federal Insurance Company.

Q. 1. Do you recall whether there was at that time in the engine room of the yacht, an outlet from the gasolene tanks in the form of a pipe line, for the purpose of drawing gas into portable containers for use outside the yacht?

A. The above condition of pipe fitting or outlet may of been part of the attached gas line fitting but I do not recall that it was there.

Q. 2. If your answer to question 1 is yes, please give your recollection of the structural form of this outlet?

A. .....

Q. 3. Is it your opinion that the existence of such a condition as that outlined in question 1 above is dangerous?

A. This would be wrong and is not in accord with the rules and regulations as outlined by the National Board of Fire Underwriters.

Dec. 7th, 1937.

E. GEO. BERNARD.

LBS. #114.

Know All Men that I, WILLIE MAE ABEL, personally as the surviving spouse of Rupert C. Abel, and as Administratrix of the Estate of Rupert C. Abel, in consideration of the sum of Five Thousand ($5,000.00) Dollars, lawful money of the United States of America, and other good and valuable consideration to me in hand paid by Seminole Boat Company, a Delaware Corporation, the receipt whereof is hereby acknowledged, have remised, released, and forever discharged, and by these presents do, for myself, my executors, administrators and assigns, remise, release and forever discharge the said Seminole Boat Company, its successors and assigns, the several boats of the said company, their officers and agents, their and each of their executors, administrators and assigns, and in particular the houseboat, "Seminole," her underwriters, charterers, their and each of their successors and assigns, and Palm Beach Company, a Delaware Corporation, John S. Phipps, Amy Guest, Henry C. Phipps, Howard Phipps, and all members of the families of the above named individuals, all corporations in which they, or any of them, are interested as stockholders or officers, or otherwise, and all corporations affiliated with or subsidiary to such corporations, including particularly but not by way of limitation, all corporations affiliated with or subsidiary to or owning stock in the aforesaid Palm Beach Company, and all agents, employees and officers of the said individuals and corporations now or heretofore acting or employed as such, of and from all, and all manner of, actions, suits, liens, debts, dues, trespasses, damages, injuries, sums of money, controversies, agreements, claims and demands whatsoever, at law, in equity or in admiralty,

Note: Remainder of this exhibit missing.

PHIPPS 3-T-1 Id.

Memorandum to Mr. H. C. Phipps.

January 10th, 1933.

Before the Yacht "Seminole" is used again the following work should be done on the motors:

1. Grind valves and clean carbon on 2 large power motors.

2. Completely overhaul generator engine.

3. Completely overhaul two water pumps.

We have a price of $300.00 for this work and Mr. John S. Phipps has approved. He asks that we get your approval before proceeding with the work.

J. F. RILEY.

JFR:BH.

R. 3-T-1.

RESP. "O" ID.

July 31, 1935.

Captain Pilkington,
Fort Lauderrale, Florida.

Dear Sir:

This letter will be your authority to turn over to Mr. J. F. Riley the two valves with fittings and also the portion of the switchboard taken from the Seminole, labelled and turned into your office by Mr. Carl Holm after the fire.

We have been formally notified by Mr. Holm of this

action and now demand that the above property items, together with any other connections, pipes, valves, or wreck fragments of any kind that you may have personally removed, caused to have been removed, or know to have been removed, be turned over to Mr. Riley on the presentation of this letter, who will sign an appropriate receipt for same.

Yours very truly,
SEMINOLE BOAT COMPANY,
By ROY H. HAWKINS.

RHH:dc.

[Written in pencil]:

Dictated CVR 7/31.

Original delivered by J. R. Riley to Capt. Pilkington, Aug. 1st, 1935, 3 p. m. Refused by Pilkinton and delivered to Miller by Riley in my presence at 4 p m., 7/31/35.

RESP. CC.

Contract.

Seminole Boat Company with W. P. Baker.

This Agreement made and entered into this 21st day of October, A. D. 1929, by and between Seminole Boat Co., a Delaware corporation, hereinafter called "Owner" and W. P. Baker, of Miami, Florida, hereinafter called "Master";

Witnesseth:

1. Owner engages and employs Master for the period of one year from this date as master and captain of owner's

gas yacht, Seminole, number 201644, Letters KTND, whose permanent yacht license certificate is number M15, upon the following terms and conditions:

2. Master agrees to maintain and operate said boat out of the port of Miami, Florida, and elsewhere as owner may direct, for the primary purpose of doing a public chartering business in the customary and a proper and efficient manner and in conformity with all applicable laws and maritime rules and regulations, at all times, and subject to the orders, supervision and control of owner; that no contracts shall be made or performed which shall be disapproved by owner, and that he will promptly and fully, upon demand of owner, render reports of maintenance, condition, operation and business of said boat, and will promptly, without demand, account for all moneys and revenues derived from the operation of said boat and pay over to owner promptly all moneys above the cost of operating said boat, the same to be divided under the terms hereof.

3. That the Owner shall pay the Master for the prompt, faithful and efficient performance of his duties hereunder, a fixed salary of Two Hundred ($200.00) Dollars per month during the term hereof, and also thirty (30) per cent of the net profits derived from the operation of said boat, computed upon an annual basis, commencing on this date; all wages of crew, fuel, subsistence and other current maintenance and operating charges not specifically mentioned, to be deducted from the gross revenues in determining the balance remaining for net profits, provided, that the cost of insurance of said boat shall be borne and paid by owner and owner shall also bear the expense of putting said boat as soon as practicable in reasonably good and seaworthy condition, and owner shall also bear the cost of suitable new awnings therefor.

4. This Agreement may be terminated at the option of owner upon ..... days' notice to Master for breach of duty or obligation by Master, or upon said boat being wrecked or substantially disabled.

In Testimony Whereof the parties hereto affix their respective signatures and seals.

SEMINOLE BOAT CO.,
By PAUL R. SCOTT,
President.

Attest:
R. M. HAWKINS, (Seal)
Secretary.

Signed, sealed and delivered in the presence of:
A. A. SIMMON,
GEORGE T. CLARK,
As to Owner.

W. P. BAKER, (Seal)
Master.

Signed, sealed and delivered in the presence of:
GEORGE T. CLARK,
A. A. SIMMON,
As to Master.

RESP. DD IN EVIDENCE.

Report of Survey.

Office of
E. Geo. Bernard,
Ship and Engineer Surveyor and Appraiser,
714 Postal Building,
Miami, Florida.

Yacht "Seminole".
Miami, Florida, March 29, 1935.

This is to certify that I, the undersigned Surveyor, did make an inspection of the houseboat "Seminole" while she was lying on marine ways at Miami, Florida, on March 26th, 1935, and when afloat, with regard to her general condition for insurance purposes.

Vessel owned by the Seminole Boat Co., Miami, Fla.

Length, O. A., 116 ft., W. L., 110 ft.; beam, 21 ft.; depth, 7 ft.; draft, 4½ ft.

Hull constructed of steel, built 1904 by the Marine Construction & Drydock Co., New York. Official No. 201644. Gross tons 174.

Vessel powered with heavy duty Winton gas engines, totaling 225 H. P., fitted 1921. Speed, 10 miles per hour.

The sides of the steel hull extend above the waterline 50". The topsides are of heavy construction of wood and extend 4 ft. above the steel section of hull; decks of wood, canvas covered. On the deck are constructed forward and after house sections, used as saloon and dining-

room, the bridge and pilot house being located in boat deck. Permanent shade deck extends from forward house over the after part of saloon deck. All the top side woodwork, deckhouses and superstructure found to be in order.

The bottom of this hull was extensively repaired and part of plating renewed early in 1928 at Miami, Florida. The vessel has been laid up in fresh water at Fort Lauderdale for the greater part of the time since 1928.

Vessel drydocked March 26th and 27th at Miami, Fla., when she was seen and examined by the undersigned, and it was noted that the hull remained in practically the same condition as when repaired in 1928; also was internally examined on dock and afloat, and all found to be tight and in order. Bilges clean, dry and free from gas odor.

Size of frames, 2⅜" x 2⅜", double, of angle iron. Thickness hull plating, 5/16".

The engine room space is located midships, is the width of hull and 9 ft. 6" deep; fitted with steel bulkheads at the forward and after ends; space vented by two 14" cowl ventilators extending from boat deck, also by skylight and hatchway and by two rectangular windows through the side of hull.

Manufacturer's Numbers of engines: Starboard, 594; port, 593. Revolutions per minute, 450. Engines fitted with air starting equipment, tanks located in hold space aft of engine room. Backfire deflectors attached to carburetors.

Equipped with two 110 volt electric light units, as follows:

Main unit: Six-cylinder Winton Engine.

Auxiliary unit: A 4-cylinder Universal engine. These located in a roomy space port side of engine room.

Carburetors connected to feed line from main tanks

Equipped with 2 H. P. motor driven combined bilge and fire pump located on shelving on engine room bulkhead.

Fitted with electric fresh and saltwater pumps.

All the above machinery found to be in good operating condition.

An independent double acting hand fire pump is located on deck over engine room, fitted with 50 ft. length of 2" fire hose; pump and hose found in order.

Storage batteries: Equipped with Edison batteries; form or size, 20 trays containing 5 cells each; these, as far as could be determined, were in good condition, having been overhauled during 1934.

Gas tanks: Four cyclindrical steel tanks located in a separate hull space forward of engine space. The tanks are of heavy construction, well bedded and secured to place. Tanks fill through tight deck fittings and are vented to lead overboard. Capacity of tanks, about 650 gallons. Shut-off valves fitted on tanks and in fuel lines in engine room. Tanks and piping found tight and in order. Glass guage fitted to show tank readings.

Auxiliary gas tank—windlass engine: Circular tank located in fore peak space; material, galvanized iron; capacity, 10 gallons; tank and filling connections found in order.

Kerosene oil tanks: Equipped with two; one, 55 gallons in engine room and one, 60 gallons on saloon deck. Tanks and piping found in order.

Galley space located aft; equipped with a 6-cover single-oven stove, kerosene used as fuel, Oliver oil burner used. Hot-water back fitted in furnace of stove. Protection in way of stove found in order. Uptake fitted over stove and vented to deck. Air circulating fan fitted in space, also vented by passageway and window. Equipped with two frigidaire units.

Fire Extinguishers: Fitted with six 1-quart hand Pyrene type fire extinguishers and four 2½-gallon Soda type. Note: The 1-quart fire extinguishers to be checked and filled and the four 2½-gallon extinguishers to be re-charged. Equipped with 8 re buckets, these located in racks on boat deck.

Ground tackle: Equipped with 3 anchors, weights 350 lbs., and 450 lbs., Patent type. Spare anchor, ordinary type, weight 250 lbs. Main anchor connected to chain cable, size ⅝" and 11/16" length 60 fathoms; also 150 fathoms of 3" manila cable as spare. Fitted with power windlass operated by Speedway gas motor located on forward deck. All found in order.

Small boats: Equipped with the following:

3 outboard motor boats.
1 20-ft. sea skiff.
1 10-ft. row boat.

Vessel fitted with four sets of boat davits.

The main switchboard, wiring and light fixtures found in order.

Equipped with engine telegraphs.

All United States Government requirements have been full complied with.

Vessel used, when in commission, strictly for private pleasure purposes.

From the examination made of this vessel while on drydock and afloat on March 26th and 27th, 1935, the general condition of hull, main and auxiliary machinery, deck, and deck houses and equipment found to be good, considering the age of the vessel.

The market value of this vessel, as of March 29th, 1935, would in the opinion of the undersigned be about Eight Thousand Five Hundred Dollars ($8,500.00).

E. GEO. BERNARD,
Marine Surveyor.

EXTRACT FROM EXHIBIT Z.

787 Fifth Avenue.

New York, November 4, 1929.

Dear Mr. Simmon:

1317 Biscayne Boulevard,
Miami, Florida.

Dear Mr. Simmon:

Mr. J. S. Phipps says that the expenses of the Seminole to New York and back this summer, and the expenses of preparing the boat for the trip north, are to be charged to him and not part thereof to Mr. Henry C. Phipps. Any expenses on the boat after its return and before it is turned over to Mr. Baker or any expenses that are not to be borne by Baker are to be divided between Mr. John S. and Mr. Henry C. as usual.

Yours very truly,

PAUL R. SCOTT.

(4-D.)

Analysis of Operation of Seminole Boat Company.

Period October 11, 1928, Through December 31, 1935.

On November 11, 1928, the records of account for Seminole Boat Company were set up with Journal Entry #1 recording the subscription payment and issuance of 10 shares of its capital stock as follows:

S. M. Mackey	4 shares
L. C. Chester	3 shares
—. Kennedy	3 shares

On November 20, 1928, an account was opened with the First National Bank, Miami, Florida, depositing $100.00, being the proceeds from the sale of the above listed stock.

The Boulevard Mortgage Company made cash advances to Seminole Boat Company, also paid sundry expense items for its account. Both the cash advances and disbursements for sundry expenses were set up on Seminole Boat Company records as Accounts Payable to Boulevard Mortgage Company. From time to time the Messrs. J. S. and H. C. Phipps would reimburse Boulevard Mortgage Company for such items—one-half each. When such reimbursements were made the Seminole Boat Company would, by journal entry, transfer its liability to Boulevard Mortgage Company to the Messrs. J. S. and H. C. Phipps.

The cash advances by Boulevard Mortgage Company and other cash receipts were deposited in Seminole Boat

Company's bank account with First National Bank, Miami. From this account were paid the principal operating expenses to June 2, 1931. On this date the bank account was closed and Boulevard Mortgage Company paid all operating expenses to December 31, 1933. Palm Beach Company then paid all operating expenses from this date on. The Messrs. J. S. and H. C. Phipps reimbursed Boulevard Mortgage Company and Palm Beach Company for such expenses to December 31, 1934. Their reimbursements were handled as stated in above paragraph. Mrs. Guest acquired the one-half interest of Mr. H. C. Phipps on March 23, 1935, Mrs. Guest assuming his one-half of the expenses for period January 1, 1935, through March 23, 1935. Mrs. Guest and Mr. J. S. Phipps reimbursed Palm Beach Company for expenses to March 23, 1935—one-half each.

With the foregoing in mind the following analysis is made:

Year 1928:		
Cash Receipts:		
Subscription to Capital Stock....	$100.00	
Cash advanced by Boulevard Mortgage Company	400.00	$500.00
Less: Expenses paid through bank account:		
Recording abstracts, etc.	45.31	
Painting	103.08	
Storage	75.00	223.39
Cash balance 12-31-28		$276.61

Other Expenses paid directly by Boulevard Mortgage Company:		
Organization Expense	98.76	
Painting	9.50	
Storage	168.30	
	276.56	
Expense paid through Bank Account	223.39	
Total Operation Expenses Year 1928	$499.95	
Year 1929:		
Cash Receipts:		
Advances by Boulevard Mortgage Co.	$9,850.00	
Proceeds from Charter	8,554.38	
Rebates, Accounts Receivable, etc.	2,004.51	
	$20,408.89	
Less Reimbursement to Boulevard Mortgage Co.	5,700.00	
	$14,708.89	
Less cash advanced to W. R. Baker outstanding 12-31-29	500.00	14,208.89
		$14,485.50
Less: Expenses paid through Bank Account:		
Truck & autos	18.80	
Charts	14.25	
Commission on Charters	150.00	
Conditioning	732.50	
Gas and oil	2,505.89	
Groceries & Furnishings	576.35	

Hardware supplies	570.27	
Installing Gas Gauge	3.40	
Insurance	1,613.35	
Laundry	146.04	
Plumbing	169.50	
Recording Abstracts, etc.	58.33	
Repairs & Maintenance	2,569.66	
Stationery & Printing	54.00	
Storage	446.41	
Sundry	66.59	
Tolls	73.20	
Uniforms	128.75	
Wages	4,520.85	14,418.74
Cash Balance 12-31-1929		$66.76
Other Expenses paid directly by Boulevard Mortgage Company:		
Commission on Charter	350.00	
Gas and Oil	8.38	
Groceries & Furnishings	357.91	
Salaries	300.00	
Storage	11.00	
Sundry	63.34	
Wages	1,022.85	
	2,113.48	
Expenses paid through Bank Account	14,418.74	
Depreciation on Yacht Year 1929	333.32	
Total Debits to Profit & Loss Year 1929	16,865.54	

Note: Adjustment of $14.29 made in Sundry a/c Item of $150.00 commission on charter shown in expenses and charged to Income Account on ledger.

Year 1930:

Cash Receipts:

Advances by Boulevard Mortgage Co.	$6,400.00	
Proceeds from Charter	4,284.00	$10,684.00
		$10,750.76

Less: Expenses paid through Bank Account:

Charts	4.50	
Gas and Oil	101.55	
Groceries & Furnishings	613.17	
Insurance	1,640.00	
Laundry	32.38	
Repairs & Maintenance	1,233.46	
Storage	652.65	
Sundry	22.00	
Telephone & Telegraph	1.25	
Uniforms	118.99	
Wages	5,954.58	10,374.53
Cash Balance 12-31-1930		376.23

Disbursements from Petty Cash Fund Outstanding 12-31-29:

Gas & Oil	34.72	
Groceries & Furnishings	6.30	
Repairs & Maintenance	262.00	
Storage	133.98	
Wages	63.00	500.00

Other expenses paid by Boulevard Mortgage Co.:		
Gas & Oil	12.23	
Laundry	123.65	
Repairs & Maintenance	1,164.77	
Storage	158.10	
Sundry	52.50	
Telephone & Telegrams	6.35	
Uniforms	1,074.35	
Wages	1,403.35	3,995.30
		4,495.30
Expenses paid through Bank Account		10,374.53
Depreciation on yacht year 1930		2,000.00
Total Expenses Year 1930		$16,869.83

Year 1931:

Cash Receipts:

Advances by Boulevard Mortgage Co.	None	
Proceeds from Charter	None	
		376.23
Less: Expenses paid through Bank Account:		
Groceries & Furnishings (Ref.)	6.30	
Repairs & Maintenance	135.00	
Sundry	2.75	131.45
Cash Balance 6-2-1931		244.78

This balance transferred to Boulevard Mortgage Company—June 2, 1931, by Check #118.

Other Expenses paid by Boulevard Mortgage Company:	
Gas and Oil	310.75
Groceries & Furnishings	74.20
Laundry	80.32
Plumbing	22.60
Repairs & Maintenance	2,069.92
Storage	1,316.30
Sundry	69.20
Taxes & Licenses	147.00
Telephone & Telegraph	.95
Wages	3,174.22
	7,265.46
Expenses paid through Bank Account	131.45
Depreciation on Yacht, Year 1931	2,000.00
Total Debits to Profit & Loss, Year 1931	$9,396.91

Year 1932:

From this period on Seminole Boat Company's operating expenses were paid by the Boulevard Mortgage Company and Palm Beach Company.

Expenses paid by Boulevard Mortgage Company:	
Truck and Auto Expenses	14.30
Gas & Oil	1.40
Groceries & Furnishings	793.72
Hardware Supplies	220.06
Insurance	268.51
Laundry	7.50
Repairs & Maintenance	396.68

Storage	1,507.78
Sundry	72.60
Taxes & Licenses	116.00
Telephone & Telegraph	3.50
Wages	632.57
	4,034.62
Depreciation on Yacht, Year 1932	2,000.00
Total Debits to Profit & Loss, Year 1932	$6,034.62

Year 1933:

Expenses paid by Boulevard Mortgage Company:	
Hardware	37.41
Insurance	116.51
Plumbing	43.00
Repairs & Maintenance	696.53
Storage	744.18
Taxes & Licenses	145.55
Telephone & Telegraph	4.50
Wages	147.50
	1,702.16
Depreciation on Yacht, Year 1933	2,000.00
Total Debits to Profit & Loss, Year 1933	$3,702.16

Year 1934:

Expenses paid by Palm Beach Company:	
Gas & Oil	269.55
Groceries & Furnishings	24.61

Hardware Supplies	87.05
Laundry	8.55
Plumbing	99.66
Repairs & Maintenance	621.04
Salaries	762.14
Storage	607.26
Sundry	177.66
Taxes & Licenses	121.86
Telephone & Telegraph	4.75
	$2,784.13
Depreciation on Yacht, Year 1934	2,000.00
Total Debits to Profit & Loss, Year 1934	$4,784.13

Year 1935:

Expenses paid by Palm Beach Company:	
Gas & Oil	110.90
Insurance	129.20
Repairs & Maintenance	623.36
Salaries & Wages	659.75
Medical Expense—Seminole Fire	2,378.43
Storage	367.88
Sundry	540.99
Taxes & Licenses	53.01
Expenses—re R. C. Abel	610.00
Groceries & Furnishings	29.84
	5,503.36
Loss of Boat Seminole by fire on June 24, 1935	9,166.68
Total Debits to Profit & Loss, Year 1935	$14,670.04

All disbursements by Boulevard Mortgage Company and Palm Beach Company have been reimbursed by Messrs. J. S. and H. C. Phipps excepting those disbursements by Palm Beach Company for period May 1, 1935, through December 31, 1935, totaling $4003.55. This is Accounts Payable to Palm Beach Company on Seminole Boat Company records.

Continuation of Analysis of Seminole Boat Company.

Period January 1, 1936, Through September 30, 1938.

Year 1936:

Expenses paid by Palm Beach Company:

Taxes	$ 10.00
Medical Expenses—Seminole Fire	2,854.25
Repairs and Maintenance	64.66
Sundry	5,023.90
Total Debits to Profit & Loss Year 1936	$7,952.81

Note: The Prigg Cabin Boat was sold on May 5th, 1936, the proceeds of $950.00 was credited to Seminole Boat Company on books of Palm Beach Company.

The net liability of Seminole Boat Company for year 1936 is $7,002.81.

Year 1937:

Expenses paid by Bessemer Properties, Incorporated:

Medical expenses—Seminole Fire	$ 988.00
Taxes	10.00
Sundry	10.00
Total Debits to Profit & Loss Year 1937	$1,008.00

Note: Palm Beach Company was consolidated on January 1st, 1937. The new company is Bessemer Properties, Incorporated.

Year 1938: (Part):

Expenses paid by Bessemer Properties, Incorporated:

Medical expenses—Seminole Fire	$ 600.00
Taxes	15.00
Total Debits for Expenses to 9-30-38	$ 615.00

Analysis of Boulevard Mortgage Company and Palm Beach Company Accounts With Seminole Boat Company for Period October 1928 Through December 31, 1935.

	Dr.	Cr.
Year 1928—Boulevard Mortgage Co.:		
Cash Advances	$ 400.00	
Expenses Paid	276.56	$676.56
Year 1929—Boulevard Mortgage Co.:		
Cash Advances	9,850.00	
Cash a/c Receivable Sundry	2,004.51	
Expenses Paid	2,113.48	13,967.99
Total for Years 1928-1929		$14,644.55

Boulevard Mortgage Company was reimbursed for years 1928 and 1929 —the following accounts receiving credit:

		Dr.	Cr.
3-25-29	Cash a/c Seminole Boat Co.	1,200.00	
4- 2-29	Cash a/c Seminole Boat Co.	3,500.00	
6- 7-20	Cash a/c Seminole Boat Co.	1,000.00	
10-31-29	Mr. H. C. Phipps..	2,479.37	
10-31-29	Mr. J. S. Phipps..	2,479.37	
12-31-29	Mr. H. C. Phipps..	489.12	
12-31-29	Mr. J. S. Phipps..	3,496.69	14,644.55

Year 1930—Boulevard Mortgage Co.:

Cash Advances	6,400.00	
Expenses Paid	3,995.30	$10,395.30

Boulevard Mortgage Company was reimbursed for year 1930—the following accounts receiving credit:

4-30-30	Mr. J. S. Phipps..	1,877.93	
4-30-30	Mr. H. C. Phipps..	1,877.94	
6-30-30	Mr. J. S. Phipps..	1,701.19	
6-30-30	Mr. H. C. Phipps..	1,701.19	
12-31-30	Mr. J. S. Phipps..	1,618.53	
12-31-30	Mr. H. C. Phipps..	1,618.52	10,395.30

Year 1931—Boulevard Mortgage Co.:

Cash Advances	None	
Expenses Paid		$7,265.46

		Dr.	Cr.
Boulevard Mortgage Company was reimbursed in part for 1931—the following accounts receiving credit:			
6- 2-31	Cash—Seminole Boat Co.	244.78	
6-30-31	Mr. J. S. Phipps	3,098.14	
6-30-31	Mr. H. C. Phipps	3,098.14	
12-31-31	Mr. J. S. Phipps	374.70	
12-31-31	Mr. H. C. Phipps	374.70	
		7,190.46	
Balance not reimbursed		75.00	7,265.46
Year 1932—Boulevard Mortgage Co.:			
Balance Forward		$ 75.00	
Expenses Paid		4,034.62	$4,109.62
Boulevard Mortgage Company was reimbursed for 1932—the following accounts receiving credit:			
6-30-32	Mr. J. S. Phipps	896.49	
6-30-32	Mr. H. C. Phipps	896.49	
12-31-32	Mr. J. S. Phipps	1,158.32	
12-31-32	Mr. H. C. Phipps	1,158.32	4,109.62
Year 1933—Boulevard Mortgage Co.:			
Expenses Paid			$1,702.16

		Dr.	Cr.
Boulevard Mortgage Company was reimbursed for 1933—the following accounts receiving credit:			
6-30-33 Mr. J. S. Phipps..	478.78		
6-30-33 Mr. H. C. Phipps..	478.78		
12-30-33 Mr. H. C. Phipps..	372.30		
12-30-33 Mr. J. S. Phipps..	372.30	1,702.16	

From this point on disbursements were made by Palm Beach Company for Seminole Boat Company.

Year 1934—Palm Beach Company:			
Expenses Paid			$2,784.13
Palm Beach Company was reimbursed for 1934 in part the following accounts receiving credit:			
12-31-34 Mr. H. C. Phipps..	1,022.38		
12-31-34 Mr. J. S. Phipps..	1,022.38		
	2,044.76		
Balance not reimbursed ...	739.37	2,784.13	
Year 1935—Palm Beach Company:			
Balance Forward	739.37		
Expenses, etc., paid	6,453.36		$7,192.73
Palm Beach Company was reimbursed as follows during 1935 the following accounts receiving credit:			
2-20-35 Mr. H. C. Phipps...	369.69		
2-20-35 Mr. J. S. Phipps...	369.68		

		Dr.	Cr.
6-22-35	Mr. J. S. Phipps...	1,224.91	
6-22-35	Mrs. F. E. Guest...	1,224.90	
		3,189.18	
	Balance not reimbursed...	4,003.55	7,192.73

Year 1936—Palm Beach Company:

Balance outstanding Jan. 1936 not reimbursed $4,003.55

Summary of reimbursements by Mr. J. S. Phipps, Mr. H. C. Phipps and Mrs. F. E. Guest for disbursements made by Boulevard Mortgage Co. and Palm Beach Company for account Seminole Boat Company. Seminole Boat Company has now transferred its liability from Boulevard Mortgage Co. and Palm Beach Company to the Messrs. Phipps and Mrs. F. E. Guest according to the following:

		Mr. J. S. Phipps	Mr. H. C. Phipps	Mrs. F. E. Guest
October	31, 1929.....	$2,479.37	$2,479.37	.....
December	31, 1929.....	3,496.69	489.12	.....
October	31, 1929 (adj.)	300.00	300.00	.....
October	31, 1929 (adj.)	1,920.13	1,920.13	.....
December	31, 1929 (adj.)	393.72	393.72	.....
October	31, 1929 (adj.)	1,110.07	1,110.07	.....
October	31, 1929.....	5,000.00	5,000.00	.....
April	30, 1930.....	1,877.93	1,877.94	.....
June	30, 1930.....	1,701.19	1,701.19	.....
December	31, 1930.....	1,618.53	1,618.52	.....
June	30, 1931.....	3,098.14	3,098.14	.....
December	31, 1931.....	374.70	374.70	.....
June	30, 1932.....	896.49	896.49	.....
December	31, 1932.....	1,158.32	1,158.32	.....
June	30, 1933.....	478.78	478.78	.....

	Mr. J. S. Phipps	Mr. H. C. Phipps	Mrs. F. E. Guest
December 30, 1933.....	372.30	372.30	.....
December 31, 1934.....	1,022.38	1,022.38	.....
February 20, 1935.....	369.68	369.69	.....
	12,440.72	12,440.72	.....
Mrs. F. E. Guest on 3/-23/35 purchased Mr. H. C. Phipps' ½ interest.	.....	12,440.72	12,440.72
June 22, 1935	1,224.91	.....	1,224.90
Balance December 31, 1935	$13,665.63	.....	$13,665.62

*Increase in Capital Stock.

JUL 20 1942
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 246

CHARLES CORYELL, *et al.*,

Petitioners,

—against—

JOHN S. PHIPPS and GEORGE J. PULKINGTON,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

T. CATESBY JONES,
LEONARD J. MATTESON,
Proctors for Petitioners.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No.

CHARLES CORYELL, *et al.*,

Petitioners,

—against—

JOHN S. PHIPPS and GEORGE J. PILKINGTON,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

CHARLES CORYELL and forty-five other boat owners petitioning this Court for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit, against respondents John S. Phipps and George J. Pilkington, respectfully show:

Statement of Matter Involved.

This is a suit in admiralty instituted by petitioners in the United States District Court for the Southern District of Florida against respondents Phipps and George J. Pilkington* to recover damages for destruction of some 45 vessels owned by petitioners, as a result of a fire which

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* The claim against Pilkington, operator of the storage basin, was not pressed in the Circuit Court of Appeals and is not pressed here.

occurred on June 24, 1935, while the vessels were afloat at Pilkington's covered storage basin, Fort Lauderdale, Florida, which originated in an explosion on the yacht "Seminole", then registered in the name of Seminole Boat Company.

Both Courts below concurrently found that the fire was caused by an explosion of gasoline fumes, which fumes had escaped into the engineroom of the "Seminole". Both Courts also found that the gasoline fumes which were in the engineroom of the "Seminole" came into that compartment as a result of the leaky condition of the "Seminole's" gasoline tanks and installation; and that this leaky condition was the result of "the passage of time" (R. 3587-8, 3648). Both Courts then held that the Seminole Boat Company was liable for the damage sustained by your petitioners because of the negligence found, but that Phipps was not liable (R. 3588, 3648). This holding resulted in a denial of all recovery to the petitioners because the Seminole Boat Company was an empty shell.

The case is brought to the attention of this Court because it is the confident belief of counsel for petitioners that if the decisions below are permitted to stand, yacht and other boat owners will be encouraged to utilize the fiction of corporate ownership without actual corporate independence, as a means of escaping liability for failure to take ordinary care to avoid injury to life and property.

The facts in connection with the corporate ownership of the "Seminole" are as follows:

The yacht "Seminole", until February 16, 1929, was registered at the Custom House at Miami as being solely owned by the respondent, John S. Phipps (Exhs. 30, 31, 32, Certificates of License). The District Court found, that prior to February 1915, the yacht "Seminole" had been owned by H. C. Phipps, a brother of the respondent Phipps; that at that time the respondent Phipps bought from his brother a one-half interest in the vessel; that she was then propelled by steam; and that in the year 1922, her steam plant was removed and gasoline engines and

their necessary appurtenances installed (Fdg. 2, R. 3582). In late 1928 or early 1929, the two brothers each sold their one-half interest in the "Seminole" to Seminole Boat Company, a Delaware corporation, which had been formed by them for the purpose of taking title to the "Seminole" and operating her under charter for hire, each receiving one-half of the outstanding stock of the company. The "Seminole" was, in fact, chartered on several occasions in 1929 and 1930 but no charterer was actually found for her after 1930 or for more than five years preceding the fire (Fdg. 3, R. 3583).

The officers and stockholders of the corporation were Paul Scott, R. C. Alley and Roy H. Hawkins. These men, as officers of the corporation, assisted by James F. Riley, and advised by certain boat captains, operated, controlled, maintained and managed the vessel from the time of her purchase by the corporation down to and including the time of the fire (Fdg. 4, R. 3583).

In March 1935, when an opportunity to sell the vessel arose, H. C. Phipps wished to sell but respondent Phipps did not. Mrs. Amy Guest, a sister of H. C. and John S. Phipps, thereupon purchased the interest of H. C. Phipps. No other change in the operation, control, maintenance or management of the vessel occurred prior to the fire (Fdg. 5, R. 3584).

Scott, Alley and Hawkins were selected by respondent Phipps and his brother to be officers and directors of the corporation Seminole Boat Company. They, as well as Riley were so-called family representatives of the Phipps (R. 1911, 1944, 1956) and were employees of certain other corporations in which the Phipps family were the shareholders and principals (R. 1355, 1478-81, 1590-1). As such, they were subject to the orders of the respondent Phipps and his brother, and subject to their call, as well as that of other members of the family, to attend to their personal business matters (R. 1451-2, 1477, 1485-6, 1582). These men were not stockholders and had no interest in the Seminole Boat Company (R. 1363), nor did they receive any compensation from Seminole Boat Company

(R. 1582-3). Their salaries were paid by the general paymaster of the Phipps' interests (R. 1353-4, 1486) and no part of such salaries were charged to Seminole Boat Company (R. 1354-5, 1486, 1582-3). Their services to Seminole Boat Company were gratuitous and undertaken for the accommodation of the Phipps (R. 1395).

The corporation was not furnished with capital funds necessary for an independent corporate existence. The only cash paid into its treasury upon organization was $100, a nominal payment of $50 from each of the stockholders. Its bank account was closed after June 2, 1931 because it was so inactive (R. 1472, 1477). The bills of the corporation for expenses of the vessel were paid by other Phipps corporations and charged on their books to Seminole Boat Company (R. 1281, 1324-5) until repaid periodically directly by the stockholders of the corporation. The corporate books contained only a record of such repayments by the stockholders made long after the debts were incurred. Respondent's own summary of the method by which the corporation was financed, Exhibit 4D, is printed as Appendix A to this petition and brief.

The family representatives of the Phipps performed no different functions toward the "Seminole" after incorporation than they had before that event or than they performed toward other vessels owned by respondent Phipps and members of his family which were not incorporated (R. 1361, 1368-70, 1398-9, 1454, 1584-6, 1532, 1596-7). They consulted with the stockholders and acted pursuant to their directions on all except minor routine matters, including the proposed sale of the "Seminole", and the purchase of a tender for that vessel (R. 1282-3, 1381-2, 1297-9, 1300-1, 1333, 1886-7).

Due to the fact that the corporation had no funds of its own and was dependent on the payment of its debts and expenses by the stockholders (R. 1400, 1941) the officers of the corporation could not incur expenses for more than nominal sums without express authority from the stockholders. Hawkins said the limit was $500

(R. 1380-1); Riley, $300. (R. 1505); see for instance authorization of $300 for repair of generator (R. 1505-6, 1596, Exh. 3T1, R., Vol. VI, p. 18).

The respondent Phipps continued throughout the existence of the corporation and the vessel to make personal use of the "Seminole" whenever he desired to do so (R. 340, 1387, 1898-9, 1915, 438, 507, 1507-8, 1643-7, 1917). He merely informed the officers of his wishes (R. 1914-5) and they recognized his authority (R. 1387-8). The only limitation on his right to use the vessel which he recognized was his personal preference for charter money if a charter was available (R. 1915; see also R. 1886). For several years after the incorporation, the yacht "Seminole" continued to be registered with the New York Yacht Club as the personal yacht of respondent Phipps (R. 1905, 1965-7; Answer (i) R. 89). Respondent Phipps defended the action on the ground that Seminole Boat Company was the actual owner and operator of the "Seminole", and that he (respondent Phipps) was not.

Respondent Phipps also set up the defense of limitation of liability under Sections 4283 and 4284 of the Revised Statutes of the United States and the statutes supplementary thereto and amendatory thereof (R. 61).

Your petitioners contended that the officers and directors of the corporation selected by respondent Phipps to manage and operate his vessel, and Riley, to whom they entrusted complete control and management of the vessel for a long period before the fire, were the *alter ego* of respondent Phipps; that their negligence, knowledge and privity were the negligence, knowledge and privity of the respondent Phipps; that their failure to provide an adequate system of inspection by competent persons, and proper maintenance, constituted negligence, knowledge and privity on their part which was in legal effect the negligence, knowledge and privity of the respondent Phipps precluding limitation of liability; and that respondent Phipps could in no event establish his claim for limitation of liability without showing that the persons appointed by him to manage the vessel were competent.

Respondent's evidence failed to show any qualification or previous experience of the officers and directors of the corporation, Scott, Alley and Hawkins, for management of the yacht "Seminole" or any vessel property. Beginning in April 1931, by direction of Scott, President of the corporation, the "Seminole" was placed in storage at Fort Lauderdale and subsequent thereto, she was continuously in storage up to the time of the fire except for only four brief occasions. By direction of Scott, the vessel, while in storage, was placed in the "control and management" of Riley, who was instructed "to inspect her regularly" (R. 1454-7, 1472, 1480). Riley conceded his inexperience and incompetence to inspect the vessel (R. 1595-6; see also R. 1637, 1640-1).

Petitioners contended further that the fact that with the passage of time some part of the machinery did leak with the result that gasoline fumes entered the engine-room and caused the fire, as concurrently found by both of the lower Courts (R. 3587-8, 3648) was, in itself, proof of the incompetence of the persons appointed by Phipps to manage the vessel and of failure to inspect, or to provide an adequate system of inspection. Such a condition could not otherwise come into being.

Conclusions of the District Court With Respect to Liability of the Respondent Phipps.

The District Court held that in spite of the circumstances of the organization and control of Seminole Boat Company by the respondent Phipps and his brother shown by the respondent's evidence, Seminole Boat Company acted "as a legal non-conductor between Phipps on the one hand and the libellants and Pilkington on the other, *because there was no fraud or other improper conduct or purpose in the creation or continued existence of the corporation*"* (R. 3589). Under "Discussion", the Court said:

"The organization of the corporation, Seminole

* Italics in quotations ours throughout this petition and brief.

> Boat Company, was a natural normal development of ownership of a pleasure yacht, *free from any fraud or ulterior motive in the inception of its chartering and creation.* Likewise, it was free of any of the other elements, treated in the reported and cited cases *incident to the presence of bad faith*, which apply the doctrine of piercing the corporate veil" (R. 3587).

The Court said further:

> "Furthermore, the character of the negligence which this record discloses is the failure to do or perform a duty, or nonfeasance. Such failure of duty does not give rise to an application of the *alter ego* or agency doctrine" (R. 3587).

The District Court further held that even if the liability were held to be that of the respondent Phipps "*the character of negligence shown by this record* was such that Phipps, as an individual, would not be precluded from asserting as a limitation of liability under the statute" (R. 3588).

The District Court therefore dismissed the libel.

Conclusions of the Circuit Court of Appeals With Respect to Liability of the Respondent Phipps.

Upon appeal to the Circuit Court of Appeals that Court held that since appellants' vessels sustained damage by reason of the negligence of Seminole Boat Company "in order to hold Phipps to personal liability, appellants had the burden of establishing by a preponderance of the evidence, that the corporation was *an artifice and a sham designed to execute illegitimate purposes* in abuse of the corporate fiction and the immunity that it carries, and that its activities in reality were those of Phipps personally" (R. 3648).

The Circuit Court of Appeals on the question of limitation of liability held independently of the District Court that "the evidence affirmatively establishes that no actual privity to or knowledge of the defective condition obtain-

ing upon the 'Seminole' was attributable to Phipps personally and that none could be imputed to him *since he had exercised due care and diligence in selecting competent men to man the vessel*, and had imposed upon them full duties as to inspection and maintenance of her" (R. 3649).

The District Court made no finding with respect to the competence of the men selected by the respondent Phipps to manage the vessel. The District Court found only that the "nature of the negligence" (R. 3588), *i. e.*, non-feasance as opposed to misfeasance (R. 3587) was not such as to preclude the respondent Phipps from limitation of liability. Consequently the finding that these men were competent is not a concurrent finding.

The Circuit Court of Appeals in its cursory examination of the record failed to note that there is no evidence whatever in the record of the competence or experience of the officers and directors, *i. e.*, Scott, Alley and Hawkins, and that Riley, who was entrusted by them with control and management of the vessel and the duties of regular inspection, was concededly inexperienced and incompetent.

The decisions of both the District Court and the Circuit Court of Appeals holding that the negligence was solely that of Seminole Boat Company and that the respondent Phipps is not liable for any acts or omissions of the Seminole Boat Company or of the officers and directors thereof selected by him are based on the erroneous principle that the corporation created by the respondent Phipps and his brother will serve as a "legal nonconductor" and an insulator against liability *unless fraud or other improper conduct or purpose* in the creation or continued existence of the corporation be shown, or unless it be established that the corporation was *an artifice and a sham designed to execute illegitimate purposes* in abuse of the corporate fiction and the immunity that it carries.

The decisions of both Courts are in conflict with the decisions of the Circuit Courts of Appeal in other cir-

cuits and of this Court. The Circuit Courts of Appeal in the other circuits have followed the principle laid down by this Court in the line of cases of which the following are examples:

U. S. v. *Lehigh Valley R. R. Co.*, 220 U. S. 257;
McCaskill Co. v. *U. S.*, 216 U. S. 504;
Linn Timber Co. v. *U. S.*, 236 U. S. 574;
Southern Pacific Co. v. *Lowe*, 247 U. S. 330;
U. S. v. *Reading Co.*, 253 U. S. 26;
Gulf Oil Corp. v. *Llewellyn*, 248 U. S. 71;
Chicago, Milwaukee & St. Paul R. R. Co. v. *Minn. Civic Assn.*, 247 U. S. 490;
Davis v. *Alexander*, 269 U. S. 114;
Gregory v. *Helvering*, 293 U. S. 465;
Consolidated Rock Co. v. *DuBois*, 312 U. S. 510, 524.

In none of these cases is "fraud" or "other improper conduct or purpose" or "illegitimate purpose" made a test of liability of the parent (individual or corporate) of a corporation. On the contrary, they have held that *domination and control* of the subsidiary by the parent creates liability on the part of the parent for the liabilities of a creature corporation which is regarded as the mere corporate agent or instrumentality or puppet of the parent. The rule was stated by this Court in *Chicago, Milwaukee and St. Paul R. Co.* v. *Civic Ass'n.*, 247 U. S. 490, at page 501, as follows:

> "where stock ownership has been resorted to, not for the purpose of participating in the affairs of the corporation in the normal and usual manner, but for the purpose, as in this case, of controlling a subsidiary company so that it may be used as a mere agency or instrumentality of the owning company or companies", * * * "the courts will not permit themselves to be blinded or deceived by mere forms of law, but regardless of fictions, will deal with the substance of the transaction involved as if the cor-

porate agency did not exist and as the justice of the case may require."*

The Circuit Court of Appeals for the Fourth Circuit in the case of the *Willem van Driel, Sr.* (C. C. A. 4), 252 Fed. 35, certiorari denied 248 U. S. 566, held the Pennsylvania Railroad Company liable for negligence of a controlled subsidiary, Central Elevator Company, in the operation of a grain elevator which caught fire with the result that the "Willem van Driel, Sr." and other vessels were damaged through spread of the fire. That Court held (pp. 37-8) that the liability of the Pennsylvania Railroad Company

> "depends upon the question of fact whether the elevator company although in the name and organization a distinct corporation, was in substance a mere corporate agent or instrumentality of the Pennsylvania Railroad Company. *So. Pac. Terminal Co.* v. *Int. Comm. Com'n*, 219 U. S. 523, 31 Sup. Ct. 279, 55 L. Ed. 310; *Joseph R. Foard Co.* v. *State of Maryland*, 219 Fed. 827, 135 C. C. A. 497; *Lehigh Valley R. Co.* v. *Delachesa*, 145 Fed. 617, 76 C. C. A. 307."

After discussing the facts showing that the subsidiary corporation was "completely under the control of the dominant corporation", the Court said at page 39:

> "Applying the language of Judge Wallace in *Lehigh Valley Railroad Co.* v. *DuPont*; 128 Fed. 840, 64 C. C. A. 478, the potential and ultimate control of all its property and business affairs of the elevator company was lodged in the railroad company, and this control was exercised as completely and as directly as the machinery of corporate organisms would permit. Such complete dominance and control by the railroad company made the elevator company its mere puppet. *United States* v. *Del. Lack. & West. R. R.*, 238 U. S. 516, 35 Sup. Ct. 873, 59 L. Ed. 1438 (252 Fed. 38, 39)."

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* This statement as repeated in *U. S.* v. *Reading Co.*, 253 U. S. 26, 62, 63, while made with respect to a case involving the commodities clause, has as pointed out by Frank, *C. J.*, "become a classic statement applied generally in cases piercing the corporate veil". *Weisser* v. *Mursam Shoe Corp.*, 127 F. (2d) 344, 346, note 4.

The Circuit Court of Appeals for the Fourth Circuit followed its decision in the *Willem van Driel, Sr.* by others to the same effect, *Luckenbach S. S. Co., et al. v. W. R. Grace & Co., Inc.* (C. C. A. 4), 267 Fed. 676, 681; *The Centaurus* (C. C. A. 4), 291 Fed. 751.

The Circuit Court of Appeals for the Second Circuit in the case of *Lehigh Valley R. R. Co.* v. *DuPont* (C. C. A. 2), 128 Fed. 840, held that Lehigh Valley Railroad Company was liable for damages resulting from an accident which occurred on the line of its subsidiary Eaton & Amboy R. R. Co. In that case the Court said at page 845:

> "The title to the franchises, privileges and property of the Eaton & Amboy Railroad Company was vested in that corporation, and the railroad upon which the deceased was killed was operated and maintained financially and physically by that corporation; but the potential and ultimate control of all its property and business affairs was lodged in the defendant [Lehigh Valley Railroad Company] and this control was exercised as completely and as directly as the machinery of corporate organisms would permit."

To the same effect are—

Lehigh Valley R. R. Co. v. *Delachesa* (C. C. A. 2), 145 Fed. 617; and
Costan v. *Manila Electric Co.* (C. C. A. 2), 24 F. (2d) 383, 384.

The Circuit Court of Appeals for the Second Circuit recently applied the same doctrine in the case of *Weisser* v. *Mursam Shoe Corporation, et al.* (C. C. A. 2), 127 F. (2d) 344 (decided April ~~27, 1942 by~~ Frank, *C. J.*).

The decisions in the *Willem van Driel, Sr.*, *Luckenbach S. S. Co.* v. *W. R. Grace & Co. Inc.*, and *Costan* v. *Manila Electric Co.*, *supra*, were cited by this Court as recently as in the case of *Consolidated Rock Co.* v. *DuBois*, 312 U. S. 510, 524.

In the case of *The Silverpalm* (C. C. A. 9), 94 F. (2d) 776, 780, the Circuit Court of Appeals for the Ninth Circuit held that the operating company of the vessel named was the *alter ego* of the owner on evidence showing that the companies involved "constituted a family affair".

The Circuit Court of Appeals for the Sixth Circuit in the case of *In re Lakes Transit Corporation and James Playfair* (C. C. A. 6), 81 F. (2d) 441, held that Playfair was personally liable as owner of the vessel involved, although title was held by a corporation in which Playfair and his family owned 90% of the stock.

The law in the Second, Fourth, Sixth and Ninth Circuits is that when a corporation is controlled by shareholders in such a manner that the corporation has no independent existence, the shareholders are the real parties in interest and are liable for the tortious acts of the corporation.

If the decision below is permitted to stand, the law in the Fifth Circuit is that in such a case to hold the stockholders, an injured person must establish "by a preponderance of the evidence, that the corporation was *'an artifice and a sham designed to execute illegitimate purposes* in abuse of the corporate fiction and the immunity that it carries". There is no requirement of any such showing in the Second, Fourth, Sixth and Ninth Circuits or under the decisions of this court.

There is also a conflict between the decisions of the Circuit Court of Appeals in the instant case and the decisions of the Circuit Courts of Appeal in the Second, Sixth and Ninth Circuits on the question of limitation of liability. The Circuit Court of Appeals for the Fifth Circuit in the instant case held that the respondent Phipps, if liable personally, was entitled to limitation of liability under Sections 4283 and 4284 of the Revised Statutes and amendatory acts, because—

> "the evidence affirmatively establishes that no actual privity to or knowledge of the defective condition

obtaining on the Seminole was attributable to Phipps personally, and that none could be imputed to him since he had exercised due care and diligence in selecting competent men to handle the vessel, and had imposed upon them full duties as to inspection and maintenance of her" (R. 3649).

The decisions of the Circuit Courts of Appeal in the Second, Sixth and Ninth Circuits hold on the contrary that where the owner (in legal effect) of a vessel has appointed agents to manage his vessel and has "imposed on them full duties as to inspection and maintenance", the agents so appointed are the *alter ego* of the owner and their negligence, knowledge and privity are attributable to the owner and will preclude limitation of liability.

The decision below is, therefore, in conflict with the decision of the Circuit Court of Appeals for the Second Circuit in the case of *In re New York Dock Co.* (C. C. A. 2), 61 F. (2d) 777. In that case the court held that the petitioner for limitation of liability, Converse, who, under R. S. 4286, in legal effect was the owner of a pile driver since he manned, victualed and navigated the vessel at his own expense, was denied the right to limit liability because of the failure of his superintendent, who was in charge of the inspection and rigging of the barge, to make adequate inspections.

The Court said at page 779:

> "*So the scope of the authority delegated to Heyer by Converse was so broad that his privity or knowledge as to the unseaworthiness of the pile driver was in law that of Converse. Spencer Kellogg & Sons* v. *Hicks*, 285 U. S. 502, 52 S. Ct. 450, 76 L. Ed. 903; *In re P. Sanford Ross* (C. C. A.), 204 F. 248; *Chesapeake Lighterage & Towing Co., Inc.* v. *Baltimore Copper Smelting & Rolling Co.* (C. C. A.), 40 F. (2d) 394; *Boston Towboat Co.* v. *Darrow-Mann Co.* (C. C. A.), 276 F. 778."

The decision below is also in conflict with that of the Circuit Court of Appeals for the Ninth Circuit in *The Silverpalm* (C. C. A. 9), 94 F. (2d) 776, where that Court dealing with a similar situation, said at page 780:

> "In proceedings for limitation the owner may not escape liability by giving the managerial functions to an employed person acting as its agent, *whether the person be corporate or otherwise. So far as concerns privity and knowledge, such an agent is its alter ego, Craig* v. *Continental Ins. Co.*, 141 U. S. 638, 648, 12 S. Ct. 97, 35 L. Ed. 886; *Eastern S. S. Corporation* v. *Great Lakes Dredge Co.* (C. C. A. 1), 256 F. 497, 502. *Sperry Flour Co.* v. *Coastwise S. S. Co.* (C. C. A. 9), 84 F. (2d) 785, 786."

The decision below is likewise in conflict with that of the Circuit Court of Appeals for the Sixth Circuit in *In re Lakes Transit Corporation, Ltd. and James Playfair* (C. C. A. 6), 81 F. (2d) 441. After holding that Playfair was in substance the owner of the vessel and liable as such, although title was held by a corporation which Playfair controlled and in which he and his family owned more than 90% of the stock, the court held that the knowledge and privity of the corporation's superintendent, Captain Burke, was the knowledge and privity of Playfair. The Court said at page 444:

> "* * * Playfair was not entitled to limitation until he had proved lack of his privity or knowledge of the defect causing the loss. This he failed to do. The evidence shows that the primary cause was the broken sea cock. The trial court found that the defective door was a contributing cause. If that be true, the right to limitation of damages resulting therefrom is barred under the personal contract rule and, in any view because Playfair had knowledge of the defect. *The statute does not require that knowledge be actual; it may be imputed if some one in charge for the owner had general authority to act for him and by the exercise of ordinary care could have discovered the fault. Craig* v. *Continental Insurance Co.*, 141 U. S. 638; 12 S. Ct. 97, 35 L. Ed. 886; *Spencer Kellogg & Sons, Inc.* v. *Hicks*, 285 U. S. 502; *In re Sanford Ross* (C. C. A.), 204 Fed. 248;

Texas & Gulf S. S. Co. v. *Parker* (C. C. A.), 263 Fed. 864; *Pocomoke Guano Co.* v. *Eastern Transp. Co.* (C. C. A.), 285 Fed. 7; *Chesapeake Lighterage & Towing Co., Inc.* v. *Baltimore Copper Smelting & Rolling Co* (C. C. A.), 40 Fed. (2d) 394. Captain Burke, th superintendent for Playfair was present when the floor was repaired and could have known whether the repairs were sufficient to make the barge seaworthy."

The decision of the District Court in this case is further in conflict with the decisions of the other circuits in that it held that the nature of the negligence which caused the disaster, that is, non-feasance as opposed to positive negligence (R. 3587) was not such as to preclude the respondent Phipps from asserting limitation of liability under the statute (R. 3588). That negligence which, under the decision of the District Court was neglect and failure of inspection as a result of which, with the passage of time, the gasoline tanks became leaky (R. 3587-8) was, as the District Court found "the failure to do or perform a duty" (R. 3588), that is, the duty of inspection and the provision of an adequate system of inspection by competent persons. The Circuit Courts of Appeal in other circuits hold that the failure of the duty of inspection and the provision of an adequate system of inspection by competent persons results in imputed knowledge and privity with respect to defective conditions which requires the denial of a claim for limitation of liability.

The Circuit Court of Appeals for the Fourth Circuit in *Chesapeake Lighterage & Towing Co.* v. *Baltimore Copper Smelting & Rolling Co.* (C. C. A. 4), 40 F. (2d) 394, at page 395, said:

"For authorities on the law that control the question as to the privity or knowledge of the owner, reference to *The Virginia* (D. C.), 264 F. 986, *Sorenson et al.* v. *Boston Insurance Co. of Boston, Mass.*, 20 F. (2d) 640, and *Bank Line* v. *Porter* (*The Poleric*), 25 F. (2d) 843, will show the rule as laid down by this court. Under these decisions the judge below

rightly held that *the superintendent of the appellant company could by proper inspections have discovered the unseaworthiness of the barge, and that the appellant was therefore chargeable with knowledge of such unseaworthiness.*"

The Circuit Court of Appeals for the Second Circuit (Ward, *C. J.*) in the case of *The Loyal* (C. C. A. 2), 204 Fed. 930, in denying a petition for limitation of liability, said at page 933:

> "There is no proof of any regular system of inspection by any one, or *that its managing officers relied upon a competent person, to whom the duty of regular inspection was committed.*"

See also:

The Republic (C. C. A. 2), 61 Fed. 109;
In re P. Sanford Ross (C. C. A. 2), 204 Fed. 248;
Dexter-Carpenter Coal Co. v. *New York O. & W. Ry. Co., et al.* (S. D. N. Y.), 50 F. (2d) 270;
The Miami (E. D. N. Y.), 43 F. (2d) 562.

The Circuit Court of Appeals for the Ninth Circuit in the case of *Parsons* v. *Empire Transportation Co.* (C. C. A. 9), 111 Fed. 202, in denying limitation of liability to the vessel owner said at page 207:

> "So that Paterson, an inexperienced man with full knowledge on the part of the appellee's general manager for the Pacific Coast, was allowed to act as general superintendent of all its business at St. Michael, including the control of the entire fleet in those waters."

The finding of the Circuit Court of Appeals in the instant case that the respondent Phipps "had exercised due care and diligence in selecting competent men to man the vessel and had imposed on them full duties as to inspection and maintenance of her (R. 3647) is not supported by any evidence in the record. As we have pointed out, it is not a concurrent finding for the decision of the District Court was placed on an entirely different

ground. Since this finding by the Circuit Court of Appeals is without any support in the evidence and since the finding by the District Court was that the nature of the negligence, that is, "failure to do or perform a duty" (R. 3587) was not of a character to preclude limitation of liability (R. 3588), a direct conflict is presented between the decision of the District Court in this case and the decisions in the Second, Fourth and Ninth Circuits which should be resolved by this Court.

The Questions Presented.

The questions presented are:

1. Whether the individual owner of a yacht can escape his responsibilities and liabilities as such owner and secure insulation from liability by forming a corporation to own his vessel

(a) When the corporation is not supplied with capital funds necessary for corporate independence;

(b) When the corporation is officered by individuals of his own choosing who

1. are personally holden to him and obligated by virtue of their situations to do his bidding and to attend to his personal business;
2. receive no compensation from the corporation for their services;
3. have no interest in the corporation;
4. are limited in their discretion and in the management of the vessel by the fact that the corporation has no funds of its own and is dependent on the stockholders for the payment of its debts, and the officers must therefore consult with the stockholders before expenditure of any more than nominal sums.

(c) When the corporation is without credit of its own, and is dependent for its existence upon the credit of the stockholders who annually pay its debts, which are paid

in the first instance by other corporations controlled by the stockholders, such debts aggregating over a period of a few years several times the value of the vessel, the sole corporate property.

(d) When such owner retains control and use of the yacht and continues to use the yacht as desired for his personal pleasure, the corporate officers without corporate action recognizing his right, and such owner acknowledges no limitation of that right except his personal preference for charter hire when a charter is available.

2. (a) Whether an owner of a vessel can escape the imputation of knowledge and privity inherent in a dangerous condition of the vessel caused by progressive deterioration of machinery and equipment which leaked, and tanks which became "defective" and "leaky" with the passage of time, by the appointment of agents, competent or otherwise, to whom he transfers "full duties" of "inspection and maintenance"?

(b) Whether an agent, to whom an individual owner of a vessel transfers all his duties and responsibilities for inspection and maintenance of his vessel, is not the *alter ego* of such owner and whether the negligence, knowledge and privity of such an agent, or agents, is not the negligence, knowledge and privity of such owner as held by the Circuit Courts of Appeal in the Second, Sixth and Ninth Circuits.

3. Whether the failure of an owner to provide for competent management and proper inspections and for an adequate system of inspection of his vessel by competent persons does not require the denial of limitation of liability on the ground of privity and knowledge as held in the Second, Sixth and Ninth Circuits?

Reasons for the Allowance of the Writ.

1. The decision of the Circuit Court of Appeals for the Fifth Circuit in this case holding that to establish personal liability on the part of the respondent Phipps, your petitioner "had the burden of establishing by a preponderance of the evidence, that the corporation was an artifice and a sham designed to execute illegitimate purposes in abuse of the corporate fiction and the immunity that it carries, and that its activities in reality were those of Phipps personally" is

(a) in direct conflict with the decisions of this Court in the following cases:

Davis v. *Alexander*, 269 U. S. 114;
Chicago, Mil. & St. Paul R. R. Co. v. *Minn. Civic Ass'n.*, 247 U. S. 490;
U. S. v. *Lehigh Valley R. R. Co.*, 220 U. S. 257;

and other cases cited *supra*, page 9.

(b) in direct conflict with the decisions of the Circuit Courts of Appeal for the Second, Fourth, Sixth and Ninth Circuits in the following cases:

Lehigh Valley R. R. Co. v. *DuPont* (C. C. A. 2), 128 Fed. 840;
Lehigh Valley R. R. Co. v. *Delachesa* (C. C. A. 2), 145 Fed. 617;
Costan v. *Manila Electric Co.* (C. C. A. 2), 24 F. (2d) 383, 384;
The Willemvan Driel, Sr. (C. C. A. 4), 252 Fed. 35, certiorari denied 248 U. S. 566;
Luckenbach S. S. Co., et al. v. *W. R. Grace & Co., Inc.* (C. C. A. 4), 267 Fed. 676, 681;
In re Lakes Transit Corp. and James Playfair (C. C. A. 6), 81 F. (2d) 441;
The Silverpalm (C. C. A. 9), 94 F. (2d) 776.

2. The decision of the Circuit Court of Appeals for the Fifth Circuit that the respondent Phipps, if liable, is entitled to limitation of liability on the ground that no actual privity or knowledge of the defective condition of the yacht "Seminole" was attributable to him "since he had exercised due care and diligence in selecting competent men to man the vessel, and had imposed upon them full duties as to inspection and maintenance of her", is in direct conflict with the decisions of the Circuit Courts of Appeal in the Second, Sixth and Ninth Circuits in the following cases:

In re New York Dock Co. (C. C. A. 2), 61 F. (2d) 777;

In re Lakes Transit Corporation and James Playfair (C. C. A. 6), 81 F. (2d) 441;

The Silverpalm (C. C. A. 9), 94 F. (2d) 776.

3. The decision of the District Court for the Southern District of Florida in this case that the character of the negligence shown by the record in this case, that is "failure to do or perform a duty", which duty was to provide for competent management and proper inspection and for an adequate system of inspection of the vessel by competent persons, is in square conflict with the decisions of the Circuit Courts of Appeal in the Second, Sixth and Ninth Circuits in the following cases:

The Loyal (C. C. A. 2), 204 Fed. 930;

Dexter-Carpenter Coal Co. v. *New York O. & W. Ry. Co., et al.* (S. D. N. Y.), 50 F. (2d) 270;

The Miami (E. D. N. Y.), 43 F. (2d) 562;

Chesapeake Lighterage & Towing Co., Inc. v. *Baltimore Copper & Rolling Co.* (C. C. A. 4), 40 F. (2d) 394;

Parsons v. *Empire Transportation Co.* (C. C. A. 9), 111 Fed. 202, 207.

The Importance of the Question Involved.

If this decision is permitted to stand, it will constitute an invitation to all owners of yachts or of similar vessel property to incorporate, without providing any working capital or other means for the corporation to maintain its independence, for the purpose of escaping liability for all torts. This decision virtually guarantees immunity in the Fifth Circuit to such incorporators even in those cases of neglect, where through deterioration of a gasoline installation as a result of "the passage of time", a vessel burning that dangerous fuel becomes a public nuisance. Under this decision, an owner of such craft by incorporating and then neglecting the property transferred to such corporation may escape all liability in case of an explosion resulting from neglect and rest easily in confidence that the Court will not disturb his repose under the corporate veil.

WHEREFORE petitioners pray that this Court issue a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit directing it to send to this Court for review a full transcript of the record in the said Circuit Court of Appeals in the case entitled: Charles Coryell, et al., Libellants-Appellants, against John S. Phipps and another, Respondents-Appellees, No. 10185, and that the decision of the said Circuit Court of Appeals rendered on the 9th day of June, 1942 (R. 3645) and the decree of the District Court entered on the 19th day of June, 1941 (R. 3590) be reversed and for such other relief in the premises as may be just.

Dated, New York, N. Y., July 17, 1942.

CHARLES CORYELL, *et al.*,
Petitioners.

T. CATESBY JONES,
LEONARD J. MATTESON,
Proctors for Petitioners.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No.

CHARLES CORYELL, *et al.*,

Petitioners,

—against—

JOHN S. PHIPPS and GEORGE J. PILKINGTON,

Respondents.

BRIEF FOR PETITIONERS.

Opinions Below.

The opinion, findings of fact and conclusions of law of the District Court are officially reported 39 F. Supp. 142 and are printed in this record (R. 3582). The opinion of the Circuit Court of Appeals filed June 9, 1942 is not yet officially reported but is printed in this record (R. 3645).

Jurisdiction of this Court.

This is a suit in admiralty instituted by petitioners against the respondents for the recovery of damages due to the destruction by fire of some 45 small yachts or motorvessels stored afloat at Pilkington's covered storage basin, Fort Lauderdale, Florida, on June 24, 1935. The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended by the Act of February 13, 1925; 43 Stat. 938, 28 U. S. C. A., Section 347.

The Facts.

The facts are stated in the petition and will not be repeated here.

POINT I.

The Courts below held that stockholders cannot be held liable for torts committed by the corporation unless it be shown that there was "fraud or other improper conduct or purpose in the creation or continued existence of the corporation" or that "the corporation was an artifice and a sham designed to execute illegitimate purposes". The rule in this Court and in the other circuits is that where the corporation is without independence of its stockholders, its act is in fact an act of the stockholders. The decisions below are in square conflict with those of this Court and those in the Second, Fourth, Sixth and Ninth Circuits.

We have shown in the petition, *supra*, pages 8-12, that the decisions below, holding that proof of "fraud", "improper conduct or purpose in the creation or continued existence of the corporation", or "artifice and sham designed to execute illegitimate purposes", is an essential prerequisite to piercing the corporate veil, and holding the stockholders liable for the torts of a corporation lacking any of the essentials of corporate independence, and subject to the domination and control of the stockholders, are in conflict with the decisions in the Second, Fourth, Sixth and Ninth Circuits in the following cases:

Lehigh Valley R. R. Co. v. *DuPont* (C. C. A. 2), 128 Fed. 840;

Lehigh Valley R. R. Co. v. *Delachesa* (C. C. A. 2), 145 Fed. 617;

Castan v. *Manila Electric Co.* (C. C. A. 2), 24 F. (2d) 383, 384;

The Willem van Driel, Sr. (C. C. A. 4), 252 Fed. 35, certiorari denied 248 U. S. 566;

Luckenbach S. S. Co., et al. v. *W. R. Grace & Co., Inc.* (C. C. A. 4), 267 Fed. 676;
In re Lakes Transit Corp. and James Playfair (C. C. A. 6), 81 F. (2d) 441;
The Silverpalm (C. C. A. 9), 94 F. (2d) 776.

It is true that fraud is sometimes a ground for piercing the corporate veil and holding the stockholder liable for the debts of the corporation, but it is only in contract cases that such doctrine exists because it is only in such cases that there has been a previous relationship of the parties that admits of fraud. A party who voluntarily enters into a contract with a corporation, knowingly enters into a legal relation with a legal entity of limited liability. He cannot complain of that limited liability, unless it can be shown that he was misled or tricked or fraudulently induced to enter into the contractual relation. Decisions in such cases have no application to the facts of cases involving tort liability. In such cases there is nothing in the legal relations involved which admit of fraud as an element in the legal relations involved. Examples of contract cases where fraud is a proper test are:

Roos v. *Texas Co.* (C. C. A. 6), 43 F. (2d) 1;
New York Trust Co. v. *Carpenter* (C. C. A. 2), 250 F. 668, 673, 678.

See also:

Weisser v. *Mursam Shoe Corp.* (C. C. A. 2), 127 F. (2d) 344, 347, note 6.

Similarly there are cases where an improper purpose in the formation of a corporation may be a sufficient basis for disregarding the corporate entity. The so-called bank stock cases may be cited as examples:

Coker v. *Soper* (C. C. A. 5), 53 F. (2d) 190, certiorari denied 285 U. S. 540;
Harris Inv. Co., et al. v. *Hood* (Fla.), 167 So. 25.

In tort cases the test is, was the corporation in fact an independent entity. The remarks of the District Court concerning fraud as an element to be considered in determining whether the act of the corporation which caused the injury complained of is the act of the stockholders are beside the point. This is also true as to the test applied by the Circuit Court of Appeals of "artifice and sham designed to execute illegitimate purposes". In addition to the decisions cited in the petition from the Second, Fourth, Sixth and Ninth Circuits, the following cases dealing with tort liability show that this is so:

Davis v. *Alexander*, 269 U. S. 114;

Callas v. *Independent Taxi Owners Assn.* (C. C. A.), D. C., 66 F. (2d) 192; certiorari denied 290 U. S. 669;

Mangan v. *Terminal Transportation System, Inc.*, 284 N. Y. S. 183, 157 Misc. 627; aff'd 286 N. Y. S. 666, 247 App. Div. 853; appeal denied 272 N. Y. 676;

Anglaize Box Board Co. v. *Hinton*, 100 Ohio St. 505, 126 N. E. 881;

Joseph R. Foard Co. v. *State* (C. C. A. 4), 219 Fed. 827;

Oriental Investing Co. v. *Barkley*, 64 S. W. 80, 25 Tex. Civ. App. 543;

Erickson v. *Minnesota & Ontario Power Co.*, 134 Minn. 209, 158 N. W. 979;

Specht v. *Missouri Pacific R. R. Co.*, 154 Minn. 314, 191 N. W. 905;

Dixie Coal M. & M. Co. v. *Williams*, 221 Ala. 331;

Ross v. *Pennsylvania Railway Co.* (N. J.), 106 N. J. L. 536, 148 Atl. 741.

See also:

Weisser v. *Mursam Shoe Corp.* (C. C. A. 2), 127 F. (2d) 344 (Opinion with notes by Frank, C. J., April 27, 1942).

No case could illustrate better than the instant case the injustice, and the harmful results, which will follow from the establishment of the rule laid down by the Courts below. Here the owner has successfully, thus far, avoided any responsibility for the operation of the yacht "Seminole" by the creation of a corporation without funds* and with only a single asset, the yacht "Seminole"; by appointing men to officer and direct the corporation, who are in substance his employees in other connections, who are beholden to him personally, and who serve without additional compensation and without interest in the corporation as an accommodation to him as stockholder; and by delegating to such men "full duties as to inspection and maintenance of her" (R. 3649). When under such circumstances "with the passage of time" the yacht's gasoline tanks, always a serious hazard,** through lack of inspection and proper maintenance become defective and leaky and cause an explosion and fire which destroys a large number of vessels owned by innocent parties, we submit, that to grant the immunity of corporate insulation establishes a dangerous precedent and encourages the owners of yacht or other vessel property to employ this devious method of avoiding personal responsibility. Such a result is in itself an abuse of the corporate fiction and the immunity that it carries.

It cannot be said that the question of the control and domination of Seminole Boat Company by respondent Phipps is a question of fact decided by the lower Courts adversely to petitioner. The facts as stated in the petition are undisputed and taken from respondent's own evidence. Neither of the Courts below made any findings as to control and domination of the corporation by the re-

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* As to the importance of supplying a corporate subsidiary with adequate capital funds if corporate insulation is to be obtained, see article entitled "Insulation from liability through Subsidiary Corporations" by William O. Douglas, now a justice of this court, in collaboration with C. M. Shanks. Also *Weisser* v. *Mursam Shoe Corp.* (C. C. A. 2), 127 F. (2d) 344, 348.

** See *Gunnarson* v. *Robert Jacob* (C. C. A. 2), 94 F. (2d) 170, 172 (Learned Hand, *C. J.*).

spondent Phipps because in their view this was not important, in the absence of any showing of fraud or improper purpose in the creation or continued existence of the corporation.

POINT II.

The decision of the Circuit Court of Appeals that the respondent Phipps, if liable, is entitled to limitation of liability on the ground that privity or knowledge of the defective condition of the yacht "Seminole" could not "be imputed to him since he had exercised due care and diligence in selecting competent men to man the vessel, and had imposed on them full duties as to inspection and maintenance of her" is in conflict with the decisions in the Second, Sixth and Ninth Circuits.

The Circuit Court of Appeals held that even if respondent Phipps were, in fact, the true owner of the "Seminole", he would be entitled to limitation of liability because "no actual privity to or knowledge of the defective condition obtaining upon the 'Semipole' was attributable to Phipps personally, and that none could be imputed to him since he had exercised due care and diligence in selecting competent men to man the vessel, and had imposed upon them full duties as to inspection and maintenance of her" (R. 3649).

We have shown in the petition, *supra*, pages 12 to 15, that this decision is in direct conflict with the decisions in the Second, Sixth and Ninth Circuits which hold that where the individual owner of a vessel has appointed an agent, or agents, to manage his vessel for him and has "imposed on them full duties as to inspection and maintenance", the agent or agents so appointed are the *alter ego* of the owner, and their negligence, knowledge and privity, actual or imputed, are attributable to the owner and preclude limitation of liability.*

* The pertinent sections of the limitation of liability statutes are printed as Appendix B to this brief.

In re New York Dock Co. (C. C. A. 2), 61 F. (2d) 777, 779;
The Silverpalm (C. C. A. 9), 94 F. (2d) 776, 780;
In re Lakes Transit Corporation, Ltd. and James Playfair (C. C. A. 6), 81 F. (2d) 441, 444.

The argument for the respondent Phipps below conceded that where the vessel is owned by a corporation, the knowledge and privity of a responsible agent of the corporation is attributable to the corporation. It was argued, however, that an individual owner could delegate all his responsibilities as owner, *i. e.*, "full duties as to inspection and maintenance of her", and thus free himself from any imputation of privity and knowledge even though his agents were guilty of gross neglect, thereby assuring himself of the right to limit his liability in all cases. This argument was accepted by the Circuit Court of Appeals and adopted as its ground of decision.

Neither authority nor reason establishes a preferred position for an individual owner with respect to the imputation of knowledge and privity when there has been a complete delegation by the owner to his agent of all the responsibilities for inspection and maintenance of his vessel. In the case of *The Silverpalm* (C. C. A. 9), 94 F. (2d) 776 at page 780, the Court said:

> "In proceedings for limitation the owner may not escape liability by giving the managerial functions to an employed person acting as its agent, *whether the person be corporate or otherwise. So far as concerns privity and knowledge, such an agent is its alter ego. Craig* v. *Continental Ins. Co.*, 141 U. S. 638, 648, 12 S. Ct. 97, 35 L. Ed. 886; *Eastern S. S. Corporation* v. *Great Lakes Dredge Co.* (C. C. A. 1) 256 F. 497, 502. *Sperry Flour Co.* v. *Coastwise S. S. Co.* (C. C. A. 9) 84 F. (2d) 785, 786."

The Circuit Court of Appeals for the Second Circuit in the case of *In re New York Dock Co.* (C. C. A. 2), 61 F. (2d) 777, 779, *supra*, applied this doctrine to an indi-

vidual (chartered) owner imputing to him the knowledge and privity of his superintendent who had been given charge of the inspection and rigging of his barge. Likewise the Circuit Court of Appeals for the Sixth Circuit in *In re Lakes Transit Corp., Ltd. and James Playfair* (C. C. A. 6), 81 F. (2d) 441, 444, imputed to Playfair the knowledge of his superintendent, Captain Burke.

Granting that a vessel owner, individual or corporate, may escape an imputation of knowledge or privity of a competent agent employed to make a particular inspection or to perform a limited function, such as preparing a vessel for a particular voyage, it is nevertheless entirely out of harmony with the spirit and purpose of the limitation laws to permit an owner, individual or corporate, to abdicate all of his functions and responsibilities as owner and delegate them to an agent without accepting responsibility for the acts of that agent.

The cases cited by the Circuit Court of Appeals in Note "2" of its opinion (R. 3649) do not support a contrary view.

In *Lord* v. *Goodall S. S. Co.* (C. C. D. Cal.), Fed. Cas. 8506, the owner was a corporation and the vessel was found in fact seaworthy. The case in this Court (102 U. S. 541) involved only the validity of the Limitation Act. In *The Annie Faxon** (C. C. A. 9), 75 Fed. 312, the owner was a corporation and it does not appear that the owner had delegated all his duties of management and inspection to the agent. If either of these decisions be regarded as in conflict with *The Silverpalm* (C. C. A. 9), 94 F. (2d) 776, they must be considered as overruled in the Ninth Circuit.

Van Eyken v. *Erie R. R. Co.* (E. D. N. Y.), 117 Fed. 712, a District Court decision, and *The Tommy* (C. C. A. 2),

* This and similar cases were criticized in the opinion in *In re Jacobson* (S. D. Tex.), 52 F. (2d) 179, 180, by Hutcheson, *C. J.*, of the Circuit Court of Appeals for the Fifth Circuit, who did not participate in the decision below.

151 Fed. 570, a decision in the Second Circuit, if considered to be in conflict with the decision in *In re New York Dock Co.* (C. C. A. 2), 61 F. (2d) 777, must be regarded as overruled in the Second Circuit.

In the *84 H* (C. C. A. 2), 296 Fed. 427, the District Court had held there was no negligence but that the petitioner "knew all about the method of conducting business at the 'dump'" (p. 432). The question was whether the District Court should have dismissed the petition or granted a decree of exoneration. The Circuit Court of Appeals held that "where there is no negligence and no fault, privity is a matter of no consequence" and directed the entry of a decree of exoneration (p. 432).

In the cases of *The Alola* (E. D. Va.), 228 Fed. 1006, and *The Oneida* (C. C. A. 2), 282 Fed. 238, there was no failure of inspection and maintenance and the vessel was held to be seaworthy and competently manned. The owner was held to be without privity and knowledge of the negligence of the master in navigating the vessel.

In the case of *Erie Lighter 108* (D. C. N. J.), 250 Fed. 490, the Court held that the vessel had been rebuilt by competent men shortly before the accident (p. 495) and there had been no neglect in respect to inspection from which privity or knowledge could be inferred (p. 496). The Court professed to follow the decisions in the Second Circuit (p. 497). The facts of that case are greatly different from those here, where, with the passage of time, the highly hazardous gasoline tanks of the "Seminole" became defective and leaky due to failure of maintenance and inspection resulting in the destruction of petitioners' vessels.

POINT III.

The decision of the District Court in this case that the character of the negligence shown by the record was such that respondent Phipps as an individual would not be precluded from limitation of liability (R. 3588) is in conflict with the decisions in the Second, Fourth and Ninth Circuits.

The character of the negligence found by the District Court, implicit in its finding that "with the passage of time some part of the machinery or equipment did leak" (R. 3587) and "the defective condition of the tanks made them leaky" (R. 3588), is failure of inspection and maintenance. The District Court described the character of this negligence as "the failure to do or perform a duty, or non-feasance" (R. 3587). Thus the decision of the District Court is placed on a different ground, that is "the character of negligence", than the decision of the Circuit Court of Appeals which was based on the complete delegation to competent agents of "full duties as to inspection and maintenance" (R. 3649). The District Court did not find that the agents were competent and, as a matter of fact, the record contains no evidence of the competence of the officers and directors of the corporation, and Riley to whom they entrusted "control and management" and the duty "to inspect her regularly" (R. 1454-7, 1472, 1480) was concededly both inexperienced and incompetent to inspect the vessel (R. 1595-6; see also R. 1637, 1640-1).

We have shown in the petition (*supra*, pp. 15-17) that the decisions in the other circuits hold that failure on the part of the owner, in his duty to inspect the vessel and to provide an adequate system of inspection by competent persons results in the imputed knowledge and privity of the owner to the defective condition of his vessel which requires the denial of a plea for limitation of liability.

The Loyal (C. C. A. 2), 204 Fed. 930, 933;
The Republic (C. C. A. 2), 61 Fed. 109;

In re P. Sanford Ross (C. C. A. 2), 204 Fed. 248;
Dexter-Carpenter Coal Co. v. *New York, O. & W. Ry. Co., et al.* (S. D. N. Y.), 50 F. (2d) 270;
The Miami (E. D. N. Y.), 43 F. (2d) 562;
Chesapeake Lighterage & Towing Co. v. *Baltimore Copper Smelting & Rolling Co.* (C. C. A. 4), 40 F. (2d) 394, 395; and see.
Parsons v. *Empire Transportation Co.* (C. C. A. 9), 111 Fed. 202;
Benedict on Admiralty, 6th Edition (1940), Vol. 3, under the heading—"When the Shipowner Is an Individual," pages 386-7.

The duty placed on the vessel owner of vigilance and inspection, and to provide an adequate system of competent inspection, particularly with respect to a vessel of so hazardous a type as the "Seminole", carrying quantities of highly volatile and dangerous fuel such as gasoline in tanks, which has been emphasized so strongly by the Circuit Courts of Appeal in the other circuits, is intended to guard against just such disasters as that which resulted from the fire and explosion on the "Seminole". Where the courts below have concurrently found that this explosion resulted from the leakage of gasoline fumes into the engineroom from tanks which had become leaky and defective "with the passage of time", we submit the purpose and spirit of the limitation laws are violated if the owner is granted limitation of liability because the negligence found is the "failure to do or perform a duty, or non-feasance" as opposed to "an act of positive negligence" (R. 3587).

CONCLUSION.

Because the decisions of the Courts below are in conflict with the decisions of this Court and of the Circuit Courts of Appeal for the Second, Fourth, Sixth and Ninth Circuits; because the decisions granting corporate insulation to the stockholder of an incorporated yacht, the corporation lacking the fundamentals of corporate independence, involves an important principle of wide application affecting the liabilities of yacht and vessel owners generally and encourages the avoidance of liability for gross neglect in the operation of such vessels through the use of the corporate form; and because the decisions below are on an important principle of maritime law of wide application relating to the limitation of liability of vessel owners and encourage the owners of yachts and other vessel property to avoid their liabilities resulting from gross neglect by complete delegation of their duties and responsibilities as such owners, we respectfully submit that a writ of certiorari should be granted in order that the questions herein may be definitely and finally decided.

Respectfully submitted,

T. CATESBY JONES,
LEONARD J. MATTESON,
Proctors for Petitioners.

Appendix A.

EXHIBIT 4D.

ANALYSIS OF OPERATION OF SEMINOLE BOAT COMPANY

PERIOD OCTOBER 11, 1928 THROUGH DECEMBER 31, 1935

On November 11, 1928 the records of account for Seminole Boat Company were set up with Journal Entry #1 recording the subscription payment and issuance of 10 shares of its capital stock as follows:

S. L. Mackey	4 shares
L. C. Chester	3 shares
H. Kennedy	3 shares

On November 20, 1928, an account was opened with the First National Bank, Miami, Florida depositing $100.00, being the proceeds from the sale of the above listed stock.

The Boulevard Mortgage Company made cash advances to Seminole Boat Company, also paid sundry expense items for its account. Both the cash advances and disbursements for sundry expenses were set up on Seminole Boat Company records as Accounts Payable to Boulevard Mortgage Company. From time to time the Messrs. J. S. and H. C. Phipps would reimburse Boulevard Mortgage Company for such items—one-half each. When such reimbursements were made the Seminole Boat Company would, by journal entry, transfer its liability to Boulevard Mortgage Company to the Messrs. J. S. and H. C. Phipps.

The cash advances by Boulevard Mortgage Company and other cash receipts were deposited in Seminole Boat Company's bank account with First National Bank, Miami. From this account were paid the principal operating expenses to June 2, 1931. On this date the bank account was closed and Boulevard Mortgage Company paid all operating expenses to December 31, 1933. Palm Beach Company then paid all operating expenses from this date on. The Messrs. J. S. and H. C. Phipps reimbursed Boulevard Mortgage Company and Palm Beach Company for such expenses to December 31, 1934. Their reimbursements were handled as stated in above paragraph. Mrs. Guest acquired the one-half interest of Mr. H. C. Phipps on March 23, 1935, Mrs. Guest assuming his one-half of the expenses for period January 1, 1935 through March 23, 1935. Mrs. Guest and Mr. J. S. Phipps reimbursed Palm Beach Company for expenses to March 23, 1935—one-half each.

With the foregoing in mind the following analysis is made:

YEAR 1928:

Cash Receipts

Subscription to Capital Stock	$ 100.00	
Cash advanced by Boulevard Mortgage Company	400.00	$ 500
Less:		
Expenses paid through bank account recording abstracts, etc.	45.31	
Painting	103.08	
Storage	75.00	223
Cash balance 12-31-28		$ 276
Other Expenses paid directly by Boulevard Mortgage Company:		
Organization Expense	98.76	
Painting	9.50	
Storage	168.30	
	276.56	
Expense paid through Bank Account	223.39	
TOTAL OPERATION EXPENSES YEAR 1928	$ 499.95	

YEAR 1929

Cash Receipts:

Advances by Boulevard Mortgage Co.	$ 9,850.00	
Proceeds from Charter	8,554.38	
Rebates, Accounts Receivable, etc.	2,004.51	
	$20,408.89	
Less Reimbursement to Boulevard Mortgage Co.	5,700.00	
	$14,708.89	
Less cash advanced to W. P. Baker outstanding 12-31-29	500.00	14,208
		$14,485

Less: Expenses paid through Bank Account:		
Truck & autos	18.80	
Charts	14.25	
Commission on Charters	150.00	
Conditioning	732.50	
Gas and oil	2,505.89	
Groceries & Furnishings	576.35	
Hardware supplies	570.87	
Installing Gas Gauge	3.40	
Insurance	1,613.35	
Laundry	146.04	
Plumbing	169.50	
Recording Abstracts, etc.	58.33	
Repairs & Maintenance	2,569.66	
Stationery & Printing	54.00	
Storage	446.41	
Sundry	66.59	
Tolls	73.20	
Uniforms	128.75	
Wages	4,520.85	14,418.74
Cash Balance 12-31-1929		$ 66.76
Other Expenses paid directly by Boulevard Mortgage Company:		
Commission on Charter	350.00	
Gas and Oil	8.38	
Groceries & Furnishings	357.91	
Salaries	300.00	
Storage	11.00	
Sundry	63.34	
Wages	1,022.85	
	2,113.48	
Expenses paid through Bank Account	14,418.74	
Depreciation on Yacht Year 1929	333.32	
Total Debits to Profit & Loss Year 1929	16,865.54	

Note: Adjustment of $14.29 made in Sundry a/c

Item of $150.00 commission on charter shown in expenses and charged to Income Account on ledger.

YEAR 1930

Cash Receipts:

Advances by Boulevard Mortgage Co.	$ 6,400.00	
Proceeds from Charter	4,284.00	$10,68
		$10,75

LESS: Expenses paid through Bank Account:

Charts	4.50	
Gas and Oil	101.55	
Groceries & Furnishings	613.17	
Insurance	1,640.00	
Laundry	32.38	
Repairs & Maintenance	1,233.46	
Storage	652.65	
Sundry	22.00	
Telephone & Telegraph	1.25	
Uniforms	118.99	
Wages	5,954.58	10,374
CASH BALANCE 12-31-1930		376

Disbursements from Petty Cash Fund Outstanding 12-31-29

Gas & Oil	34.72	
Groceries & Furnishings	6.30	
Repairs & Maintenance	262.00	
Storage	133.98	
Wages	63.00	500.00

Other expenses paid by Boulevard Mortgage Co.

Gas & Oil	12.23	
Laundry	123.65	
Repairs & Maintenance	1,164.77	
Storage	156.10	
Sundry	52.50	
Telephone & Telegrams	6.35	
Uniforms	1,074.35	
Wages	1,403.35	3,995.30
		4,495.30
Expenses paid through Bank Account		10,374.53
Depreciation on yacht year 1930		2,000.00
TOTAL EXPENSES YEAR 1930		$16,869.83

YEAR 1931

Cash Receipts:

Advances by Boulevard Mortgage Co.	None	
Proceeds from Charter	None	
		376.23
LESS: Expenses paid through Bank Account:		
Groceries & Furnishings (Ref.)	6.30	
Repairs & Maintenance	135.00	
Sundry	2.75	131.45
CASH BALANCE 6-2-1931		244.78

This balance transferred to Boulevard Mortgage Company—June 2, 1931 by Check #118.

Other Expenses paid by Boulevard Mortgage Company:

Gas and Oil	310.75
Groceries & Furnishings	74.20
Laundry	80.32
Plumbing	22.60
Repairs & Maintenance	2,069.92
Storage	1,316.30
Sundry	69.20
Taxes & Licenses	147.00
Telephone & Telegraph	.95
Wages	3,174.22
	7,265.46
Expenses paid through Bank Account	131.45
Depreciation on Yacht, Year 1931	2,000.00
TOTAL DEBITS TO PROFIT & LOSS, YEAR 1931	$ 9,396.91

YEAR 1932

From this period on Seminole Boat Company's operating expenses were paid by the Boulevard Mortgage Company and Palm Beach Company.

Expenses paid by Boulevard Mortgage Company:

Truck and Auto expenses	14.30
Gas & Oil	1.40
Groceries & Furnishings	793.72
Hardware Supplies	220.06
Insurance	268.51
Laundry	7.50
Repairs & Maintenance	396.68
Storage	1,507.78
Sundry	72.60
Taxes & Licenses	116.00
Telephone & Telegraph	3.50
Wages	632.57
	4,034.62
Depreciation on Yacht, Year 1932	2,000.00
TOTAL DEBITS TO PROFIT & LOSS, YEAR 1932	$ 6,034.62

YEAR 1933

Expenses paid by Boulevard Mortgage Company:

Hardware	37.41
Insurance	116.51
Plumbing	43.00
Repairs & Maintenance	696.53
Storage	744.18
Taxes & Licenses	145.55
Telephone & Telegraph	4.50
Wages	147.50
	1,702.16
Depreciation on Yacht, Year 1933	2,000.00
TOTAL DEBITS TO PROFIT & LOSS, YEAR 1933	$ 3,702.16

YEAR 1934

Expenses paid by Palm Beach Company:

Gas & Oil	269.55
Groceries & Furnishings	24.61
Hardware Supplies	87.05
Laundry	8.55
Plumbing	99.66
Repairs & Maintenance	621.04
Salaries	762.14
Storage	607.26
Sundry	177.66
Taxes & Licenses	121.86
Telephone & Telegraph	4.75
	$ 2,784.13
Depreciation on Yacht, Year 1934	2,000.00
TOTAL DEBITS TO PROFIT & LOSS YEAR 1934	$ 4,784.13

YEAR 1935

Expenses paid by Palm Beach Company:

Gas & Oil	110.90
Insurance	129.20
Repairs & Maintenance	623.36
Salaries & Wages	659.75
Medical Expense—Seminole Fire	2,378.43
Storage	367.88
Sundry	540.99
Taxes & Licenses	53.01
Expenses—re R. C. Abel	610.00
Groceries & Furnishings	29.84
	5,503.36
Loss of Boat Seminole by fire on June 24, 1935	9,166.68
TOTAL DEBITS TO PROFIT & LOSS YEAR 1935	$14,670.04

All disbursements by Boulevard Mortgage Company and Palm Beach Company have been reimbursed by Messrs. J. S. and H. C. Phipps excepting those disbursements by Palm Beach Company for period May 1, 1935 through December 31, 1935, totaling $400[illegible]. This is Accounts Payable to Palm Beach Company on Seminole Boat Company records.

CONTINUATION OF ANALYSIS OF SEMINOLE BOAT COMPANY

Period

January 1, 1936 through September 30, 1938

Year 1936

Expenses paid by Palm Beach Company:

Taxes	$ [illegible]
Medical Expenses—Seminole Fire	2,854.[illegible]
Repairs and Maintenance	64.[illegible]
Sundry	5,023.[illegible]
Total Debits to Profit & Loss Year 1936	$7,952.[illegible]

Note: The Prigg Cabin Boat was sold on May 5th, 1936, the proceeds of $950.00 was credited to Seminole Boat Company on Books of Palm Beach Company.

The net liability of Seminole Boat Company for year 1936 is $7,002.81.

Year 1937:

Expenses paid by Bessemer Properties, Incorporated:

Medical expenses—Seminole Fire	$ 988.[illegible]
Taxes	10.[illegible]
Sundry	10.[illegible]
Total Debits to Profit & Loss Year 1937	$1,008.[illegible]

Note: Palm Beach Company was consolidated on January 1st, 1937. The new company is Bessemer Properties, Incorporated.

Year 1938: (Part)

Expenses paid by Bessemer Properties, Incorporated:	
Medical expenses—Seminole Fire	$ 600.00
Taxes	15.00
TOTAL DEBITS FOR EXPENSES TO 9-30-38	$ 615.00

ANALYSIS OF BOULEVARD MORTGAGE COMPANY AND PALM BEACH COMPANY ACCOUNTS WITH SEMINOLE BOAT COMPANY FOR PERIOD OCTOBER 1928 THROUGH DECEMBER 31, 1936.

		Dr.	Cr.
Year 1928—Boulevard Mortgage Co.			
Cash Advances		$400.00	
Expenses Paid		276.56	$ 676.56
Year 1929—Boulevard Mortgage Co.:			
Cash Advances		9,850.00	
Cash a/c Receivable Sundry		2,004.51	
Expenses Paid		2,113.48	13,967.99
TOTAL FOR YEARS 1928-1929			$14,644.55
Boulevard Mortgage Company was reimbursed for years 1928 and 1929—the following accounts receiving credit:			
3-25-29	Cash a/c Seminole Boat Co.	1,200.00	
4-2-29	" " " "	3,500.00	
6-7-29	" " " "	1,000.00	
10-31-29	Mr. H. C. Phipps	2,479.37	
10-31-29	Mr. J. S. Phipps	2,479.37	
12-31-29	Mr. H. C. Phipps	489.12	
12-31-29	Mr. J. S. Phipps	3,496.69	14,644.55

		Dr.	
Year 1930—Boulevard Mortgage Co.			
Cash Advances	6,400.00		
Expenses Paid	3,995.30		$10,3
Boulevard Mortgage Company was reimbursed for year 1930—the following accounts receiving credit:			
4-30-30—Mr. J. S. Phipps	1,877.93		
4-30-30 Mr. H. C. Phipps	1,877.94		
6-30-30 Mr. J. S. Phipps	1,701.19		
6-30-30 Mr. H. C. Phipps	1,701.19		
12-31-30 Mr. J. S. Phipps	1,618.53		
12-31-30 Mr. H. C. Phipps	1,618.52	10,395.30	
Year 1931—Boulevard Mortgage Co.			
Cash Advances	None		
Expenses Paid			$ 7,2
Boulevard Mortgage Company was reimbursed in part for 1931—the following accounts receiving credit:			
6-2-31—Cash—Seminole Boat Co.	244.78		
6-30-31 Mr. J. S. Phipps	3,098.14		
6-30-31 Mr. H. C. Phipps	3,098.14		
12-31-31 Mr. J. S. Phipps	374.70		
12-31-31 Mr. H. C. Phipps	374.70		
	7,190.46		
Balance not reimbursed	75.00	7,265.46	

		Dr.	Cr.
Year 1932—Boulevard Mortgage Co.			
Balance Forward	$ 75.00		
Expenses Paid	4,034.62		$ 4,109.62
Boulevard Mortgage Company was reimbursed for 1932—the following accounts receiving credit:			
6-30-32—Mr. J. S. Phipps	896.49		
6-30-32 Mr. H. C. Phipps	896.49		
12-31-32 Mr. J. S. Phipps	1,158.32		
12-31-32 Mr. H. C. Phipps	1,158.32	4,109.62	
Year 1933—Boulevard Mortgage Co.			
Expenses Paid			$ 1,702.16
Boulevard Mortgage Company was reimbursed for 1933—the following accounts receiving credit:			
6-30-33—Mr. J. S. Phipps	478.78		
6-30-33 Mr. H. C. Phipps	478.78		
12-30-33 Mr. H. C. Phipps	372.30		
12-30-33 Mr. J. S. Phipps	372.30	1,702.16	
From this point on disbursements were made by Palm Beach Company for Seminole Boat Company.			
Year 1934—Palm Beach Company.			
Expenses Paid			$ 2,784.13
Palm Beach Company was reimbursed for 1934 in part the following accounts receiving credit:			
12-31-34—Mr. H. C. Phipps	1,022.38		
12-31-34 Mr. J. S. Phipps	1,022.38		
	2,044.76		
Balance not reimbursed	739.37	2,784.13	

		Dr.	Cr.
Year 1935—Palm Beach Company			
Balance Forward	739.37		
Expenses, etc., paid	6,453.36		$ 7,192
Palm Beach Company was reimbursed as follows during 1935 the following accounts receiving credit:			
2-20-35 Mr. H. C. Phipps	369.69		
2-20-35 Mr. J. S. Phipps	369.68		
6-22-35 Mr. J. S. Phipps	1,224.91		
6-22-35 Mrs. F. E. Guest	1,224.90		
	3,189.18		
Balance not reimbursed	4,003.55	7,192.73	

	Dr.	Cr.
AR 1936—Palm Beach Company		
Balance outstanding Jan. 1936 not reimbursed		$ 4,003.55

mmary of reimbursements by Mr. J. S. Phipps, Mr. H. C. Phipps and Mrs. F. E. Guest for disbursements made by Boulevard Mortgage Co. and Palm Beach Company for account Seminole Boat Company. Seminole Boat Company has now transferred its liability from Boulevard Mortgage Co. and Palm Beach Company to the Messrs. Phipps and Mrs. F. E. Guest according to the following:

	Mr. J. S. Phipps	Mr. H. C. Phipps	Mrs. F. E. Guest
October 31, 1929	$ 2,479.37	$ 2,479.37	$
December 31, 1929	3,496.69	489.12	
October 31, 1929 (adj.)	300.00	300.00	
October 31, 1929 (adj.)	1,920.13	1,920.13	
December 31, 1929 (adj.)	393.72	393.72	
October 31, 1929 (adj.)	1,110.07	1,110.07	
October 31, 1929	5,000.00	5,000.00	
April 30, 1930	1,877.93	1,877.94	
June 30, 1930	1,701.19	1,701.19	
December 31, 1930	1,618.53	1,618.52	
June 30, 1931	3,098.14	3,098.14	
December 31, 1931	374.70	374.70	
June 30, 1932	896.49	896.49	
December 31, 1932	1,158.32	1,158.32	
June 30, 1933	478.78	478.78	
December 30, 1933	372.30	372.30	
December 31, 1934	1,022.38	1,022.38	
February 20, 1935	369.68	369.69	
	12,440.72	12,440.72	
Mrs. F. E. Guest on 3/23/35 purchased Mr. H. C. Phipps' ½ interest		12,440.72	12,440.72
June 22, 1935	1,224.91		1,224.90
Balance December 31, 1935	$13,665.63	—	$13,665.62

* Increase in Capital stock

Appendix B.

Statutes with respect to limitation of liability of shipowners:

A. Statute as of June 24, 1935:

The liability of the owner of any vessel, for any embezzlement, loss, or destruction, by any person, of any property, goods, or merchandise, shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel, and her freight then pending. (R. S. 4283—U. S. C. title 46, sec. 183.)

Whenever any such embezzlement, loss, or destruction is suffered by several freighters or owners of goods, wares, merchandise, or any property whatever, on the same voyage, and the whole value of the vessel, and her freight for the voyage, is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the vessel, in proportion to their respective losses; and for that purpose the freighters and owners of the property, and the owner of the vessel, or any of them, may take the appropriate proceedings in any court, for the purpose of apportioning the sum for which the owner of the vessel may be liable among the parties entitled thereto. (R. S. 4284, Feb. 27, 1877—U. S. C. title 46, sec. 184.)

It shall be deemed a sufficient compliance on the part of such owner with the requirements of this Title [R. S. 4131-4305] relating to his liability for any embezzlement, loss, or destruction of any property, goods, or merchandise, if he shall transfer his interest in such vessel and freight for the benefit of such claimants to a trustee, to be appointed by any court of competent jurisdiction to act as such trustee for the

person who may prove to be legally entitled thereto; from and after which transfer all claims and proceedings against the owner shall cease. (R. S. 4285—U. S. C. title 46, sec. 185.)

The charterer of any vessel, in case he shall man, victual, and navigate such vessel at his own expense or by his own procurement shall be deemed the owner of such vessel within the meaning of the provisions of this Title [R. S. 4131-4305] relating to the limitation of the liability of the owners of vessels; and such vessel, when so chartered, shall be liable in the same manner as if navigated by the owner thereof. (R. S. 4286—U. S. C. title 46, sec. 186.)"

B. Statute as amended August 29, 1935.*

"(R. S. 4283-46 U. S. C. 183) The liability of the owner of any vessel, for any embezzlement, loss, or destruction, by any person, of any property, goods, or merchandise, shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel, and her freight then pending. PROVIDED, That the total liability of the owner or owners of any sea-going sailing, steam, or motor vessel, whether American or foreign, other than tugs, barges, fishing vessels and their tenders, for the entire loss of life or personal injuries caused without the fault or privity of such owner or owners to any person, shall be in an amount not less than an amount equal to $60 for each ton of the tonnage of such vessel or vessels, or the amount or value of the interest of such owner in such vessel and her freight then pending, if the latter be the greater amount. The tonnage of a steam or motor vessel shall

* Section R. S. 4283A relating to stipulations limiting time for filing claims and commencing suits omitted.

be her gross tonnage without deduction on account of engine room, and the tonnage of a sailing vessel shall be her registered tonnage, provided that there shall not be included in such tonnage any space occupied by seamen or apprentices and appropriated to their use. The owner of every sea-going vessel or share therein shall be liable in respect of every such loss of life or personal injury arising on distinct occasions to the same extent as if no other loss or injury had arisen. (Aug. 29, 1935, sec. 1.)

(R. S. 4283-46 U. S. C. 183a.) In respect of loss of life or bodily injury, the actual privity or knowledge of the master of a sea-going vessel (other than tugs, barges, fishing vessels and their tenders), or of the superintendent or managing agent of the owner thereof, at or prior to the commencement of each voyage, shall be deemed conclusively the privity or knowledge of the owner of such vessel. (Aug. 29, 1935.)

* * *

(R. S. 4284-46 U. S. C. 184.) Whenever any such embezzlement, loss, or destruction is suffered by several freighters or owners of goods, wares, merchandise, or any property whatever, on the same voyage, and the whole value of the vessel, and her freight for the voyage, is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the vessel, in proportion to their respective losses; and for that purpose the freighters and owners of the property, and the owner of the vessel, or any of them, may take the appropriate proceedings in any court, for the purpose of apportioning the sum for which the owner of the vessel may be liable among the parties entitled thereto. (Feb. 27, 1877.)

* * *

(R. S. 4286-46 U. S. C. 186.) The charterer of any vessel, in case he shall man, victual, and navigate such vessel at his own expense or by his own procurement, shall be deemed the owner of such vessel within

the meaning of the provisions of this Title [R. S. 4131-4305] relating to the limitation of the liability of the owners of vessels; and such vessel, when so chartered, shall be liable in the same manner as if navigated by the owner thereof."

C. Statute as amended June 5, 1936.*

"R. S. 4283 (46 U. S. C. 183.) (a) The liability of the owner of any vessel, whether American or foreign for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

(b) In the case of any seagoing vessel, if the amount of the owner's liability as limited under subsection (a) is insufficient to pay all losses in full, and the portion of such amount applicable to the payment of losses in respect of loss of life or bodily injury is less than $60 per ton of such vessel's tonnage, such portion shall be increased to an amount equal to $60 per ton, to be available only for the payment of losses in respect of loss of life or bodily injury. If such portion so increased is insufficient to pay such losses in full, they shall be paid therefrom in proportion to their respective amounts.

(c) For the purposes of this section the tonnage of a seagoing steam or motor vessel shall be her gross tonnage without deduction on account of engine room, and the tonnage of a seagoing sailing vessel shall be

* Section R. S. 4283A relating to stipulations limiting time for filing claims and commencing suit, and Section R. S. 4283B relating to stipulations limiting liability for negligence omitted.

her registered tonnage: PROVIDED, That there shall not be included in such tonnage any space occupied by seamen or apprentices and appropriated to their use.

(d) The owner of any such seagoing vessel shall be liable in respect of loss of life or bodily injury arising on distinct occasions to the same extent as if no other loss of life or bodily injury had arisen.

(e) In respect of loss of life, or bodily injury, the privity or knowledge of the master of a seagoing vessel or of the superintendent or managing agent of the owner thereof, at or prior to the commencement of each voyage, shall be deemed conclusively the privity or knowledge of the owner of such vessel.

(f) As used in subsections (b), (c), (d), and (e) of this section and in section 4283 A [see p. 303], the term 'seagoing vessel' shall not include pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels or their tenders, self-propelled lighters, nondescript self-propelled vessels, canal boats, scows, car floats, barges, lighters, or nondescript non-self propelled vessels, even though the same may be seagoing vessels within the meaning of such term as used in section 4289 of this chapter, as amended. (Aug. 29, 1935; sec. 1; June 5, 1936, sec. 1.)

* * *

APPORTIONMENT OF COMPENSATION.

R. S. 4284. (46 U. S. C. 184.) Whenever any such embezzlement, loss, or destruction is suffered by several freighters or owners of goods, wares, merchandise, or any property whatever, on the same voyage, and the whole value of the vessel, and her freight for the voyage, is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the vessel, in proportion to their respective losses; and for that purpose the freighters and owners of the property, and the owner of the vessel,

or any of them, may take the appropriate proceedings in any court, for the purpose of apportioning the sum for which the owner of the vessel may be liable among the parties entitled thereto. (Feb. 27, 1877.)

TRANSFER OF INTEREST OF OWNER TO TRUSTEE.

R. S. 4285 (46 U. S. C. 185). The vessel owner, within six months after a claimant shall have given to or filed with such owner written notice of claim, may petition a district court of the United States of competent jurisdiction for limitation of liability within the provisions of this chapter, as amended, and the owner (a) shall deposit with the court, for the benefit of claimants, a sum equal to the amount, or value of the interest of such owner in the vessel and freight, or approved security therefor, and in addition such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 4283, as amended, or (b) at his option shall transfer, for the benefit of claimants, to a trustee to be appointed by the court his interest in the vessel and freight, together with such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 4283, as amended. Upon compliance with the requirements of this section all claims and proceedings against the owner with respect to the matter in question shall cease. (June 5, 1936, sec. 3.)

CHARTERER MAY BE DEEMED OWNER.

R. S. 4286 (46 U. S. C. 186). The charterer of any vessel, in case he shall man, victual, and navigate such vessel at his own expense or by his own procurement, shall be deemed the owner of such vessel within the meaning of the provisions of this Title [R. S. 4131-4305] relating to the limitation of the liability of the owners of vessels; and such vessel, when so chartered, shall be liable in the same manner as if navigated by the owner thereof."

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T. CATESBY JONES,
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As is not infrequently the case, counsel for the respondent seeking to avoid review by this court of the decisions below asserts in the Brief for Respondent that the questions presented by the petition are of fact only. It is significant that in their statement of the facts and of the findings of the District Court, respondent's counsel has considered it necessary to make two assertions, which are at variance with the record.

At page 5 of the Brief for Respondent Phipps, it is suggested that the cause of petitioners' losses was the negligence of one Abel. It is noteworthy that none of the references in the brief in support of this suggestion is from the finding of either of the courts below. Indeed, the District Court found the exact contrary,—that negligence of Abel was not the proximate cause of the loss (R. 3587).

Similarly, at page 6 of the Brief for Respondent Phipps it is asserted that the District Court "made no findings as to the cause of the fire * * *." This assertion is

based solely on the fact that the findings made by the District Court as to the cause of the fire do not appear in separately numbered paragraphs in the document filed by the District Court on June 5th, 1941 entitled: "FINDINGS OF FACT AND CONCLUSIONS OF LAW" (R. 3582), but do appear in the paragraphs following the subtitle "Discussion" and preceding the heading "Conclusions of Law". Regardless of formality of arrangement, we submit that the findings by the District Court in these paragraphs are, in fact, the findings of the District Court of the ultimate facts of the case and were so intended. The findings in the preceding numbered paragraphs are not findings of the ultimate facts but merely summaries of evidence. In fact, the words "I find" do not appear in the numbered paragraphs but do precede the subsequent findings on which we rely. They are not to be disregarded as findings because of "inartificial" arrangement. *Nashville Interurban Ry. v. Barnum*, 212 Fed. 634, 639.

In the recent case of *Commercial Molasses Corp. v. New York Tank Barge Corp.*, both this Court and the Circuit Court of Appeals treated a statement by the District Court in its Conclusion of Law No. 2 to the effect that on the evidence "the cause of the accident has been left in doubt" as, nevertheless, a finding of fact. *Commercial Molasses Corp. v. New York Tank Barge Corp.* (C. C. A. 2), 114 F. (2d) 248, 250; 314 U. S. 104, 114.

At R. 3587 the District Court said:

> "The presence of gasoline fumes in the engine room, *I find* was the proximate cause of the damage done to the vessels of libelants."*

Again, in the following paragraph, the District Court said:

> "But with the passage of time some part of the machinery or equipment did leak and the great possibility of damage attendant upon the use of gaso-

* Italics in quotations ours throughout this brief.

line, brings into play the principle that negligence may be based upon circumstantial evidence alone. The respondent argues that there must have been some third person agency intervening which brought about the means whereby gasoline escaped with attendant fumes. There is no evidence of this, and we get into the realm of conjecture. Just when the defective condition of the tanks made them leaky is in doubt. Expert testimony on this is an unsatisfactory character of evidence. *I am satisfied, and find*, that there were gasoline fumes present in the engine room, and that their ignition into combustion and fire caused the damage" (R. 3587-8).

We submit that these are findings by the District Court as to the cause of the fire; that the District Court did find that the presence of gasoline fumes in the engine room "was the proximate cause of the damage done to the vessels of libellants" (R. 3587), and that these fumes resulted because "with the passage of time some part of the machinery or equipment did leak" (R. 3587); that prior to the fire "the defective condition of the tanks made them leaky" (R. 3588) and that the presence of the gasoline fumes in the engineroom and "their ignition into combustion and fire caused the damage" (R. 3588).

We submit further that these findings cannot be disregarded as such for the reasons stated in the brief of the respondent Phipps.

Not only did the District Court make these findings with respect to the cause of the fire; but the District Court further found that the existence of these conditions was the result of negligence of Seminole Boat Company, Phipps' puppet corporation. At R. 3588, the District Court found "For this the Seminole Boat Company was liable". On the same page, a little farther on, because of its erroneous view of the law as to the liability of the respondent Phipps for the negligence of his creature corporation, the Court held that Phipps was not chargeable with that negligence "Firstly, because the negligence was that of the Seminole Boat Company and not of Phipps;".

It was similarly argued in the Circuit Court of Appeals that the findings of the District Court to which we have referred were not proper findings. The Circuit Court of Appeals not only did not accept this argument but itself adopted the findings of fact made by the District Court (R. 3647-8).

We have pointed out in our petition and brief that the District Court made its findings and reached its conclusion that the respondent Phipps was not liable for the negligence of the corporation on the sole ground that there was "no fraud or other improper conduct or purpose in the creation or continued existence of the corporation" (R. 3589) and because the organization of the corporation was "free from any fraud or ulterior motive in the inception of its chartering and creation" or other elements "incident to the presence of bad faith" (R. 3587; Petition, pp. 6 and 7), and that because of this erroneous view of the law neither of the courts below made any findings as to control and domination of the corporation by the respondent Phipps (Brief for Petitioners, pp. 27-8).

Nevertheless, it is asserted in the brief for the respondent Phipps that the real question presented is—"Did respondent in fact so dominate the corporate owner of the 'Seminole' that the corporate entity had been abandoned and should be disregarded?" (Respondent's Brief, p. 10) and it is asserted "This presents only a question of fact which both Courts below found favorably to respondent" (p. 10).

On the following page, it is asserted the Courts below concurrently found these facts against petitioners. In support of this assertion, it is stated that "Petitioners' contention as to domination was squarely presented below—see the excerpt from our main brief in the Circuit Court of Appeals printed *infra* as Appendix A" (Respondent's Brief, p. 17). Obviously the question as to what was found by the Courts below is not to be determined by consideration of the arguments or briefs presented but by examination of the decisions themselves.

The statement that the Courts below found against petitioners on the issue of domination cannot be justified. A careful scrutiny of the findings of both Courts will show that no finding was made by either Court on the question of the domination of the corporation or of corporate independence.

In the absence of any findings by either the District Court or the Circuit Court of Appeals on the questions of domination or corporate independence, we have summarized the facts in connection with the corporate ownership of the "Seminole" at pages 2 to 5 of the petition, supplementing the findings of the District Court only by statements of undisputed facts taken from respondent's own evidence and largely taken from respondent's own summary of those facts, Respondent's Exhibit 4D, printed as Appendix A to the Petition and Brief for Petitioners.

These supplementary statements are not materially disputed in the respondent's brief. They are discussed at pages 11 to 14 of respondent's brief, where they are merely characterized as "assertions" and "complaints" and an attempt is made to minimize their significance. Taken together, the conceded facts, which we have recited from the respondent's own evidence, clearly establish, we submit, complete lack of all essentials of corporate independence in Seminole Boat Company, and for the reasons, and under the authorities, cited in the petition and brief, establish the liability of the respondent Phipps for the negligence of the corporation.

In the respondent's brief, an attempt is made by brief and inadequate summary to minimize or distinguish the authorities cited in the petition and brief relative to the liability of the corporate parent, individual or corporate, for the negligence of a creature corporation. The decisions which we have cited speak for themselves and have been discussed in the brief and petition. We shall not burden the court with further discussion of these authorities.

We have shown in our petition and brief that although each of the Courts below expressed the opinion that the respondent Phipps, if liable, would be entitled to limitation of liability, each based this expression on a ground in conflict with the decisions in the other circuits. The grounds for the expression of opinion by the two courts were, however, different.

The Circuit Court of Appeals based its expression of this opinion on the proposition that

> "no actual privity to or knowledge of the defective condition obtaining on the 'Seminole' was attributable to Phipps personally, and that none could be imputed to him since he had exercised due care and diligence in selecting competent men to man the vessel, and *had imposed upon them full duties as to inspection and maintenance* of her" (R. 3649).

The Circuit Court of Appeals in this statement adopts the view that complete delegation of an individual owner's responsibilities and duties to a competent* person, or persons, assures limitation of liability irrespective of the negligence, knowledge or privity of those persons.

We have shown in the Brief for Petitioners (pp. 28-30) that this view is in direct conflict with the decisions in the Second, Sixth and Ninth Circuits, which hold that where an individual owner completely delegates his duties and responsibilities for the inspection and maintenance of his vessel to another, that other is the owner's *alter ego*, and the privity and knowledge of that other is the privity and knowledge of the owner.

> *In re New York Dock Co.* (C. C. A. 2), 61 F. (2d) 777, 779;
> *The Silverpalm* (C. C. A. 9), 94 F. (2d) 776, 780;
> *In re Lakes Transit Corp. and James Playfair* (C. C. A. 6), 81 F. (2d) 441, 444.

* There is in fact no evidence in the record to support a finding that the persons referred to, *i. e.*, the officers and directors of the corporation, were competent.

Counsel for respondent Phipps supports the view expressed by the Circuit Court of Appeals and asserts that there is in this respect a difference between the position of a corporate and an individual owner (Respondent's Brief, p. 19). The cases do not, in fact, justify this contention and the decision of the Circuit Court of Appeals for the Second Circuit in *In re New York Dock Co.* (C. C. A. 2), 61 F. (2d) 777, is directly to the contrary. Respondent's counsel naively asserts that in that case "the court overlooked" the fact that the owner was an individual, an assumption which can hardly be justified.

As pointed out by Hutcheson, *C. J.*, in the case of *In re Jacobson* (S. D. Tex.), 52 F. (2d) 178, 180, there is no logical justification for the contention of respondent's counsel. Judge Hutcheson said:

> "It is my opinion that those decisions are illogical which hold that, where an owner delegates the job of furnishing a seaworthy vessel to another, he may have limitation but that, where he tried to make it seaworthy himself, he may not have."

The late Judge Hough in characteristicly vigorous language dealt with a similar situation in the case of *In re Phoenix Sand & Gravel Co.* (S. D. N. Y.), reported 1940 A. M. C. 508, 509, when he said:

> "If lack of actual knowledge were enough, imbecility, real or assumed, on the part of the owners, would be at a premium."

Although this was a case of corporate ownership, it is clear that Judge Hough had in mind individual as well as corporate owners, for he followed this statement by saying:

> "Such assumption of ignorance would be particularly easy on the part of corporate owners."

Respondent's counsel asserts that the acceptance of a position contrary to his contention, "Would destroy the limitation statutes so far as individual owners are con-

cerned as fully as if Congress repealed them". There is no justification for this statement. There is justification for holding the individual owner to at least as high a degree of personal responsibility as a corporate owner.

It can hardly be contended that the agents to whom the respondent Phipps delegated his responsibilities as owner, *i. e.*, the officers and directors of his creature corporation, were free from negligence or privity and knowledge, in view of the fact that for a period of years prior to the disaster they had redelegated "control and management" as well as the duty of regular inspection to Riley, who was concededly inexperienced and incompetent to inspect (R. 1454-7, 1472, 1480, 1595-6, 1637, 1640-1).

The ground stated by the District Court for the expression of its opinion that the respondent Phipps, if liable, would be entitled to limitation of liability is set forth in the following quotation from the opinion:

> "The character of negligence shown by this record was such that Phipps, as an individual, would not be precluded from asserting as a limitation of liability under the statute" (R. 3588).

The "character of negligence" which the District Court had in mind is not disclosed in this paragraph of the opinion but is characterized on the preceding page as "the failure to do or perform a duty, or non-feasance" (R. 3587). While this statement was made in connection with the District Court's discussion of "corporate insulation", in the absence of any other or different characterization of the negligence in the subsequent passage, it can only be inferred that it was the same type of negligence to which the Court referred in connection with limitation of liability. Otherwise the expression of the District Court is unexplained, and therefore meaningless.

We have shown in our petition and brief that the expression of opinion by the District Court that the character of negligence shown by the record as specified by the District Court, *i. e.*, the failure to do or perform a duty,

or non-feasance was not sufficient to preclude the respondent Phipps as an individual from limitation of liability under the statute, is in conflict with the decisions in the Second, Fourth and Ninth Circuits (Petition, pp. 15 to 17, 28; Petitioners' Brief, pp. 32-33). The decisions in those circuits hold that non-feasance consisting of the failure on the part of the owner in his duty to inspect the vessel, and to provide an adequate system of inspection by competent persons, results in the imputed knowledge and privity of the owner to the defective condition of his vessel, which requires the denial of a plea for limitation of liability. In the present case, it is the respondent's own evidence that the only system of inspection which had been provided for the "Seminole" for a period of years before the disaster consisted of the delegation by the officers and directors of the corporation, to whom respondent Phipps had entrusted the management of his vessel, of control and management and the duty of regular inspection to Riley, who was concededly inexperienced, and incompetent to inspect the vessel (R. 1454-7, 1472, 1480, 1595-6, 1637, 1640-1). The burden of proof was, of course, on the respondent Phipps to establish every element necessary to warrant a finding of the absence of privity and knowledge, including the fulfillment of his duty to provide both competent management and a regular and adequate system of inspection by competent persons (see summary of authorities, *The Silverpalm*, 94 F. (2d) 776, 777).

The suggestion that the innocent libellants, whose vessels have been destroyed, cannot complain of the lack of adequate inspections or of any system of inspection by competent persons because "an inspection was in progress at the time their loss occurred" (Respondent's Brief, p. 23) is specious indeed. Not only did their loss result from failure of inspection and failure to provide an adequate system of inspection by competent persons over a long period of time, but Abel, who is characterized as "an experienced boat captain", was not the captain of the "Seminole", and had had no previous connection with her.

He had been captain (by courtesy only) of much smaller vessels. There is no evidence other than the assertion of counsel that he was a competent or proper person to inspect the "Seminole". Even if the assertion in respondent's brief that "a system of inspection by the master has been held to be enough" (Respondent's Brief, p. 23) were accurate, which we question, Abel would not be within such decision since he was not master of the vessel.

The inspection of the "Seminole" in March, 1935, by a marine surveyor referred to in Respondent's Brief, page 23, was wholly inadequate, in particular, because he did not, and could not, under the conditions, examine the gasoline tanks which the District Court held became defective and leaky (R. 2215, 2248-9). He did not and could not under the conditions make any general examination of the vessel (R. 2231). It was not a thorough examination or a condition survey (R. 2224-5, R. 2228-9, R. 2236-8; R. 2246). He estimated from his examination at that time that it would have cost the owner about $2,500 to bring the "Seminole" to A-1 condition, which a condition survey would have required (R. 2238).

We submit, therefore, that the petition should be granted, and a writ of certiorari issued, and that this Court should review the decision of the Circuit Court of Appeals for the Fifth Circuit in this case so that the decisions and the law in admiralty cases in the various circuits may be reconciled on the important questions involved in this case as to the liability of an individual, who creates a corporation without corporate independence for the operation of his vessel, and who seeks limitation of liability by attempting to divest himself of his responsibilities as a vessel owner by delegation of those responsibilities to subservient employees through the use of the corporate device.

Respectfully submitted,

T. CATESBY JONES,
LEONARD J. MATTESON,
Proctors for Petitioners.

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No. 246.

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Respondents.

BRIEF FOR PETITIONERS.

T. CATESBY JONES,
LEONARD J. MATTESON,
Counsel for Petitioners.

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Argument:

I—The holdings of the courts below that respondent Phipps as a shareholder in the Seminole Boat Company is not liable to petitioners because it was not shown that there was "fraud or other improper conduct or purpose in the creation or continued existence of the corporation" or that "the corporation was an artifice and a sham designed to execute illegitimate purposes" are erroneous. The rule in this Court, in other circuits, and in the State of Florida, is that when a corporation is not supplied with funds necessary for corporate independence; when officers of the corporation are subject to control and domination by the stockholders and have no true independence of action, receive no compensation for their services, and have no interest in the corporation, and are dependent upon approval of stockholders in cases where substantial repairs are needed; when the corporation is without credit of its own and must rely entirely upon

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the credit of its stockholders; and when the stockholders retain the use of, and do use, the corporate property as their own, the stockholders who so act are in fact principals and liable for the negligent acts of the corporation and its agents..... 15

II—Both courts below concurrently found that the losses sued for were caused by the negligence of Seminole Boat Company and that negligence consisted in permitting gasoline tanks to become defective and leaky "through the passage of time". Such a condition could not have existed if there had been proper inspection. Since, as we have shown, this negligence of the Seminole Boat Company was in fact the negligence of respondent Phipps, respondent Phipps is not entitled to limit liability. If the tanks had been examined the defective condition of the tanks would no doubt have been discovered. Knowledge of what could have been discovered, if a proper inspection had been made, is imputed to Phipps. The decision of the District Court that the character of the negligence, *i. e.*, "the failure to do or perform a duty, or non-feasance", did not constitute "privity and knowledge" and did not preclude Phipps "from asserting * * * limitation of liability under the statute", U. S. C. Title 46, §183, is clearly erroneous and is in conflict with the decisions of other circuits 30

III—The decision of the Circuit Court of Appeals that the respondent Phipps, if liable, is entitled to the protection of the limitation of liability statute, on the ground that privity or knowledge of the defective condition of the yacht "Seminole" could not "be imputed to him since

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he had exercised due care and diligence in selecting competent men to man the vessel, and had imposed on them full duties as to inspection and maintenance of her" is erroneous and is in conflict with the decisions in the Second, Sixth and Ninth Circuits. When the owner of the "Seminole" delegated "full duties as to inspection and maintenance" to these men, they became the owner's *alter ego*, and their knowledge and privity became the knowledge and privity of the owner 42

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 246.

CHARLES CORYELL, *et al.*,

Petitioners,

—against—

JOHN S. PHIPPS and GEORGE J. PILKINGTON,

Respondents.

BRIEF FOR PETITIONERS.

Opinions Below.

The findings of fact, and conclusions of law of the District Court are officially reported in 39 F. Supp. 142, and are printed in the record (R. 3582). The opinion of the Circuit Court of Appeals, filed June 9, 1942, is officially reported in 128 F. (2d) 702, and is printed in this record (R. 3645).

Jurisdiction of this Court.

The suit is in admiralty. The losses and damages were sustained by water borne craft afloat upon navigable waters. The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended by the Act of February 13, 1925; 43 Stat. 938, 28 U. S. C. A. Section 347.

Statement of the Case.

Petitioners, Charles Coryell and forty-four other boat owners, instituted a suit in Admiralty in the United

States District Court for the Southern District of Florida against the respondents Phipps and George J. Pilkington* to recover damages for the destruction of some forty-five vessels owned by petitioners, as a result of a fire which occurred on June 24, 1935, while the vessels were afloat at Pilkington's covered storage basin, Fort Lauderdale, Florida. The fire was caused by an explosion of gasoline fumes in the engineroom of the yacht "Seminole", then registered in the name of Seminole Boat Company. Respondent Phipps alleged that there was no negligence, but that even if there had been negligence, such negligence was that of the Seminole Boat Company and was not his negligence, and that, even if he were negligent, he was entitled to the benefits of the Limitation of Liability Statute. For the text of this Statute, see Appendix A.

Both Courts below concurrently found that the gasoline fumes had escaped into the engineroom of the "Seminole" because of the leaky condition of the "Seminole's" gasoline tanks and installation, which became defective with the "passage of time" (R. 3587-8, 39 F. Supp. 142 at p. 144; R. 3648, 128 F. (2d) 702, at 704). Both Courts then held that the Seminole Boat Company was liable for the damage sustained by your petitioners because of the negligence thus found, but that Phipps was not liable (R. 3588, 39 F. Supp. 145; R. 3648, 128 F. (2d) 704) because the negligence was that of the Seminole Boat Company, and not that of Phipps, who was a mere stockholder in that company. Thus the issue of negligence is definitely determined by the findings of both Courts below that the damage to petitioners' vessels was due to a defective condition of the yacht "Seminole". Those findings are in the following language:

* The claim against Pilkington, operator of the storage basin, was not pressed in the Circuit Court of Appeals and is not pressed here.

The District Court:

> "The presence of gasoline fumes in the engine room, I find was the proximate cause of the damage done to the vessels of libellants."
>
> * * * *
>
> "The Seminole Boat Company was responsible for the proximate cause. It was not negligence to have converted a steam yacht into a gasoline propelled vessel, and from the evidence it is clear there was no negligence in the original installation of the tanks which were used on the 'Seminole' for gasoline storage. *But with the passage of time some part of the machinery or equipment did leak* and the great possibility of damage attendant upon the use of gasoline, brings into play the principle that negligence may be based upon circumstantial evidence alone. The respondent argues that there must have been some third person agency intervening which brought about the means whereby gasoline escaped with attendant fumes. There is no evidence of this, and we get into the realm of conjecture. *Just when the defective condition of the tanks made them leaky is in doubt.* Expert testimony on this is an unsatisfactory character of evidence. *I am satisfied, and find, that there were gasoline fumes present in the engine room, and that their ignition into combustion and fire caused the damage. For this the Seminole Boat Company was liable.* Whether the Seminole Boat Company could limit liability is not necessary to decide. That is not in the case" (R. 3587-88, 39 F. Supp. at p. 144).*

The Circuit Court of Appeals concurred in these findings, saying:

> "The basic dispute turns upon the ultimate facts, for when they have been ascertained the principles of law applicable thereto are well settled. This being an appeal in admiralty, the findings of fact made by

* Italics in quotations ours throughout this brief.

the court below are not binding upon us, but we think the evidence preponderates in favor of the findings made in each material instance. Under the evidence, the case presents itself in this aspect: Appellants' vessels sustained damages by reason of the negligence of the Seminole Boat Company" (R. 3648, 128 F. (2d) 704).

Later in the opinion while discussing the issue of limitation of liability, the Court refers to "the defective condition obtaining upon the 'Seminole'" (R. 3649, 128 F. (2d) 704).

The defense based upon the issue of negligence is no longer open to respondent Phipps in this Court, *Just* v. *Chambers*, 312 U. S. 383, 385. So also since respondent Phipps has not presented any questions for determination to this Court, he may not question the correctness of any determination not raised by the petitioners. *The Mahrdal Baxter, Jr.*, 277 U. S. 323. The issues before this court are: was the corporate setup of the Seminole Boat Company such that Phipps should have been held liable for the negligence found and, if so, was Phipps entitled to limit his liability to the value of the damaged yacht "Seminole"?

Because the Seminole Boat Company was an empty shell and the yacht "Seminole" was a complete wreck, the decision of the lower courts meant that the petitioners were without redress. Although at the time of the loss Mr. John S. Phipps and his sister, Mrs. Guest, were both shareholders of the Seminole Boat Company, suit was brought against Mr. John S. Phipps alone.*

* In admiralty each tort feasor is liable for full damages *The Atlas*, 93 U. S. 302, and the *Virginia Ehrman*, 97 U. S. 309, 317. When by negligence the vessel sets fire "to one adjoining" or causes a collision, all the part owners are answerable *in solido* (*Parsons on Shipping & Admiralty*, Vol. I, 106. *Parsons on Maritime Law*, 94). See also: 58 Corpus Juris, Title Shipping, p. 303, Par. 424; *Scull* v. *Raymond*, 18

[Footnote continued on following page]

Facts.

The yacht "Seminole", prior to February 16, 1929, was registered at the Custom House at Miami as being solely owned by the respondent John S. Phipps (Exhs. 30 and 31, Certificates of License offered, R. 249).

The District Court found, that during February 1915, respondent Phipps purchased a half interest in the yacht "Seminole", then a steam yacht, from his brother, H. C. Phipps. During 1922, her steam plant was removed and gasoline engines and their necessary appurtenances were installed (Fdg. 2, R. 3582). At that time, four cylindrical tanks, to be used for carrying gasoline to drive the yacht's engines, were placed in a compartment which had formerly been used as a coal bunker (R. 376, 572-3). The tanks completely filled the coal bunker, and it was impossible to inspect them properly without removing the bulkheads of the compartment (R. 135-6, 142-3, 171-2, 383, 397, 573-4, 840-42, 974-5, 2231, 2248-9). In late 1928 or early 1929, the two brothers each sold their one-half interest in the "Seminole" to Seminole Boat Company, a Delaware corporation, which had been formed by them for the purpose of taking title to the "Seminole" and operating her under charter for hire. Each of them received one-half of the stock of the company. The "Seminole" was, in fact, chartered on several occasions in 1929 and 1930 but no charterer was found for her after 1930 or for more than five years preceding the fire (Fdg. 3, R. 3583).

The officers and directors of the corporation were Paul

[Footnote continued from preceding page.]

Fed. 547. It follows that a determination of these issues in favor of petitioners will permit a full recovery by them of their damages from the respondent Phipps, leaving him to seek such contribution from his sister as he may be advised. The interest of Mrs. Guest in the "Seminole" and in the corporation did not appear, and were unknown to libellants when suit was brought, or until established by respondent's testimony at the trial.

Scott, President, R. C. Alley, Vice-President and Roy H. Hawkins, Secretary-Treasurer. These men, as officers of the corporation, assisted by James F. Riley, advised by certain boat captains, operated, controlled, maintained and managed the vessel from the time of her purchase by the corporation down to and including the time of the fire (Fdg. 4, R. 3583).

In March 1935, when an opportunity to sell the vessel arose, H. C. Phipps wished to sell but respondent Phipps did not. Mrs. Amy Guest, a sister of H. C. and John S. Phipps, thereupon purchased the interest of H. C. Phipps. No other change in the operation, control, maintenance or management of the vessel occurred prior to the fire (Fdg. 5, R. 3584).

Scott, Alley and Hawkins were selected by respondent Phipps and his brother to be officers and directors of the corporation Seminole Boat Company. They, as well as Riley, were so-called "family representatives" of the Phippses (R. 1911, 1944, 1956) and were employees of certain other corporations in which the Phipps family were the shareholders and principals (R. 1355, 1470, 1478-81, 1593, 1590-1). As such, they were subject to the orders of the respondent Phipps and his brother, and subject to their call, as well as that of other members of the Phipps family, to attend to their personal business matters (R. 1451-2, 1477, 1485-6, 1582). They were not stockholders and had no interest in the Seminole Boat Company (R. 1363), nor did they receive any compensation from Seminole Boat Company (R. 1582-3). Their salaries were paid by the general paymaster of the Phipps' interests (R. 1353-4, 1486) and no part of such salaries were charged to Seminole Boat Company (R. 1354-5, 1486, 1582-3). Their services to Seminole Boat Company were gratuitous and undertaken for the accommodation of the Phippses (R. 1395).

The corporation was not furnished with capital funds

necessary for an independent corporate existence. The only cash paid into its treasury upon organization was $100, a nominal payment of $50 from each of the stockholders. Its bank account was closed after June 2, 1931 because it was so inactive (R. 1472, 1477). The bills of the corporation for expenses of the vessel were paid by other Phipps corporations* and charged on their books to Seminole Boat Company (R. 1281, 1324-5) until repaid periodically by respondent Phipps and his brother (later his sister) directly to the corporations which had advanced the money. The corporate books contained only a record of such repayments by the Phipps made long after the debts were incurred. Exhibit D (offered, R. 1659, see reprint accompanying record) is respondent's own summary of the method by which the corporation was financed.

These family representatives of the Phipps performed the same functions for the "Seminole" after incorporation as they had done before that event, and they acted for the "Seminole" in the same manner as they acted for other vessels owned directly by respondent Phipps and members of his family without the benefit of the corporate form (R. 1361, 1368-70, 1398-9, 1454, 1584-6, 1532, 1596-7). They consulted with the stockholders and acted subject to their directions on all except minor routine matters (R. 1282-3, 1381-2, 1297-9, 1300-1, 1333, 1886-7).

Due to the fact that the corporation had no funds of its own and was dependent on the payment of its debts and expenses by the Phippses (R. 1400, 1941), the officers of the corporation could not incur expenses for more than nominal sums without express authority from the Phippses. Hawkins said the limit was $500 (R. 1380-1); Riley, $300 (R. 1505); see for instance authorization of $300 for repair of generator (R. 1505-6, 1596, Exh. 3-T1, R., Vol. VI, p. 18, offered, R. 1507).

* Boulevard Mortgage Company and Palm Beach Company.

As long as the "Seminole" remained in existence the respondent Phipps continued to make personal use of her whenever he desired to do so (R. 340, 1387, 1898-9, 1915, 438, 507, 1507-8, 1643-7, 1917) by merely informing the officers of the corporation of his wishes (R. 1914-5). They recognized his authority (R. 1387-8). The only limitation on his right to use the vessel which he recognized was his personal preference to charter, if a charter was available so that he could have the charter hire (R. 1915; see also R. 1886). For several years after the incorporation, the yacht "Seminole" continued to be registered with the New York Yacht Club as the personal yacht of respondent Phipps (R. 1965, 1965-7; Answer (i) R. 89).

Conclusions of the District Court With Respect to Liability of the Respondent Phipps.

The District Court held that in spite of the circumstances of the organization and control of Seminole Boat Company by the respondent Phipps and his brother, shown by the respondent's own evidence, Seminole Boat Company acted "as a legal non-conductor between Phipps on the one hand and the libellants and Pilkington on the other, *because there was no fraud or other improper conduct or purpose* in the creation or continued existence of the corporation" (R. 3589). The Court said:

> "The organization of the corporation, Seminole Boat Company, was a natural normal development of ownership of a pleasure yacht, *free from any fraud or ulterior motive in the inception of its chartering and creation.* Likewise, it was free of any of the other elements, treated in the reported and cited cases *incident to the presence of bad faith*, which apply the doctrine of piercing the corporate veil" (R. 3587).

The Court said further:

> "Furthermore, the character of the negligence which this record discloses is the failure to do or perform a duty, or nonfeasance. Such failure of duty does not give rise to an application of the *alter ego* or agency doctrine" (R. 3587).

In both of these respects we submit the District Court was in error and our argument under Point I is in support of this position.

Conclusions of the Circuit Court of Appeals With Respect to Liability of the Respondent Phipps.

Upon appeal to the Circuit Court of Appeals that Court held that, since petitioners' vessels sustained damage by reason of the negligence of Seminole Boat Company, "in order to hold Phipps to personal liability, appellants [petitioners] had the burden of establishing by a preponderance of the evidence, that the corporation was *an artifice and a sham designed to execute illegitimate purposes* in abuse of the corporate fiction and the immunity that it carries, and that its activities in reality were those of Phipps personally" (R. 3648).

We submit that the Court was in error in this statement and we support our position by the argument under Point I.

Limitation of Liability.

Respondent Phipps also set up the defense of limitation of liability under Sections 4283 and 4284 of the Revised Statutes of the United States* and the statutes supplementary thereto and amendatory thereof (R. 63).

* U. S. C., Title 46, Secs. 183, 184, 185, 186. Printed as Appendix A to this brief.

Petitioner's Contention on the Issue of Limitation.

Petitioners contend that since the concurrent finding below was that, with the passage of time, some part of the machinery of the yacht did leak, with the result that gasoline fumes entered the engineroom and caused the fire, these facts in themselves establish circumstances which deprived respondent Phipps of the benefit of the limitation statute; and that such a condition necessarily indicates a failure to inspect, or to provide an adequate system of inspection. Otherwise this defective condition would have been discovered during "the passage of time".

Your petitioners further contend that the officers and directors of the corporation selected by respondent Phipps to manage and operate his vessel, and Riley, to whom they later entrusted complete control and management of the vessel for a long period before the fire, were the *alter ego* of respondent Phipps; that their negligence, knowledge and privity were the negligence, knowledge and privity of the respondent Phipps; that their failure to provide an adequate system of inspection by competent persons, and proper maintenance, constituted negligence, knowledge and privity on their part which was in legal effect the negligence, knowledge and privity of the respondent Phipps, precluding limitation of liability; and that respondent Phipps could in no event establish his claim for limitation of liability without showing that the persons appointed by him to manage the vessel were competent.

Respondent's evidence failed to show any qualification or previous experience of the officers and directors of the corporation, Scott, Alley and Hawkins, for management of the yacht "Seminole" or any vessel property. Beginning in April 1931, by direction of Scott, President of the corporation, the "Seminole" was placed in storage at Fort Lauderdale and subsequent thereto, she was continuously in storage up to the time of the fire except for only four

brief occasions. By direction of Scott, the vessel, while in storage, was placed in the "control and management" of Riley, who was instructed "to inspect her regularly" (R. 1454-7, 1472, 1480). Riley conceded his inexperience and incompetence to inspect the vessel (R. 1595-6; see also R. 1637, 1640-1).

The District Court held that even if the liability were held to be that of the respondent Phipps "*the character of negligence shown by this record* was such that Phipps, as an individual, would not be precluded from asserting as a limitation of liability under the statute" (R. 3588). The Court had previously held that "The character of the negligence which this record discloses is the failure to do or perform a duty, or nonfeasance" (R. 3587).

We shall show under Point II of this brief that this holding is not supported by authority and is wrong in principle.

The Circuit Court of Appeals on the question of limitation of liability held independently of the District Court that "the evidence affirmatively establishes that no actual privity to or knowledge of the defective condition obtaining upon the 'Seminole' was attributable to Phipps personally and that none could be imputed to him *since he had exercised due care and diligence in selecting competent men to man the vessel, and had imposed upon them full duties as to inspection and maintenance of her*" (R. 3649).

Petitioner contends that the "imposition upon" the men selected by respondent Phipps of "full duties as to inspection and maintenance" of the "Seminole" made them the *alter ego* of the respondent Phipps and that consequently their negligence, knowledge and privity were the negligence, knowledge and privity of the respondent Phipps. Since the respondent Phipps had delegated to them the entire responsibility for inspection and maintenance of the vessel, their negligence, knowledge and privity were the negligence, knowledge and privity of

respondent Phipps. We shall support this proposition under Point III of this brief.

The statement by the Circuit Court of Appeals that the men selected by the respondent Phipps upon whom he imposed full duties as to inspection and maintenance were competent, was not a concurrent finding. The District Court made no finding with respect to the competency of any of these men. The District Court found only that the "nature of the negligence" (R. 3588), *i. e.*, non-feasance as opposed to mis-feasance (R. 3587), was not such as to preclude the respondent Phipps from limitation of liability. The Circuit Court of Appeals in its cursory examination of the record failed to note that there is no evidence whatever in the record of the competency or experience of the officers and directors, *i. e.*, Scott, Alley and Hawkins, and that Riley, who was entrusted by them with control and management of the vessel and the duties of regular inspection, was concededly inexperienced and incompetent. We shall support this proposition under Point IV of this brief.

Questions Presented to This Court by the Petition for a Writ of Certiorari.

1. Whether the individual owner of a yacht can escape his responsibilities and liabilities as such owner and secure insulation from liability by forming a corporation to own his vessel

(a) When the corporation is not supplied with capital funds necessary for corporate independence;

(b) When the corporation is officered by individuals of his own choosing who

1. are personally holden to him and obligated by virtue of their situations to do his bidding and to attend to his personal business;

2. receive no compensation from the corporation for their services;

3. have no interest in the corporation;

4. are limited in their discretion and in the management of the vessel by the fact that the corporation has no funds of its own and is dependent on the stockholders for the payment of its debts, and the officers must therefore consult with the stockholders before expenditure of any more than nominal sums.

(c) When the corporation is without credit of its own, and is dependent for its existence upon the credit of the stockholders who mually pay its debts, which are paid in the first instance by other corporations controlled by the stockholders, such debts aggregating over a period of a few years several times the value of the vessel, the sole corporate property.

(d) When such owner retains control and use of the yacht and continues to use the yacht as desired for his personal pleasure, the corporate officers without corporate action recognizing his right, and such owner acknowledges no limitation of that right except his personal preference for charter hire when a charter is available.

2. (a) Whether an owner of a vessel can escape the imputation of knowledge and privity inherent in a dangerous condition of the vessel caused by progressive deterioration of machinery and equipment which leaked, and tanks which became "defective" and "leaky" with the passage of time, by the appointment of agents, competent or otherwise, to whom he transfers "full duties" of "inspection and maintenance"?

(b) Whether an agent, to whom an individual owner of a vessel transfers all his duties and responsibilities for

inspection and maintenance of his vessel, is not the *alter ego* of such owner? and whether the negligence, knowledge and privity of such an agent, or agents, is not the negligence, knowledge and privity of such owner as was held by the Circuit Court of Appeals in the Second, Sixth and Ninth Circuits?

3. Whether the failure of an owner to provide for competent management and proper inspections and for an adequate system of inspection of his vessel by competent persons does not require the denial of limitation of liability on the ground of privity and knowledge as held in the Second, Sixth and Ninth Circuits?

The petition for a writ of certiorari was granted by this Court on October 12, 1942.

Argument.

I.

The holdings of the courts below that respondent Phipps as a shareholder in the Seminole Boat Company is not liable to petitioners because it was not shown that there was "fraud or other improper conduct or purpose in the creation or continued existence of the corporation" or that "the corporation was an artifice and a sham designed to execute illegitimate purposes" are erroneous. The rule in this Court, in other circuits, and in the State of Florida, is that when a corporation is not supplied with funds necessary for corporate independence; when officers of the corporation are subject to control and domination by the stockholders and have no true independence of action, receive no compensation for their services, and have no interest in the corporation, and are dependent upon approval of stockholders in cases where substantial repairs are needed; when the corporation is without credit of its own and must rely entirely upon the credit of its stockholders; and when the stockholders retain the use of, and do use, the corporate property as their own, the stockholders who so act are in fact principals and liable for the negligent acts of the corporation and its agents.

The District Court in holding that the respondent Phipps was not liable for the negligence found, based its conclusion upon the proposition of law that the organization of the Seminole Boat Company "was free from fraud or ulterior motive in the inception of its chartering and creation" (R. 3587). The Court held further that the Seminole Boat Company was a legal non-conductor between Phipps on the one hand and libellants (petitioners) and Pilkington on the other, "because there was no fraud or improper conduct or purpose in the creation or continued existence

of the corporation" (Concl. 2, R. 3589; 39 F. Supp. 142, at p. 145). The Circuit Court of Appeals held that "in order to hold Phipps to personal liability, appellants had the burden of establishing by a preponderance of the evidence, that the corporation was an artifice and a sham designed to execute illegitimate purposes in abuse of the corporate fiction and the immunity that it carries, and that its activities in reality were those of Phipps personally" (R. 3648).

We submit that both of these holdings are in conflict with the decision in *Chicago, Mil. & St. Paul R. R. Co.* v. *Minn. Civic Assn.*, 247 U. S. 490, at page 501, which laid down the following rule:

> "where stock ownership has been resorted to, not for the purpose of participating in the affairs of the corporation in the normal and usual manner, but for the purpose, as in this case, of controlling a subsidiary company so that it may be used as a mere agency or instrumentality of the owning company or companies" * * * "the courts will not permit themselves to be blinded or deceived by mere forms of law, but regardless of fictions, will deal with the substance of the transaction involved as if the corporate agency did not exist and as the justice of the case may require."*

That the substance of the transaction involved is the determining factor in determining whether corporate agency did exist has been repeatedly held by this Court;

U. S. v. *Lehigh Valley R. R. Co.*, 220 U. S. 257;

* This statement as repeated in *U. S.* v. *Reading Co.*, 253 U. S. 26, 62, 63, although made with respect to a case involving the commodities clause, has as pointed out by Frank, *C. J.*, "become a classic statement applied generally in cases piercing the corporate veil." *Weisser* v. *Maysam Shoe Corp.*, 127 F. (2d) 344, 346, note 4. See also an article entitled "Insulation from Liability Through Subsidiary Corporations" by William O. Douglas and Carrol M. Shanks, 39 Yale Law Journal, p. 193, where the cases decided before 1929 are collected.

McCaskill Co. v. *U. S.*, 216 U. S. 504;
Linn Timber Co. v. *U. S.*, 236 U. S. 574;
Southern Pacific Co. v. *Lowe*, 247 U. S. 330;
U. S. v. *Reading Co.*, 253 U. S. 26;
Gulf Oil Corp. v. *Ellenbogen*, 248 U. S. 71;
Chicago, Milwaukee & St. Paul R. R. Co. v. *Minn. Civic Assn.*, 247 U. S. 490;
Davis v. *Alexander*, 269 U. S. 114;
Gregory v. *Helvering*, 293 U. S. 465;
Consolidated Rock Co. v. *DuBois*, 312 U. S. 510, 524.

In none of these cases is "fraud" or "other improper conduct or purpose" or "illegitimate purpose" made a test of liability of the parent (individual or corporate) of a corporation. On the contrary, the Courts have held that *domination and control* of the subsidiary by the parent creates liability.

The Circuit Courts of Appeal in other circuits than the Fifth have taken a like view.

In *The Willem van Driel, Sr.* (C. C. A. 4), 252 F. 35, certiorari denied 248 U. S. 566, an Admiralty case, the Circuit Court of Appeals for the Fourth Circuit held that, where the Pennsylvania Railroad Company through stock control dominated a company called the Central Elevator Company, the Pennsylvania Railroad Company was liable for the negligence of the Central Elevator Company in the operation of a grain elevator which caught fire and damaged the S. S. "Willem van Driel, Sr." The Court held that the liability of the Pennsylvania Railroad Company depended upon whether the Elevator Company was in substance a mere corporate agent or instrumentality of the Pennsylvania Railroad Company. It found that there was such a complete dominance and control of the Elevator Company by the Pennsylvania Railroad Company that the Elevator Company was a

"mere puppet" of the Railroad Company. The Court then adopted the language of Judge Wallace in *Lehigh Valley R. R. Co.* v. *DuPont* (C. C. A. 2), 128 F. 840, as follows:

> "Applying the language of Judge Wallace in *Lehigh Valley Railroad Co.* v. *DuPont*, 128 Fed. 840, 64 C. C. A. 478, the potential and ultimate control of all its property and business affairs of the elevator company was lodged in the railroad company, and this control was exercised as completely and as directly as the machinery of corporate organisms would permit. Such complete dominance and control by the railroad company made the elevator company its mere puppet. *United States* v. *Del. Lack. & West. R. R.*, 238 U. S. 516, 35 Sup. Ct. 873, 59 L. Ed. 1438" (252 Fed. 35, 39).

The *Willem van Driel, Sr.*, was followed by the Circuit Court of Appeals for the Fourth Circuit in *Luckenbach S. S. Co. et al.* v. *W. R. Grace & Co., Inc.* (C. C. A. 4), 267 F. 676, 681, and in *The Centaurus* (C. C. A. 4), 291 F. 751.

The same result was reached in the Second Circuit.

> *Lehigh Valley R. R. Co.* v. *DuPont* (C. C. A. 2), 128 F. 840.

The Circuit Court of Appeals for the Second Circuit followed the last cited case in *Lehigh Valley R. R. Co.* v. *Delaware* (C. C. A. 2), 145 F. 617, and in *Costan* v. *Manila Electric Co.* (C. C. A. 2), 24 F. (2d) 383, 384, and in the very recent case of *Weisser* v. *Marsam Shoe Corporation, et al.* (C. C. A. 2), 127 F. (2d) 344.

The Willem van Driel, Sr., *Luckenbach S. S. Co.* v. *W. R. Grace & Co., Inc.* and *Costan* v. *Manila Electric Co.* were all cited by this Court in the case of *Consolidated Rock Co.* v. *DuBois*, 312 U. S. 510, 524.

In the case of *The Silver Palm* (C. C. A. 9), 94 F. (2d) 776, 780, the Circuit Court of Appeals for the Ninth Circuit held that the operating company of the vessel named was the *alter ego* of the owner. It stated that under the circumstances of that case the group of companies involved "constituted a family affair".

The Circuit Court of Appeals for the Sixth Circuit, in the case of *In re Lake's Transit Corporation and James Playfair*, 81 F. (2d) 441, held that Playfair was personally liable as owner of the vessel involved, since the facts showed that he was the real party in interest, although it was claimed that title was held by a corporation in which Playfair and his family owned 90% of the stock. In none of these cases did the Court base its decision upon fraud, nor upon sham or illegal purpose. These decisions all rest upon the ground that the company had no independent existence and was in fact merely the *alter ego* of the stockholder.

The Florida cases are very clear on this point.

Biscayne Realty & Ins. Co. v. Ostend Realty Co., 109 Florida 1, 8*; 148 So. 560, is the leading Florida case. In summing up its reasons for reversing a decree of the trial Court where it had declined to pierce the corporate veil, the Court said:

> "In the view we have of the case *it is unnecessary to say that the Ostend Realty Company was organized for an illegal purpose*, nor to say that the ownership of all its stock by Clarence M. Busch dissolved it. That is not necessary to a determination of the case. It is sufficient to say that the original bill, the answers thereto, and the evidence disclose a state of facts, at least suggest such facts, as would require

* Note that the opinion reported at page 1 is superseded by that beginning at page 8.

a court of equity* to look beyond the mere form of the corporate entity to the person who was the sole beneficiary of its activities, directed and managed the transactions, used the corporate name at his pleasure, incurred financial obligations in its name, conveyed to himself the corporate lands when he so desired, received all money paid to the corporation by way of consideration in its transactions, if any, assumed obligations primarily assumed in the corporate name which were originally intended to be taken over by him, used the name of the corporation and set it up as his principal, assumed the act as its agent when in fact the act in the corporate name was his act, and his act that of the Corporation. In the circumstances the interests of the two cannot be distinguished. In these transactions the Corporation by name became indebted to third persons. It was the *alter ego* of the defendant Busch" (109 Florida 22).

This case was followed by *The Third Avenue Company, et al,* v. *May Rodine Kirby*, 111 Florida 46, 149 So. 30, opinion filed May 30, 1933, petition for rehearing denied October 17, 1933. That case also involved a creditors' bill, whereby creditors of the defunct "The Third Avenue Company," sought to charge Henry C. Phipps, John S. Phipps (the respondent herein), Biscayne Boulevard Company (a Phipps' corporation), and Palm Beach Company (the second of the Phipps' Companies used to finance the Yacht "Semitole"), Phipps Realty Company and Mortgage Discount Company, with the debts of The Third Avenue Company. In that case the allegations of the original bill were summarized by the court as follows:

"Through many allegations, made lengthy by de-

* Although a Court of Admiralty is not a Court of Equity it administers justice on equitable principles—*Watts* v. *Camors*, 115 U. S. 353, 361; *United States* v. *Cornell Steamboat Co.*, 202 U. S. 184, at p. 194.

tailed accounts of numerous alleged transactions, the fact is set up in reasonably clear and certain language that the Phippses organized and owned the five corporations; that while their names do not appear as stockholders or officers in any one of the corporations, they were nevertheless the owners of them, dominated, controlled and directed them through others, the employees of the Phippses, who used the names of such employees as officers and owners of the capital stock, although they paid nothing for their stock and constituted as such officers merely mouthpieces or agents for the Phippses who furnished the money for the stock held by their employees and who manipulated, managed and controlled all the activities of the different corporations solely and exclusively for the benefit of the Phippses and to their exclusive advantage; that the names of the corporations were used as a shield to protect from persons with whom the Phippses dealt through the names of the corporations the information of the personal liability of the Phippses; that the nominal stockholders, officers and directors of the corporations are as such mere employees of the Phippses, who pay them for their activities in the said corporations and who are used for superficially maintaining a legal government of the corporations and their legal corporate entities, but in reality to shield and cover the interests of the Phippses in the many transactions intended to be entered into for their exclusive financial benefit and to guard them from personal liability to persons who in the course of such transactions became ostensibly creditors of one or more of such corporations; that The Third Avenue Company was thus a mere device in the hands of the Phippses for the purpose of giving them absolute control of the property ostensibly purchased by that corporation while protecting them from personal liability for any indebtedness included in the name of the corporate entity; that Mrs. Keely became a cred-

itor of The Third Avenue Company in one or more transactions with that corporation under the conditions set forth above" (111 Florida, pp. 48, 49).

The Trial Court had sustained the demurrer to the original bill. As to this ruling the Supreme Court of Florida said:

"The allegations of the original bill state a ground for equity relief upon the doctrine announced by this Court in the case of *Biscayne Realty and Insurance Co. v. Ostend Realty Company, et al.*, decided at this term and filed May 24, 1933.

* * * The bill stated such a case as would require a court of equity to look beyond the mere form of the corporate entity to the persons who were the sole beneficiaries of its activities, directed and managed its transactions, used the corporate name at pleasure, incurred financial obligations in its name, conveyed to themselves corporate lands, and other property as desired, received the profits, if any, paid out money as the transactions required, and in fact set up and treated the corporate entity as their principal. In such circumstances the interests of the corporation and its owners became so blended, so indistinguishable, as to be identical.

The instant case is distinguished from the *Biscayne Realty Insurance-Ostend Realty Company* case in no essential element. According to the allegations of the original bill the Phippses merely concealed themselves beneath one more layer of names. Instead of using their own names as stockholders and officers they merely employed others in their service to use theirs, but whom they directed and manipulated as pawns in their complicated and deceptive game of trade. Whether the allegations of the bill can be proved by the complainant is another matter, but the allegations of the bill set up such a case" (111 Florida, pp. 50, 51).

In the present case neither Scott, Alley, Hawkins nor Riley held any stock in the Seminole Boat Company nor were they in any way interested in that company, except as employees of Phipps. The Seminole Boat Company never had any financial independence and at all times was dependent for its existence upon the respondent for payment of its bills. It had no capital funds nor money of its own. John S. Phipps originally contributed $50 and Henry C. Phipps $50, not even enough to pay the expenses of organization. This was the only cash which the corporation ever had as its own. All other moneys were advanced either by Boulevard Mortgage Company or by the Palm Beach Company for the account of the Phippses and were repaid to the advancing companies by the Phippses.* Scott, Alley, Hawkins and Riley re-

*The following is an extract from Respondent's Exhibit 41 offered R. 1659, see reprint accompanying record which is respondent's own summary of the financial operation of Seminole Boat Company.

ANALYSIS OF OPERATION OF SEMINOLE BOAT COMPANY

PERIOD OCTOBER 11, 1928 THROUGH DECEMBER 31, 1935

On November 11, 1928 the records of account for Seminole Boat Company were set up with Journal Entry #1 recording the subscription payment and issuance of 10 shares of its capital stock as follows:

S. L. Mackey	4 shares
L. C. Chester	3 shares
H. Kennedy	3 shares

On November 20, 1928, an account was opened with the First National Bank, Miami, Florida depositing $100.00, being the proceeds from the sale of the above listed stock.

The Boulevard Mortgage Company made cash advances to Seminole Boat Company, also paid sundry expense items for its account. Both the cash advances and disbursements for sundry expenses were set up on Seminole Boat Company records as Accounts Payable to Boulevard Mortgage Company. From time to time the Messrs. J. S. and H. C. Phipps would reimburse Boulevard Mortgage Company for

[Footnote continued on following page]

garded themselves as representatives of the Phipps family and were dependent upon the Phipps family for their employment and dared not incur any major expense for repairs of the "Seminole" without obtaining approval of the Phipps family. The Seminole Boat Company was without any credit of its own and the credit which was extended was extended to the Phippses. The Phippses retained the yacht "Seminole" to use it at their pleasure, and did so use it, without corporate action recognizing their rights.

In the spring of 1935, Hawkins, Secretary-Treasurer of the Company, on the instructions of respondent Phipps, bought a small vessel called a "Prig" boat for $950. On further instructions from respondent Phipps, the purchase price was charged to Seminole Boat Company. After the fire the "Prig" boat was transferred to the respondent Phipps by bookkeeping entries. A corporation with less

[Footnote continued from preceding page]

such items—one-half each. When such reimbursements were made the Seminole Boat Company would, by journal entry, transfer its liability to Boulevard Mortgage Company to the Messrs. J. S. and H. C. Phipps.

The cash advances by Boulevard Mortgage Company and other cash receipts were deposited in Seminole Boat Company's bank account with First National Bank, Miami. From this account were paid the principal operating expenses to June 2, 1934. On this date the bank account was closed and Boulevard Mortgage Company paid all operating expenses to December 31, 1933. Palm Beach Company then paid all operating expenses from this date on. The Messrs. J. S. and H. C. Phipps reimbursed Boulevard Mortgage Company and Palm Beach Company for such expenses to December 31, 1934. Their reimbursements were handled as stated in above paragraph. Mrs. Guest acquired the one-half interest of Mr. H. C. Phipps on March 23, 1935, Mrs. Guest assuming his one-half of the expenses for period January 1, 1935 through March 23, 1935. Mrs. Guest and Mr. J. S. Phipps reimbursed Palm Beach Company for expenses to March 23, 1935—one-half each.

independence and more completely the *alter ego* of the respondent Phipps, could hardly be imagined.*

The subsequent Florida cases follow the same doctrine:

Hirsch v. *Lincoln Securities Co.*, 118 Florida 164, 168 So. 12;

Mayer v. *Eastwood-Smith Co.*, 122 Florida 34, 164 So. 684;

Fickling Properties, Inc. v. *Smith*, 123 Florida 556, 167 So. 42;

Bellaire Securities Corp. v. *Brown*, 124 Florida 47, 168 So. 625;

Wofford v. *Wofford*, 129 Florida 445, 176 So. 499;

Miakka Estates v. *B. L. E. Corporation*, 132 Florida 307, 181 So. 423.

In these last two cases, the Supreme Court of Florida quotes with approval the following language from its decision in *Mayer* v. *Eastwood-Smith Co.*, 122 Florida 34, at p. 43, where the Court said:

> "The overwhelming weight of authority is to the effect that courts will look through the screen of corporate identity to the individuals who compose it in cases in which the corporation was [1] a mere device or sham to accomplish some ulterior purpose, or [2] is a mere instrumentality or agent of another corporation or individual owning all or most of its stock, or [3] where the purpose is to evade some statute or to accomplish some fraud or illegal purpose" (the numbers in brackets are supplied by us).

The decisions of the courts below ignored category [2] as a ground for piercing the corporate veil. Merely because the facts here did not establish a case under category [1] (or, as was said below, because there was no evidence of

* In Appendix B, attached to this brief, p. 57, we have summarized respondent's evidence as to the Phipps' domination of the corporation.

fraud "or other improper conduct or purpose in the creation or continued existence of the corporation", or "that the corporation was an artifice and a sham designed to execute illegitimate purposes") the courts below held that the respondent Phipps was not liable. Because the facts do not justify a holding under category [1] that the corporate veil was pierced, is immaterial, since they do establish that the veil was pierced under category [2].

The law applied by the Admiralty courts is the same. In the leading case in Admiralty, which was also a case of tort, the *Willem van Driel, Sr.*, 252 F. 35, cert. denied 248 U. S. 566, the Court permitted the corporate veil to be pierced for identically the same reason as that given by the Supreme Court of Florida in category [2] in *Meyer v. Eastwood-Smith Co.*, 122 Florida 34. In the *Willem van Driel, Sr.*, the Circuit Court of Appeals for the Fourth Circuit said that liability:

> "depends upon the question of fact whether the elevator company although in the name and organization a distinct corporation, was in substance a mere corporate agent or instrumentality of the Pennsylvania Railroad Company. *So. Pac. Terminal Co. v. Int. Comm. Com'n.*, 219 U. S. 525, 31 Sup. Ct. 279, 55 L. Ed. 310; *Joseph R. Foard Co. v. State of Maryland*, 219 Fed. 827, 135 C. C. A. 497; *Lehigh Valley R. Co. v. Delachesa*, 145 F. 617, 76 C. C. A. 307."

See also:

Luckenbach S. S. Co. v. W. R. Grace & Co. Inc. (C. C. A. 4), 267 Fed. 676;
The Centaurus (C. C. A. 4), 291 Fed. 751;
The J. B. Austin Jr. (E. D. N. Y.), 1 F. (2d) 451.

Judge Wallace in the Second Circuit said in *Lehigh Valley R. Co. v. DuPont* (C. C. A. 2), 128 Fed. 840, that,

"the potential and ultimate control" was the test. In none of these cases was fraud or illegitimate purpose an essential element in the case. The stockholder's liability rested upon the fact that the corporation lacked essential elements of corporate independence, and was subject to the domination and control of stockholder.

It is true that fraud may also be a ground for "piercing the corporate veil" and holding shareholders liable for the debts of the corporation, but since fraud can only be in an element in contract cases, category [1] is of no importance here. When a party voluntarily enters into a contract with a corporation, he knowingly contracts with the corporate entity, which has a limited liability. He cannot complain of that limited liability unless he can show that he has been misled or tricked or fraudulently induced to enter into a contractual relation with it. See:

Roos v. *Texas Co.* (C. C. A. 6), 43 F. (2d) 1;
New York Trust Co. v. *Carpenter* (C. C. A. 2), 250 F. 668, 673, 678;
Weisser v. *Marsam Shoe Corp.* (C. C. A. 2), 127 F. (2d) 344, 347, note 6.

Decisions in such cases have no application to tort liability. In tort cases there is nothing in the legal relations involved which admits of fraud as an element of liability.

Similarly there are cases where an improper purpose in the formation of a corporation may be sufficient for disregarding the corporate entity. The so-called bank stock cases may be cited as examples:

Coker v. *Soper* (C. C. A. 5), 53 F. (2d) 190, certiorari denied 285 U. S. 540;
Harris Inv. Co. et al. v. *Hood* (Fla.), 167 So. 25.

In tort cases the test is, was the corporation in fact an entity? Was it sufficiently independent of its shareholders and sufficiently free of their dominance and control to be regarded as more than a mere agent of the shareholders? We respectfully submit that the District Court was clearly wrong in holding that the Seminole Boat Company was not respondent Phipps under another name merely because no fraud was involved.

The test applied by the Circuit Court of Appeals of "artifice and sham designed to execute illegitimate purposes" is equally inapplicable.

That the corporate form does not effectively protect shareholders from tort liability when the corporation has no real independence, and the corporation is a mere name, is well established:

Davis v. *Alexander*, 269 U. S. 114;

Callas v. *Independent Taxi Owners Assn.* (C. C. A.), D. C., 66 F. (2d) 492; certiorari denied 290 U. S. 669;

Mangan v. *Terminal Transportation System, Inc.*, 284 N. Y. S. 183, 157 Misc. 627; aff'd 286 N. Y. S. 666, 247 App. Div. 853; appeal denied 272 N. Y. 676;

Anglaize Box Board Co. v. *Hinton*, 100 Ohio St. 505, 126 N. E. 881;

Joseph R. Foard Co. v. *State* (C. C. A. 4), 219 Fed. 827;

Oriental Investing Co. v. *Barkley*, 64 S. W. 80, 25 Tex. Civ. App. 543;

Erickson v. *Minnesota & Ontario Power Co.*, 134 Minn. 209, 158 N. W. 979;

Specht v. *Missouri Pacific R. R. Co.*, 154 Minn. 314, 191 N. W. 905;

Dixie Coal M. & M. Co. v. *Williams*, 221 Ala. 331;

Ross v. *Pennsylvania Railway Co.* (N. J.), 148 Atl. 741.

See also:

Weisser v. *Mursam Shoe Corp.* (C. C. A. 2), 127 F. (2d) 344 (Opinion with notes by Frank, *C. J.*; April 27, 1942).

No case could illustrate better than the instant case the injustice, and the harmful results, which will follow from the establishment of the rule laid down by the Courts below. Here the owner has thus far successfully avoided any responsibility for negligent operation of the yacht "Seminole" merely by creation of a corporation which was an empty shell. When "with the passage of time" gas tanks, always a serious hazard*, through lack of inspection and proper maintenance become defective and leaky and cause an explosion and fire which destroys a large number of vessels owned by innocent persons, such an owner should not under the circumstances of this case be permitted to hide behind the corporate veil. We submit, that to grant the immunity of corporate insulation in such a case, establishes a dangerous precedent and encourages the owners of yacht, or other vessel property, to employ this devious method of avoiding personal liability.

It cannot be said that the question of the control and domination of Seminole Boat Company by respondent Phipps is a question of fact decided by the lower Courts adversely to petitioners. Neither of the Courts below made any findings as to control and domination of the corporation by the respondent Phipps because in their view this was not important, in the absence of any showing of fraud or improper purpose in the creation or continued existence of the corporation.*

The facts admitted by respondent Phipps clearly establish that the Seminole Boat Company was no more than respondent Phipps under another name.

* See *Gunnarson* v. *Robert Jacob* (C. C. A. 2), 94 F. (2d) 170, 172 (Learned Hand, *C. J.*).

II.

Both courts below concurrently found that the losses sued for were caused by the negligence of Seminole Boat Company and that negligence consisted in permitting gasoline tanks to become defective and leaky "through the passage of time". Such a condition could not have existed if there had been proper inspection. Since, as we have shown, this negligence of the Seminole Boat Company was in fact the negligence of respondent Phipps, respondent Phipps is not entitled to limit liability. If the tanks had been examined the defective condition of the tanks would no doubt have been discovered. Knowledge of what could have been discovered, if a proper inspection had been made, is imputed to Phipps. The decision of the District Court that the character of the negligence, *i. e.*, "the failure to do or perform a duty, or non-feasance", did not constitute "privity and knowledge" and did not preclude Phipps "from asserting * * * limitation of liability under the statute", U. S. C. Title 46, §183, is clearly erroneous and is in conflict with the decisions of other circuits.

The negligence of the Seminole Boat Company, which both courts below found was the cause of the losses sustained by petitioners, was in fact, as we have just shown, that of the respondent Phipps. That negligence consisted in permitting tanks to become defective and leaky "through the passage of time" (R. 3587; 39 F. Supp. at p. 144). In short, the petitioners' losses were due to the general decay of the yacht "Seminole"—decay which progressed with time. Nevertheless, the District Court held that if an owner's negligence consists of "the failure to do or perform a duty, non-feasance" (R. 3587; 39 F. Supp. 144), he may still limit his liability. Since the "Seminole"

after the explosion was a worthless wreck, this decision really exonerates Phipps from all liability.

Contrast the language of the District Court with that of the Courts in the following cases:

In *Chesapeake Lighterage & Towing Co., Inc.* v. *Baltimore Copper, etc. Co.* (C. C. A. 4), 40 F. (2d) 394, 395, the Circuit Court of Appeals for the Fourth Circuit said:

> "For authorities on the law that controls the question of privity or knowledge of the owner, reference to *The Virginian* (D. C.) 264 F. 986,* *Sorenson et al.* v. *Boston Insurance Co. of Boston, Mass.*, 20 F. (2d) 640, and *Bank Line* v. *Porter, (The Polaric)* 25 F. (2d) 843 will show the rule as laid down by this court. Under these decisions the judge below rightly held that the superintendent of the appellant company could, by proper inspection, have discovered the unseaworthiness of the barge, and that the appellant was therefore chargeable with knowledge of such unseaworthiness."

In *Sabine Towing Co.* v. *Brennan* (C. C. A. 5), 72 F. (2d) 490, at page 493, where an old tug, which was covered by certificates stating that she had been inspected and found fit, sank in weather, which she should have withstood, and caused the loss of a number of lives, the Court held that the owners were not entitled to limitation of liability. The Court went on to say that such difficulty as there was in the case was whether the petitioner was entitled to exoneration altogether, rather than whether he was entitled to limitation, because if negligence existed, its very nature was such that the petitioner could not limit against it. The Court said:

> "We think it plain, in fact, the record leaves no room for question, that whatever may be said in

* Cited with approval in *Spencer Kellogg Co.* v. *Hicks*, 285 U. S. 502 at p. 511.

favor of exoneration altogether, because of failure to prove negligence, this is not a case for limitation of liability. Whatever was done with the tug of about it was the act of the owner through its managing officers, and if there was negligence, the owner was privy to it. All of those who testified for appellant make this clear. While they testified positively that Guy was the port engineer and in charge of repairs, they testified too that he made no serious repairs without consulting the officers, and that everything that was done by him in actually equipping this vessel was done under their supervision, and with their approval. Under these circumstances, if there was negligence, the officers were privy to it, and appellant, present in the presence of its managing officers, was privy to it too. *Ft. Worth Elevators Co. v. Russell* (Tex. Sup.) 70 S. W. (2d) 397; *In re N. Y. Dock Co.* (C. C. A.) 61 F. (2d) 777; *Henson v. F. & C. Trust Co.* (C. C. A.) 68 F. (2d) 444; *The Malcolm Baxter, Jr.*, 277 U. S. 323; 48 S. Ct. 516, 72 L. Ed. 901; *The Mamie* (D. C.) 43 F. (2d) 562; *The Vestris* (D. C.) 60 F. (2d) 273; *Kellogg & Sons v. Hicks*, 285 U. S. 511, 52 S. Ct. 450, 76 L. Ed. 905, (72 F. (2d) at p. 493).

See also *The 84 H.* (C. C. A. 2), 296 Fed. 427, cert. den. 264 U. S. 596.

Here it was an expensive matter to get at the tanks on account of the coal bunkers. Mr. Hawkins testified that he would not make any repairs to the "Seminole" beyond the sum of $500 without consulting the respondent Phipps, and Riley said that he could not order repairs in excess of $200 without consulting Phipps.* In these circumstances the tanks could not be thoroughly inspected without Phipps' consent.

* See Appendix B, p. 65, *infra*.

See also *In re Jacobsen*, 32 F. (2d) 179 at p. 180, and *The Friendship II (Just v. Chambers)* (C. C. A. 5),* 113 F. (2d) 105 at p. 107, where the Court said:

> "Responsibility for the injury having been established, it remains to be determined whether the appellant is entitled to a limitation of liability. Since a proper inspection of the vessel would have shown the defective condition of the pipes, and Yeiser was himself present and in charge, the injuries were not occasioned without the knowledge or privity of the shipowner. *Because he failed to make such an inspection he may not have limitation. The Republic*, (2 Circ.) 61 Fed. 109; *Christopher v. Gracha*, 40 F. (2d) 8."

See also the decisions of the Circuit Court of Appeals for the Second Circuit in *The Republic* (C. C. A. 2), 61 F. 109; *In re Jeremiah Smith & Son* (C. C. A. 2), 193 F. 395, and *In re P. Sanford Ross* (C. C. A. 2), 204 F. 248.

In *The Malcolm Baxter, Jr.* (C. C. A. 2), 20 F. (2d) 304, 305, the same Court denied limitation because structural defects existed, which, although not found by surveyors, could have been discovered by due diligence. This latter case was affirmed by this Court in *The Malcolm Baxter, Jr.*, 277 U. S. 323, at p. 332. There this Court said:

> "Respondents had purchased the vessel about one month before she sailed. At that time she was unseaworthy, due to a 'hog' or camber in her keel, a struc-

* The decision of the Circuit Court of Appeals, although it affirmed that of the District Court on the issues of negligence and limitation, reversed the decree of the District Court awarding damages to injured persons on the ground that because the tort-feasor had died, the cause of action abated with his death. Certiorari was granted by this Court, and in *Just v. Chambers*, 312 U. S. 383, the judgment awarding full damages, without limitation, of the District Court was restored.

tural weakness dangerous to the ship in heavy weather, which later caused the leak and made necessary the repairs at Havana. Following the purchase and before sailing from New Orleans a survey was made by the owner, which appears not to have disclosed her condition, but both courts below agree that the fact of her unseaworthiness could have been discovered by due diligence" (277 U. S. 332).

And, at page 331 of 277 U. S., this Court said:

> "Both courts below agreed that the 'Baxter' was unseaworthy on sailing and that respondent failed to exercise due diligence to ascertain her condition before sailing. This was sufficient ground for denying the petition for exoneration and limitation of liability under the Harter Act, Act of February 13, 1893, c. 105, 27 Stat. 445, and acts permitting limitation of liability to the vessel and pending freight, R. S. 4282-4289."

In the case of *The Isoud* (C. C. A. 2), 294 F. 930, Judge Ward, in his concurring opinion denying limitation of liability, said:

> "There is no proof of any regular system of inspection by any one, or *that its managing officers relied upon a competent person, to whom the duty of regular inspection was committed.*"

In *Porter-Carpenter Coal Co. v. New York, O. & W. Ry. Co., et al.* (S. D. N. Y.), 50 F. (2d) 270, the Court said:

> "It is my opinion that there should be no limitation of liability in this case. Limitation is permissible only where the owner can show lack of knowledge or privity of the unseaworthy condition. The burden of proving such lack of knowledge or privity is on the owner. *In re P. Sanford Ross, Inc.* (C. C. A.), 204

F. 248; *In re Reichert Towing Line* (C. C. A.), 251 F. 214. Where the unseaworthiness is due to a generally decayed condition of the vessel which renders it unable to withstand the ordinary wear and tear of service, as was the case with this old barge, *the owner's lack of knowledge can only mean that the owner did not inspect the vessel or provide a regular system of inspection. The Republic* (C. C. A.), 61 F. 109; *In re P. Sanford Ross, Inc., supra.*"

Similarly, in the case of *The Miami* (E. D. N. Y.), 43 F. (2d) 562, the Court said:

> "These defects, of a most serious nature, had existed for a long time, and were structural. *In re P. Sanford Ross, Inc.* (C. C. A.), 204 F. 248-252. The company should have informed itself of this very apparent condition. *The Republic* (C. C. A.), 61 F. 109-113.
>
> There is no proof that there was any serious system of inspection or reliance upon any really competent person for that purpose.
>
> Under such circumstances not only has there been a failure of proof on the part of the petitioner, but the facts all indicate a situation that may well raise a presumption that the corporation must be presumed to have had knowledge of her condition. See *In re P. Sanford Ross, Inc.*, 204 F. 248 (C. C. A. 2)."

See also the very recent case in the Circuit Court of Appeals for the Second Circuit, *New York & Cuba Mail S. S. Co. v. Continental Ins. Co.* (C. C. A. 2), 117 F. (2d) 404, at p. 409.

Judge Hough in *The Argent*, 1940 A. M. C. 508, at p. 509, summed up the matter thus:

> "It would, however, be a very easy matter for an owner to shelter himself behind an actual ignorance if lack of personal knowledge always constituted a

good defence to the extent of the protection accorded by statute. If lack of actual knowledge were enough, imbecility, real or assumed, on the part of owners, would be at a premium. Such assumption of ignorance would be peculiarly easy on the part of corporate owners. Corporate owners have of late years greatly multiplied, and it is accordingly found that the doctrine of imputed knowledge and imputed privity has grown to meet the demands of business.

. . . . . .

As long ago as *Republic*, 61 Fed. 109, knowledge of what owners could have seen if they had looked was imputed to them. The same doctrine is assumed in *Towson*, 142 Fed. 1034; it is assumed in *Re Smith*, 193 Fed. 395, and fully applied under circumstances which in substance are very like this in *Re Santord Ross*, 204 Fed. 248.

Parsons v. *Empire Transportation Co.*, 111 Fed. 202, certiorari denied, 183 U. S. 699, is authority for considering Conway as the managing agent or *alter ego* of the corporation. Personally I prefer the doctrine of imputed knowledge, but the result is the same."

In short, contrary to what the District Court held, the law in the United States is that where a vessel through the passage of time has become defective, the owner may not limit liability if the defects could have been seen if looked for.

The failure of an owner to inspect, or to provide an adequate system of inspection by competent persons, is sufficient to deprive an owner of the benefits of the statute. See Benedict on Admiralty, Fifth Edition, Sec. 498, as follows:

"*Neglect to inspect the vessel or properly to provide a system of inspection* creates ordinarily such privity with a disaster arising from a defective con-

> dition of the vessel as to preclude limitation and, where the owner has delegated power to a shipmaster or other agent and has relied upon him to see to it that the vessel is properly equipped or otherwise fitted for the contemplated service, *the burden of proving the competency of such representative* for the work entrusted to him rests upon the owner and, unless such competency is affirmatively shown, the owner cannot limit his liability.*

In cases such as *The Republic*, and *The Malcolm Baxter, Jr., supra*, where the defects were of long standing, *i. e.*, decay in the "Republic", and a hog or camber in the "Malcolm Baxter, Jr." limitation was denied because a proper inspection was not had. Both in *The Malcolm Baxter, Jr.* and in the *Sabine Towing Co.* cases, surveyor's certificates had been issued, yet that did not save the shipowner. Neither does the certificate of Surveyor Bernard** save the respondent in this case. Bernard visited the engine room of the yacht for only about fifteen minutes (R. 2246, 2225). He was afforded no facilities for inspection. There being no captain or engineer on

* See also Benedict on Admiralty, Sixth Edition, Vol. III, pp. 385-7.

** Bernard was the surveyor to whom the Circuit Court of Appeals referred in the passage reading:

> "It is undisputed that the vessel had been examined and pronounced fit by an experienced ship surveyor in February, 1935; that she developed no flaws during the cruise or prior to reaching Pilkington's; that the crew left her gasoline valves closed, her electric switches open, her gas tanks registering empty, and her bilges clean and free of gasoline or gasoline vapor; and that she was repeatedly examined by competent men between April 15 and June 24, 1935, who discovered nothing wrong with her." (R. 3647, 128 F. (2d) 703).

We do not know what the Court means by saying that these statements were not disputed, since we have contested them from the outset. We now repeat that there is not a scintilla of evidence which supports the Court's statement that the yacht "was repeat-

(Footnote continued on following page.)

board, he could not operate any of the machinery or controls in the absence of an owner's representative (R. 2225, 2228-9). He was not employed to make a thorough examination or "condition survey" (R. 2224, 2231). He did not and could not examine the tanks which leaked, because of their inaccessibility (R. 2215, 2231, 2248, 9). He received for his services the paltry sum of $17.50 (R. 1430). He conceded that his examination was superficial and that he did not intend it for a thorough examination, or represent it as such (R. 2224). Moreover, he testified that the construction of the yacht was such that only a small portion of the surface of the four cylindrical tanks, which the Court found leaked, could be seen or inspected (R. 2248-9). These tanks were contained in the old coal bunker, which they completely filled, and the only way that one could see the tanks would be to remove one of the steel walls of the bulkhead forming the coal bunker. Bernard testified that he would have charged about $25 for a proper survey, and that to place the yacht in proper condition after such survey, would have cost the owner $2,500 or more (R. 2238).

The inaccessibility of the tanks does not excuse failure on the part of the respondent to inspect them, nor his failure to take such measures as were required to pre-

[Footnote continued from preceding page.]

edly examined by competent men between April 15th and 24, 1935, who found nothing wrong with her". In fact, the opposite is the case, for it is a fact that no one examined the "Seminole" from the time she was laid up on April 16, 1935 to the day of the fire. Later in the opinion the Circuit Court of Appeals concurred in the findings of the District Court and held that petitioners' losses were due to negligence of the Seminole Boat Company. This finding disposes of any inference from the remarks quoted to the effect that the shipowner had done all that it should have done in connection with the inspection of the "Seminole", because if the shipowner had done so, the Court's subsequent finding of negligence would be meaningless.

vent their becoming defective through lapse of time since their installation thirteen years before the fire, *i. e.*, 1922. Neither is it any excuse to say that this was the best places for them. A somewhat similar situation was discussed in *Gunnarson* v. *Robert Jacob* (C. C. A. 2), 94 F. (2d) 170, at page 172, where the Court, speaking through Judge Learned Hand, said:

> "But to say that such a tank was safest where it was put, is not to say that it was safe at all, and we do not think that it was, without more care on the owner's part. *It is of no moment that it was harmless so long as it did not leak, and that it would not leak if it was properly handled. In such cases liability depends upon an equation in which the gravity of the harm, if it comes, multiplied into the chance of its occurrence, must be weighed against the expense, inconvenience and loss of providing against it. The harm may be so great as to impose an absolute liability, regardless of any negligence;* in such cases the very activity, though lawful, entails responsibility, and reparation becomes a cost of the enterprise, as under workmen's compensation. *Exner* v. *Sherman Power Construction Co.*, 2 Cir., 54 F. (2d) 510, 80 A. L. R. 686."

It is common knowledge that gasoline used for driving an explosion engine, is dangerous, and, as Judge Hand says in the passage just quoted, although it may have been safer to put these tanks in an old coal bunker, where they would be protected from blows or other contacts with objects which would be likely to damage them, such protection would be of no moment if the tanks did actually leak.

Before concluding the argument under this heading, because the language is so apt, we call the decision in

Asiatic Petroleum Company, Ltd. v. *Leonard's Carrying Co., etc.** (1914), 1 K. B. 419, to the Court's attention.—

> Buckley, *L. J.*: "If the owner be guilty of an act of omission to do something which he ought to have done, he is no less guilty of "actual fault" than if the act had been one of commission. To avail himself of the statutory defense, he must shew that he himself is not blameworthy for having either done or omitted to do something or been privy to something. It is not necessary to show knowledge. If he has means of knowledge which he ought to have used and does not avail himself of them, his omission so to do may be a fault, and, if so, it is an actual fault and he cannot claim the protection of the section" ([1914] 1 K. B. at p. 432).

The reasons given in the instant case by the District Court to sustain its holding of absence of privity are the same as those given by Buckley, *L. J.*, for holding that there was privity. And in the same case, Hamilton, *L. J.*, took a similar position to that of Buckley, *L. J.*, when he said:

> "I recall with proper diligence the owners might have prevented all this and must have known the special perils attending the transport of benzine in bulk, for it was their trade. When those owners ask this Court to find that the fire, which naturally ensued in the circumstances 'happened without their actual fault or privity', I refuse." (1914) 1 K. B. 441.

It is true that the yacht "Seminole" was not in the trade of carrying benzine, but it did burn large quantities

* Vaughan Williams, *L. J.*, dissented from the judgment of Buckley, *L. J.*, and Hamilton, *L. J.* The case, under the style of *Leonard's Carrying Company, Limited* v. *Asiatic Petroleum Company, Limited* (1915), A. C. 705, went to the House of Lords, which unanimously affirmed the decision below. In the course of his speech, Lord Dunedin specifically approved the ground upon which Hamilton, *L. J.*, placed his judgment.

of gasoline which it did carry in "defective" tanks. Respondent Phipps must have known the special perils attending gasoline. Those perils are matters of common knowledge. Obviously, with proper diligence these tanks would not have become defective. They could have been kept sound and tight. The fact that they were not, and that they leaked, and gasoline later exploded, were circumstances which naturally ensued. We submit that Hamilton, *L. J.*, was right when he refused to say that such circumstances happened without the privity and knowledge of an owner. The circumstance that the owner was ignorant of what he should have known, and neglected to provide any means which would enable even a visual examination of the tanks, much less a thorough test, is enough under the authorities cited above to deprive him of the benefits of the limitation statute.

For these reasons alone limitation should have been denied.

III.

The decision of the Circuit Court of Appeals that the respondent Phipps, if liable, is entitled to the protection of the limitation of liability statute, on the ground that privity or knowledge of the defective condition of the yacht "Seminole" could not "be imputed to him since he had exercised due care and diligence in selecting competent men to man the vessel, and had imposed on them full duties as to inspection and maintenance of her" is erroneous and is in conflict with the decisions in the Second, Sixth and Ninth Circuits. When the owner of the "Seminole" delegated full "duties as to inspection and maintenance" to these men, they became the owner's *alter ego*, and their knowledge and privity became the knowledge and privity of the owner.

In its opinion the Circuit Court of Appeals held that the respondent Phipps, if liable personally, was entitled to limitation of liability, because

> "the evidence affirmatively establishes that no actual privity to or knowledge of the defective condition obtaining on the 'Seminole' was attributable to Phipps personally, and that none could be imputed to him since he had exercised due care and diligence in selecting competent men to man the vessel, and *had imposed upon them full duties as to inspection and maintenance of her*" (R. 3649).

We do not concede that the men selected to man the vessel were competent. But even if they were competent, when the owner "imposed upon them full duties as to inspection and maintenance" they became the *alter ego* of the owner and their privity became that of Phipps.

The decisions of the Circuit Courts of Appeal in the Second, Sixth and Ninth Circuits so hold.

The Circuit Court of Appeals for the Second Circuit in the case of *In re New York Dock Co.* (C. C. A. 2), 61 F. (2d) 777, held that one, Converse, who, under R. S. 4286 was, in legal effect, the owner of a pile driver, could not limit liability because of the negligence of his superintendent, who was in complete charge of the inspection and rigging of the barge.

The Court said at page 779:

> "*So the scope of the authority delegated to Mc[illegible]by Converse was so broad that his privity or knowledge as to the unseaworthiness of the pile driver was in law that of Converse.* *Spencer Kellogg & Sons v. Hicks*, 285 U. S. 502, 52 S. Ct. 430, 76 L. Ed. 903; *In re P. Sanford Ross* (C. C. A.), 294 F. 248; *Chesapeake Lighterage & Towing Co., Inc. v. Baltimore Copper Smelting & Rolling Co.* (C. C. A.), 40 F. (2d) 394; *Boston Towboat Co. v. Darrow-Mann Co.* (C. C. A.), 276 F. 778."

The decision below is also in conflict with that of the Circuit Court of Appeals for the Ninth Circuit in *The Silverpalm* (C. C. A. 9), 94 F. (2d) 776, where that Court dealing with a similar situation, said at page 780:

> "In proceedings for limitation the owner may not escape liability by giving the managerial functions to an employed person acting as its agent, *whether the person be corporate or otherwise.* *So far as concerns privity and knowledge, such an agent is its alter ego.* *Craig v. Continental Ins. Co.*, 141 U. S. 638, 648, 12 S. Ct. 97, 35 L. Ed. 886; *Eastern S. S. Corporation v. Great Lakes Dredge Co.* (C. C. A. 1), 256 F. 497, 502; *Sperry Flour Co. v. Coastwise S. S. Co.* (C. C. A. 9), 84 F. (2d) 785, 786."

The decision below is also in conflict with that of the Circuit Court of Appeals for the Sixth Circuit in

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 246.

CHARLES CORYELL, *et al.*,

Petitioners,

—against—

JOHN S. PHIPPS and GEORGE J. PILKINGTON,

Respondents.

REPLY BRIEF ON BEHALF OF PETITIONERS.

As is not infrequently the case, counsel for the respondent seeking to avoid review by this court of the decisions below asserts in the Brief for Respondent that the questions presented by the petition are of fact only. It is significant that in their statement of the facts and of the findings of the District Court, respondent's counsel has considered it necessary to make two assertions, which are at variance with the record.

At page 7 of the Brief for Respondent Phipps, it is suggested that the cause of petitioners' losses was the negligence of one Abel. It is noteworthy that none of the references in the brief in support of this suggestion is from the finding of either of the courts below. Indeed, the District Court found the exact contrary,—that negligence of Abel was not the proximate cause of the loss (R. 3587).

Similarly, at page 6 of the Brief for Respondent Phipps it is asserted that the District Court "made no findings as to the cause of the fire * * *." This assertion is

based solely on the fact that the findings made by the District Court as to the cause of the fire do not appear in separately numbered paragraphs in the document filed by the District Court on June 5th, 1941 entitled: "FINDINGS OF FACT AND CONCLUSIONS OF LAW" (R. 3582), but do appear in the paragraphs following the subtitle "Discussion" and preceding the heading "Conclusions of Law". Regardless of formality of arrangement, we submit that the findings by the District Court in these paragraphs are, in fact, the findings of the District Court of the ultimate facts of the case and were so intended. The findings in the preceding numbered paragraphs are not findings of the ultimate facts but merely summaries of evidence. In fact, the words "I find" do not appear in the numbered paragraphs but do precede the subsequent findings on which we rely. They are not to be disregarded as findings because of "inartificial" arrangement. *Nashville Interurban Ry. v. Barnum*, 212 Fed. 634, 639.

In the recent case of *Commercial Molasses Corp.* v. *New York Tank Barge Corp.*, both this Court and the Circuit Court of Appeals treated a statement by the District Court in its Conclusion of Law No. 2 to the effect that on the evidence "the cause of the accident has been left in doubt" as, nevertheless, a finding of fact. *Commercial Molasses Corp.* v. *New York Tank Barge Corp.* (C. C. A. 2), 114 F. (2d) 248, 250; 314 U. S. 104, 114.

At R. 3587 the District Court said:

> "The presence of gasoline fumes in the engine room, *I find* was the proximate cause of the damage done to the vessels of libelants."*

Again, in the following paragraph, the District Court said:

> "But with the passage of time some part of the machinery or equipment did leak and the great possibility of damage attendant upon the use of gaso-

* Italics in quotations ours throughout this brief.

line, brings into play the principle that negligence may be based upon circumstantial evidence alone. The respondent argues that there must have been some third person agency intervening which brought about the means whereby gasoline escaped with attendant fumes. There is no evidence of this, and we get into the realm of conjecture. Just when the defective condition of the tanks made them leaky is in doubt. Expert testimony on this is an unsatisfactory character of evidence. *I am satisfied, and find,* that there were gasoline fumes present in the engine room, and that their ignition into combustion and fire caused the damage" (R. 3587-8).

We submit that these are findings by the District Court as to the cause of the fire; that the District Court did find that the presence of gasoline fumes in the engine room "was the proximate cause of the damage done to the vessels of libellants" (R. 3587), and that these fumes resulted because "with the passage of time some part of the machinery or equipment did leak" (R. 3587); that prior to the fire "the defective condition of the tanks made them leaky" (R. 3588) and that the presence of the gasoline fumes in the engineroom and "their ignition into combustion and fire caused the damage" (R. 3588).

We submit further that these findings cannot be disregarded as such for the reasons stated in the brief of the respondent Phipps.

Not only did the District Court make these findings with respect to the cause of the fire, but the District Court further found that the existence of these conditions was the result of negligence of Seminole Boat Company, Phipps' puppet corporation. At R. 3588, the District Court found "For this the Seminole Boat Company was liable". On the same page, a little farther on, because of its erroneous view of the law as to the liability of the respondent Phipps for the negligence of his creature corporation, the Court held that Phipps was not chargeable with that negligence "Firstly, because the negligence was that of the Seminole Boat Company and not of Phipps;".

It was similarly argued in the Circuit Court of Appeals that the findings of the District Court to which we have referred were not proper findings. The Circuit Court of Appeals not only did not accept this argument but itself adopted the findings of fact made by the District Court (R. 3647-8).

We have pointed out in our petition and brief that the District Court made its findings and reached its conclusion that the respondent Phipps was not liable for the negligence of the corporation on the sole ground that there was "no fraud or other improper conduct or purpose in the creation or continued existence of the corporation" (R. 3589) and because the organization of the corporation was "free from any fraud or ulterior motive in the inception of its chartering and creation" or other elements "incident to the presence of bad faith" (R. 3587; Petition, pp. 6 and 7), and that because of this erroneous view of the law neither of the courts below made any findings as to control and domination of the corporation by the respondent Phipps (Brief for Petitioners, pp. 27-8).

Nevertheless, it is asserted in the brief for the respondent Phipps that the real question presented is—"Did respondent in fact so dominate the corporate owner of the 'Seminole' that the corporate entity had been abandoned and should be disregarded?" (Respondent's Brief, p. 10) and it is asserted "This presents only a question of fact which both Courts below found favorably to respondent" (p. 10).

On the following page, it is asserted the Courts below concurrently found these facts against petitioners. In support of this assertion, it is stated that "Petitioners' contention as to domination was squarely presented below—see the excerpt from our main brief in the Circuit Court of Appeals printed *infra* as Appendix A" (Respondent's Brief, p. 17). Obviously the question as to what was found by the Courts below is not to be determined by consideration of the arguments or briefs presented but by examination of the decisions themselves.

The statement that the Courts below found against petitioners on the issue of domination cannot be justified. A careful scrutiny of the findings of both Courts will show that no finding was made by either Court on the question of the domination of the corporation or of corporate independence.

In the absence of any findings by either the District Court or the Circuit Court of Appeals on the questions of domination or corporate independence, we have summarized the facts in connection with the corporate ownership of the "Seminole" at pages 2 to 5 of the petition, supplementing the findings of the District Court only by statements of undisputed facts taken from respondent's own evidence and largely taken from respondent's own summary of those facts, Respondent's Exhibit 4D, printed as Appendix A to the Petition and Brief for Petitioners.

These supplementary statements are not materially disputed in the respondent's brief. They are discussed at pages 11 to 14 of respondent's brief, where they are merely characterized as "assertions" and "complaints" and an attempt is made to minimize their significance. Taken together, the conceded facts, which we have recited from the respondent's own evidence, clearly establish, we submit, complete lack of all essentials of corporate independence in Seminole Boat Company, and for the reasons, and under the authorities, cited in the petition and brief, establish the liability of the respondent Phipps for the negligence of the corporation.

In the respondent's brief, an attempt is made by brief and inadequate summary to minimize or distinguish the authorities cited in the petition and brief relative to the liability of the corporate parent, individual or corporate, for the negligence of a creature corporation. The decisions which we have cited speak for themselves and have been discussed in the brief and petition. We shall not burden the court with further discussion of these authorities.

We have shown in our petition and brief that although each of the Courts below expressed the opinion that the respondent Phipps, if liable, would be entitled to limitation of liability, each based this expression on a ground in conflict with the decisions in the other circuits. The grounds for the expression of opinion by the two courts were, however, different.

The Circuit Court of Appeals based its expression of this opinion on the proposition that

> "no actual privity to or knowledge of the defective condition obtaining on the 'Seminole' was attributable to Phipps personally, and that none could be imputed to him since he had exercised due care and diligence in selecting competent men to man the vessel, and *had imposed upon them full duties as to inspection and maintenance* of her" (R. 3649).

The Circuit Court of Appeals in this statement adopts the view that complete delegation of an individual owner's responsibilities and duties to a competent* person, or persons, assures limitation of liability irrespective of the negligence, knowledge or privity of those persons.

We have shown in the Brief for Petitioners (pp. 28-30) that this view is in direct conflict with the decisions in the Second, Sixth and Ninth Circuits, which hold that where an individual owner completely delegates his duties and responsibilities for the inspection and maintenance of his vessel to another, that other is the owner's *alter ego*, and the privity and knowledge of that other is the privity and knowledge of the owner.

In re New York Dock Co. (C. C. A. 2), 61 F. (2d) 777, 779;
The Silverpalm (C. C. A. 9), 94 F. (2d) 776, 780;
In re Lakes Transit Corp. and James Playfair, (C. C. A. 6), 81 F. (2d) 441, 444.

* There is in fact no evidence in the record to support a finding that the persons referred to, *i. e.*, the officers and directors of the corporation, were competent.

Counsel for respondent Phipps supports the view expressed by the Circuit Court of Appeals and asserts that there is in this respect a difference between the position of a corporate and an individual owner (Respondent's Brief, p. 19). The cases do not, in fact, justify this contention and the decision of the Circuit Court of Appeals for the Second Circuit in *In re New York Dock Co.* (C. C. A. 2), 61 F. (2d) 777, is directly to the contrary. Respondent's counsel naively asserts that in that case "the court overlooked" the fact that the owner was an individual, an assumption which can hardly be justified.

As pointed out by Hutcheson, *C. J.*, in the case of *In re Jacobson* (S. D. Tex.), 52 F. (2d) 178, 180, there is no logical justification for the contention of respondent's counsel. Judge Hutcheson said:

> "It is my opinion that those decisions are illogical which hold that, where an owner delegates the job of furnishing a seaworthy vessel to another, he may have limitation but that, where he tried to make it seaworthy himself, he may not have."

The late Judge Hough in characteristicly vigorous language dealt with a similar situation in the case of *In re Phoenix Sand & Gravel Co.* (S. D. N. Y.), reported 1940 A. M. C. 508, 509, when he said:

> "If lack of actual knowledge were enough, imbecility, real or assumed, on the part of the owners, would be at a premium."

Although this was a case of corporate ownership, it is clear that Judge Hough had in mind individual as well as corporate owners, for he followed this statement by saying:

> "Such assumption of ignorance would be particularly easy on the part of corporate owners."

Respondent's counsel asserts that the acceptance of a position contrary to his contention, "Would destroy the limitation statutes so far as individual owners are con-

cerned as fully as if Congress repealed them". There is no justification for this statement. There is justification for holding the individual owner to at least as high a degree of personal responsibility as a corporate owner.

It can hardly be contended that the agents to whom the respondent Phipps delegated his responsibilities as owner, *i. e.*, the officers and directors of his creature corporation, were free from negligence or privity and knowledge, in view of the fact that for a period of years prior to the disaster they had redelegated "control and management" as well as the duty of regular inspection to Riley, who was concededly inexperienced and incompetent to inspect (R. 1454-7, 1472, 1480, 1595-6, 1637, 1640-1).

The ground stated by the District Court for the expression of its opinion that the respondent Phipps, if liable, would be entitled to limitation of liability is set forth in the following quotation from the opinion:

> "The character of negligence shown by this record was such that Phipps, as an individual, would not be precluded from asserting as a limitation of liability under the statute" (R. 3588).

The "character of negligence" which the District Court had in mind is not disclosed in this paragraph of the opinion but is characterized on the preceding page as "the failure to do or perform a duty, or non-feasance" (R. 3587). While this statement was made in connection with the District Court's discussion of "corporate insulation", in the absence of any other or different characterization of the negligence in the subsequent passage, it can only be inferred that it was the same type of negligence to which the Court referred in connection with limitation of liability. Otherwise, the expression of the District Court is unexplained, and therefore meaningless.

We have shown in our petition and brief that the expression of opinion by the District Court that the character of negligence shown by the record as specified by the District Court, *i. e.*, the failure to do or perform a duty,

or non-feasance was not sufficient to preclude the respondent Phipps as an individual from limitation of liability under the statute, is in conflict with the decisions in the Second, Fourth and Ninth Circuits (Petition, pp. 15 to 17, 28; Petitioners' Brief, pp. 32-33). The decisions in those circuits hold that non-feasance consisting of the failure on the part of the owner in his duty to inspect the vessel, and to provide an adequate system of inspection by competent persons, results in the imputed knowledge and privity of the owner to the defective condition of his vessel, which requires the denial of a plea for limitation of liability. In the present case, it is the respondent's own evidence that the only system of inspection which had been provided for the "Seminole" for a period of years before the disaster consisted of the delegation by the officers and directors of the corporation, to whom respondent Phipps had entrusted the management of his vessel, of control and management and the duty of regular inspection to Riley, who was concededly inexperienced, and incompetent to inspect the vessel (R. 1454-7, 1472, 1480, 1595-6, 1637, 1640-1). The burden of proof was, of course, on the respondent Phipps to establish every element necessary to warrant a finding of the absence of privity and knowledge, including the fulfillment of his duty to provide both competent management and a regular and adequate system of inspection by competent persons (see summary of authorities, *The Silverpalm*, 94 F. (2d) 776, 777).

The suggestion that the innocent libellants, whose vessels have been destroyed, cannot complain of the lack of adequate inspections or of any system of inspection by competent persons because "an inspection was in progress at the time their loss occurred" (Respondent's Brief, p. 23) is specious indeed. Not only did their loss result from failure of inspection and failure to provide an adequate system of inspection by competent persons over a long period of time, but Abel, who is characterized as "an experienced boat captain", was not the captain of the "Seminole", and had had no previous connection with her.

He had been captain (by courtesy only) of much smaller vessels. There is no evidence other than the assertion of counsel that he was a competent or proper person to inspect the "Seminole". Even if the assertion in respondent's brief that "a system of inspection by the master has been held to be enough" (Respondent's Brief, p. 23) were accurate, which we question, Abel would not be within such decision since he was not master of the vessel.

The inspection of the "Seminole" in March, 1935, by a marine surveyor referred to in Respondent's Brief, page 23, was wholly inadequate, in particular, because he did not, and could not, under the conditions, examine the gasoline tanks which the District Court held became defective and leaky (R. 2215, 2248-9). He did not and could not under the conditions make any general examination of the vessel (R. 2231). It was not a thorough examination or a condition survey (R. 2224-5, R. 2228-9, R. 2236-8, R. 2246). He estimated from his examination at that time that it would have cost the owner about $2,500 to bring the "Seminole" to A-1 condition, which a condition survey would have required (R. 2238).

We submit, therefore, that the petition should be granted, and a writ of certiorari issued, and that this Court should review the decision of the Circuit Court of Appeals for the Fifth Circuit in this case so that the decisions and the law in admiralty cases in the various circuits may be reconciled on the important questions involved in this case as to the liability of an individual, who creates a corporation without corporate independence for the operation of his vessel, and who seeks limitation of liability by attempting to divest himself of his responsibilities as a vessel owner by delegation of those responsibilities to subservient employees through the use of the corporate device.

Respectfully submitted,

T. CATESBY JONES,
LEONARD J. MATTESON,
Proctors for Petitioners.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 246.

CHARLES CORYELL, *et al.*,
Petitioners,

—against—

JOHN S. PHIPPS and GEORGE J. PILKINGTON,
Respondents.

BRIEF FOR PETITIONERS.

T. CATESBY JONES,
LEONARD J. MATTESON,
Counsel for Petitioners.

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Argument:

I—The holdings of the courts below that respondent Phipps as a shareholder in the Seminole Boat Company is not liable to petitioners because it was not shown that there was "fraud or other improper conduct or purpose in the creation or continued existence of the corporation" or that "the corporation was an artifice and a sham designed to execute illegitimate purposes" are erroneous. The rule in this Court, in other circuits, and in the State of Florida, is that when a corporation is not supplied with funds necessary for corporate independence; when officers of the corporation are subject to control and domination by the stockholders and have no true independence of action, receive no compensation for their services, and have no interest in the corporation, and are dependent upon approval of stockholders in cases where substantial repairs are needed; when the corporation is without credit of its own and must rely entirely upon

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the credit of its stockholders; and when the stockholders retain the use of, and do use, the corporate property as their own, the stockholders who so act are in fact principals and liable for the negligent acts of the corporation and its agents..... 15

II—Both courts below concurrently found that the losses sued for were caused by the negligence of Seminole Boat Company and that negligence consisted in permitting gasoline tanks to become defective and leaky "through the passage of time". Such a condition could not have existed if there had been proper inspection. Since, as we have shown, this negligence of the Seminole Boat Company was in fact the negligence of respondent Phipps, respondent Phipps is not entitled to limit liability. If the tanks had been examined the defective condition of the tanks would no doubt have been discovered. Knowledge of what could have been discovered, if a proper inspection had been made, is imputed to Phipps. The decision of the District Court that the character of the negligence, *i. e.*, "the failure to do or perform a duty, or non-feasance", did not constitute "privity and knowledge" and did not preclude Phipps "from asserting * * * limitation of liability under the statute", U. S. C. Title 46, §183, is clearly erroneous and is in conflict with the decisions of other circuits..... 30

III—The decision of the Circuit Court of Appeals that the respondent Phipps, if liable, is entitled to the protection of the limitation of liability statute, on the ground that privity or knowledge of the defective condition of the yacht "Seminole" could not "be imputed to him since

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he had exercised due care and diligence in selecting competent men to man the vessel, and had imposed on them full duties as to inspection and maintenance of her" is erroneous and is in conflict with the decisions in the Second, Sixth and Ninth Circuits. When the owner of the "Seminole" delegated "full duties as to inspection and maintenance" to these men, they became the owner's *alter ego*, and their knowledge and privity became the knowledge and privity of the owner 42

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 246.

CHARLES CORYELL, *et al.*,

Petitioners,

—against—

JOHN S. PHIPPS and GEORGE J. PILKINGTON,

Respondents.

BRIEF FOR PETITIONERS.

Opinions Below.

The findings of fact, and conclusions of law of the District Court are officially reported in 39 F. Supp. 142, and are printed in the record (R. 3582). The opinion of the Circuit Court of Appeals, filed June 9, 1942, is officially reported in 128 F. (2d) 702, and is printed in this record (R. 3645).

Jurisdiction of this Court.

The suit is in admiralty. The losses and damages were sustained by water borne craft afloat upon navigable waters. The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended by the Act of February 13, 1925; 43 Stat. 938, 28 U. S. C. A. Section 347.

Statement of the Case.

Petitioners, Charles Coryell and forty-four other boat owners, instituted a suit in Admiralty in the United

States District Court for the Southern District of Florida against the respondents Phipps and George J. Pilkington* to recover damages for the destruction of some forty-five vessels owned by petitioners, as a result of a fire which occurred on June 24, 1935, while the vessels were afloat at Pilkington's covered storage basin, Fort Lauderdale, Florida. The fire was caused by an explosion of gasoline fumes in the engineroom of the yacht "Seminole", then registered in the name of Seminole Boat Company. Respondent Phipps alleged that there was no negligence, but that even if there had been negligence, such negligence was that of the Seminole Boat Company and was not his negligence, and that, even if he were negligent, he was entitled to the benefits of the Limitation of Liability Statute. For the text of this Statute, see Appendix A.

Both Courts below concurrently found that the gasoline fumes had escaped into the engineroom of the "Seminole" because of the leaky condition of the "Seminole's" gasoline tanks and installation, which became defective with the "passage of time" (R. 3587-8, 39 F. Supp. 142 at p. 144; R. 3648, 128 F. (2d) 702, at 704). Both Courts then held that the Seminole Boat Company was liable for the damage sustained by your petitioners because of the negligence thus found, but that Phipps was not liable (R. 3588, 39 F. Supp. 145; R. 3648, 128 F. (2d) 704) because the negligence was that of the Seminole Boat Company, and not that of Phipps, who was a mere stockholder in that company. Thus the issue of negligence is definitely determined by the findings of both Courts below that the damage to petitioners' vessels was due to a defective condition of the yacht "Seminole". Those findings are in the following language:

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* The claim against Pilkington, operator of the storage basin, was not pressed in the Circuit Court of Appeals and is not pressed here.

The District Court:

"The presence of gasoline fumes in the engine room, I find was the proximate cause of the damage done to the vessels of libellants."

* * *

"The Seminole Boat Company was responsible for the proximate cause. It was not negligence to have converted a steam yacht into a gasoline propelled vessel, and from the evidence it is clear there was no negligence in the original installation of the tanks which were used on the 'Seminole' for gasoline storage. *But with the passage of time some part of the machinery or equipment did leak* and the great possibility of damage attendant upon the use of gasoline, brings into play the principle that negligence may be based upon circumstantial evidence alone. The respondent argues that there must have been some third person agency intervening which brought about the means whereby gasoline escaped with attendant fumes. There is no evidence of this, and we get into the realm of conjecture. *Just when the defective condition of the tanks made them leaky is in doubt.* Expert testimony on this is an unsatisfactory character of evidence. *I am satisfied, and find, that there were gasoline fumes present in the engine room, and that their ignition into combustion and fire caused the damage. For this the Seminole Boat Company was liable.* Whether the Seminole Boat Company could limit liability is not necessary to decide. That is not in the case" (R. 3587-88, 39 F. Supp. at p. 144).*

The Circuit Court of Appeals concurred in these findings, saying:

"The basic dispute turns upon the ultimate facts, for when they have been ascertained the principles of law applicable thereto are well settled. This being an appeal in admiralty, the findings of fact made by

* Italics in quotations ours throughout this brief.

the court below are not binding upon us, but we think the evidence preponderates in favor of the findings made in each material instance. Under the evidence, the case presents itself in this aspect: Appellants' vessels sustained damages by reason of the negligence of the Seminole Boat Company" (R. 3648, 128 F. (2d) 704).

Later in the opinion while discussing the issue of limitation of liability, the Court refers to "the defective condition obtaining upon the 'Seminole'" (R. 3649, 128 F. (2d) 704).

The defense based upon the issue of negligence is no longer open to respondent Phipps in this Court, *Just* v. *Chambers*, 312 U. S. 383, 385. So also since respondent Phipps has not presented any questions for determination to this Court, he may not question the correctness of any determination not raised by the petitioners. *The Malcolm Baxter, Jr.*, 277 U. S. 323. The issues before this court are: was the corporate setup of the Seminole Boat Company such that Phipps should have been held liable for the negligence found and, if so, was Phipps entitled to limit his liability to the value of the damaged yacht "Seminole"?

Because the Seminole Boat Company was an empty shell and the yacht "Seminole" was a complete wreck, the decision of the lower courts meant that the petitioners were without redress. Although at the time of the loss Mr. John S. Phipps and his sister, Mrs. Guest, were both shareholders of the Seminole Boat Company, suit was brought against Mr. John S. Phipps alone.*

* In admiralty each tort feasor is liable for full damages (*The Atlas*, 93 U. S. 302, and the *Virginia Ehrman*, 97 U. S. 309, 317). When by negligence the vessel sets fire "to one adjoining" or causes a collision, all the part owners are answerable *in solido* (*Parsons on Shipping & Admiralty*, Vol. I, 106. *Parsons on Maritime Law*, 94). See also: 58 Corpus Juris, Title Shipping, p. 303, Par. 424; *Scull* v. *Raymond*, 18

[Footnote continued on following page.]

Facts.

The yacht "Seminole", prior to February 16, 1929, was registered at the Custom House at Miami as being solely owned by the respondent John S. Phipps (Exhs. 30 and 31, Certificates of License offered, R. 249).

The District Court found, that during February 1915, respondent Phipps purchased a half interest in the yacht "Seminole", then a steam yacht, from his brother, H. C. Phipps. During 1922, her steam plant was removed and gasoline engines and their necessary appurtenances were installed (Fdg. 2, R. 3582). At that time, four cylindrical tanks, to be used for carrying gasoline to drive the yacht's engines, were placed in a compartment which had formerly been used as a coal bunker (R. 376, 572-3). The tanks completely filled the coal bunker, and it was impossible to inspect them properly without removing the bulkheads of the compartment (R. 135-6, 142-3, 171-2, 383, 397, 573-4, 840-42, 974-5, 2231, 2248-9). In late 1928 or early 1929, the two brothers each sold their one-half interest in the "Seminole" to Seminole Boat Company, a Delaware corporation, which had been formed by them for the purpose of taking title to the "Seminole" and operating her under charter for hire. Each of them received one-half of the stock of the company. The "Seminole" was, in fact, chartered on several occasions in 1929 and 1930 but no charterer was found for her after 1930 or for more than five years preceding the fire (Fdg. 3, R. 3583).

The officers and directors of the corporation were Paul

[Footnote continued from preceding page.]

Fed. 547. It follows that a determination of these issues in favor of petitioners will permit a full recovery by them of their damages from the respondent Phipps, leaving him to seek such contribution from his sister as he may be advised. The interest of Mrs. Guest in the "Seminole" and in the corporation did not appear, and were unknown to libellants when suit was brought, or until established by respondent's testimony at the trial.

Scott, President, R. C. Alley, Vice-President and Roy H. Hawkins, Secretary-Treasurer. These men, as officers of the corporation, assisted by James F. Riley, advised by certain boat captains, operated, controlled, maintained and managed the vessel from the time of her purchase by the corporation down to and including the time of the fire (Fdg. 4, R. 3583).

In March 1935, when an opportunity to sell the vessel arose, H. C. Phipps wished to sell but respondent Phipps did not. Mrs. Amy Guest, a sister of H. C. and John S. Phipps, thereupon purchased the interest of H. C. Phipps. No other change in the operation, control, maintenance or management of the vessel occurred prior to the fire (Fdg. 5, R. 3584).

Scott, Alley and Hawkins were selected by respondent Phipps and his brother to be officers and directors of the corporation Seminole Boat Company. They, as well as Riley, were so-called "family representatives" of the Phippses (R. 1911, 1944, 1956) and were employees of certain other corporations in which the Phipps family were the shareholders and principals (R. 1355, 1470, 1478-81, 1503, 1590-1). As such, they were subject to the orders of the respondent Phipps and his brother, and subject to their call, as well as that of other members of the Phipps family, to attend to their personal business matters (R. 1451-2, 1477, 1485-6, 1582). They were not stockholders and had no interest in the Seminole Boat Company (R. 1363), nor did they receive any compensation from Seminole Boat Company (R. 1582-3). Their salaries were paid by the general paymaster of the Phipps' interests (R. 1353-4, 1486) and no part of such salaries were charged to Seminole Boat Company (R. 1354-5, 1486, 1582-3). Their services to Seminole Boat Company were gratuitous and undertaken for the accommodation of the Phippses (R. 1395).

The corporation was not furnished with capital funds

necessary for an independent corporate existence. The only cash paid into its treasury upon organization was $100, a nominal payment of $50 from each of the stockholders. Its bank account was closed after June 2, 1931 because it was so inactive (R. 1472, 1477). The bills of the corporation for expenses of the vessel were paid by other Phipps corporations* and charged on their books to Seminole Boat Company (R. 1281, 1324-5) until repaid periodically by respondent Phipps and his brother (later his sister) directly to the corporations which had advanced the money. The corporate books contained only a record of such repayments by the Phipps made long after the debts were incurred. Exhibit D (offered, R. 1659, see reprint accompanying record) is respondent's own summary of the method by which the corporation was financed.

These family representatives of the Phipps performed the same functions for the "Seminole" after incorporation as they had done before that event, and they acted for the "Seminole" in the same manner as they acted for other vessels owned directly by respondent Phipps and members of his family without the benefit of the corporate form (R. 1361, 1368-70, 1398-9, 1454, 1584-6, 1532, 1596-7). They consulted with the stockholders and acted subject to their directions on all except minor routine matters (R. 1282-3, 1381-2, 1297-9, 1300-1, 1333, 1886-7).

Due to the fact that the corporation had no funds of its own and was dependent on the payment of its debts and expenses by the Phippses (R. 1400, 1941), the officers of the corporation could not incur expenses for more than nominal sums without express authority from the Phippses. Hawkins said the limit was $500 (R. 1380-1); Riley, $300 (R. 1505); see for instance authorization of $300 for repair of generator (R. 1505-6, 1596, Exh. 3-T1, R., Vol. VI, p. 18, offered, R. 1507).

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* Boulevard Mortgage Company and Palm Beach Company.

As long as the "Seminole" remained in existence the respondent Phipps continued to make personal use of her whenever he desired to do so (R. 340, 1387, 1898-9, 1915, 438, 507, 1507-8, 1643-7, 1917) by merely informing the officers of the corporation of his wishes (R. 1914-5). They recognized his authority (R. 1387-8). The only limitation on his right to use the vessel which he recognized was his personal preference to charter, if a charter was available so that he could have the charter hire (R. 1915; see also R. 1886). For several years after the incorporation, the yacht "Seminole" continued to be registered with the New York Yacht Club as the personal yacht of respondent Phipps (R. 1905, 1965-7; Answer (i) R. 89).

Conclusions of the District Court With Respect to Liability of the Respondent Phipps.

The District Court held that in spite of the circumstances of the organization and control of Seminole Boat Company by the respondent Phipps and his brother, shown by the respondent's own evidence, Seminole Boat Company acted "as a legal non-conductor between Phipps on the one hand and the libellants and Pilkington on the other, *because there was no fraud or other improper conduct or purpose in* the creation or continued existence of the corporation" (R. 3589). The Court said:

> "The organization of the corporation, Seminole Boat Company, was a natural normal development of ownership of a pleasure yacht, *free from any fraud or ulterior motive in the inception of its chartering and creation.* Likewise, it was free of any of the other elements, treated in the reported and cited cases *incident to the presence of bad faith*, which apply the doctrine of piercing the corporate veil" (R. 3587).

The Court said further:

> "Furthermore, the character of the negligence which this record discloses is the failure to do or perform a duty, or nonfeasance. Such failure of duty does not give rise to an application of the *alter ego* or agency doctrine" (R. 3587).

In both of these respects we submit the District Court was in error and our argument under Point I is in support of this position.

Conclusions of the Circuit Court of Appeals With Respect to Liability of the Respondent Phipps.

Upon appeal to the Circuit Court of Appeals that Court held that, since petitioners' vessels sustained damage by reason of the negligence of Seminole Boat Company, "in order to hold Phipps to personal liability, appellants [petitioners] had the burden of establishing by a preponderance of the evidence, that the corporation was *an artifice and a sham designed to execute illegitimate purposes* in abuse of the corporate fiction and the immunity that it carries, and that its activities in reality were those of Phipps personally" (R. 3648).

We submit that the Court was in error in this statement and we support our position by the argument under Point I.

Limitation of Liability.

Respondent Phipps also set up the defense of limitation of liability under Sections 4283 and 4284 of the Revised Statutes of the United States* and the statutes supplementary thereto and amendatory thereof (R. 61).

* U. S. C., Title 46, Secs. 183, 184, 185, 186. Printed as Appendix A to this brief.

Petitioner's Contention on the Issue of Limitation.

Petitioners contend that since the concurrent finding below was that, with the passage of time, some part of the machinery of the yacht did leak, with the result that gasoline fumes entered the engineroom and caused the fire, these facts in themselves establish circumstances which deprived respondent Phipps of the benefit of the limitation statute; and that such a condition necessarily indicates a failure to inspect, or to provide an adequate system of inspection. Otherwise this defective condition would have been discovered during "the passage of time".

Your petitioners further contend that the officers and directors of the corporation selected by respondent Phipps to manage and operate his vessel, and Riley, to whom they later entrusted complete control and management of the vessel for a long period before the fire, were the *alter ego* of respondent Phipps; that their negligence, knowledge and privity were the negligence, knowledge and privity of the respondent Phipps; that their failure to provide an adequate system of inspection by competent persons, and proper maintenance, constituted negligence, knowledge and privity on their part which was in legal effect the negligence, knowledge and privity of the respondent Phipps, precluding limitation of liability; and that respondent Phipps could in no event establish his claim for limitation of liability without showing that the persons appointed by him to manage the vessel were competent.

Respondent's evidence failed to show any qualification or previous experience of the officers and directors of the corporation, Scott, Alley and Hawkins, for management of the yacht "Seminole" or any vessel property. Beginning in April 1931, by direction of Scott, President of the corporation, the "Seminole" was placed in storage at Fort Lauderdale and subsequent thereto, she was continuously in storage up to the time of the fire except for only four

brief occasions. By direction of Scott, the vessel, while in storage, was placed in the "control and management" of Riley, who was instructed "to inspect her regularly" (R. 1454-7, 1472, 1480). Riley conceded his inexperience and incompetence to inspect the vessel (R. 1595-6; see also R. 1637, 1640-1).

The District Court held that even if the liability were held to be that of the respondent Phipps "*the character of negligence shown by this record* was such that Phipps, as an individual, would not be precluded from asserting as a limitation of liability under the statute" (R. 3588). The Court had previously held that "The character of the negligence which this record discloses is the failure to do or perform a duty, or nonfeasance" (R. 3587).

We shall show under Point II of this brief that this holding is not supported by authority and is wrong in principle.

The Circuit Court of Appeals on the question of limitation of liability held independently of the District Court that "the evidence affirmatively establishes that no actual privity to or knowledge of the defective condition obtaining upon the 'Seminole' was attributable to Phipps personally and that none could be imputed to him *since he had exercised due care and diligence in selecting competent men to man the vessel, and had imposed upon them full duties as to inspection and maintenance of her*" (R. 3649).

Petitioner contends that the "imposition upon" the men selected by respondent Phipps of "full duties as to inspection and maintenance" of the "Seminole" made them the *alter ego* of the respondent Phipps and that consequently their negligence, knowledge and privity were the negligence, knowledge and privity of the respondent Phipps. Since the respondent Phipps had delegated to them the entire responsibility for inspection and maintenance of the vessel, their negligence, knowledge and privity were the negligence, knowledge and privity of

respondent Phipps. We shall support this proposition under Point III of this brief.

The statement by the Circuit Court of Appeals that the men selected by the respondent Phipps upon whom he imposed full duties as to inspection and maintenance were competent, was not a concurrent finding. The District Court made no finding with respect to the competency of any of these men. The District Court found only that the "nature of the negligence" (R. 3588), *i. e.*, non-feasance as opposed to mis-feasance (R. 3587), was not such as to preclude the respondent Phipps from limitation of liability. The Circuit Court of Appeals in its cursory examination of the record failed to note that there is no evidence whatever in the record of the competency or experience of the officers and directors, *i. e.*, Scott, Alley and Hawkins, and that Riley, who was entrusted by them with control and management of the vessel and the duties of regular inspection, was concededly inexperienced and incompetent. We shall support this proposition under Point IV of this brief.

Questions Presented to This Court by the Petition for a Writ of Certiorari.

1. Whether the individual owner of a yacht can escape his responsibilities and liabilities as such owner and secure insulation from liability by forming a corporation to own his vessel

(a) When the corporation is not supplied with capital funds necessary for corporate independence;

(b) When the corporation is officered by individuals of his own choosing who

1. are personally holden to him and obligated by virtue of their situations to do his bidding and to attend to his personal business;

2. receive no compensation from the corporation for their services;

3. have no interest in the corporation;

4. are limited in their discretion and in the management of the vessel by the fact that the corporation has no funds of its own and is dependent on the stockholders for the payment of its debts, and the officers must therefore consult with the stockholders before expenditure of any more than nominal sums.

(c) When the corporation is without credit of its own, and is dependent for its existence upon the credit of the stockholders who annually pay its debts, which are paid in the first instance by other corporations controlled by the stockholders, such debts aggregating over a period of a few years several times the value of the vessel, the sole corporate property.

(d) When such owner retains control and use of the yacht and continues to use the yacht as desired for his personal pleasure, the corporate officers without corporate action recognizing his right, and such owner acknowledges no limitation of that right except his personal preference for charter hire when a charter is available.

2. (a) Whether an owner of a vessel can escape the imputation of knowledge and privity inherent in a dangerous condition of the vessel caused by progressive deterioration of machinery and equipment which leaked, and tanks which became "defective" and "leaky" with the passage of time, by the appointment of agents, competent or otherwise, to whom he transfers "full duties" of "inspection and maintenance"?

(b) Whether an agent, to whom an individual owner of a vessel transfers all his duties and responsibilities for

inspection and maintenance of his vessel, is not the *alter ego* of such owner? and whether the negligence, knowledge and privity of such an agent, or agents, is not the negligence, knowledge and privity of such owner as was held by the Circuit Court of Appeals in the Second, Sixth and Ninth Circuits?

3. Whether the failure of an owner to provide for competent management and proper inspections and for an adequate system of inspection of his vessel by competent persons does not require the denial of limitation of liability on the ground of privity and knowledge as held in the Second, Sixth and Ninth Circuits?

The petition for a writ of certiorari was granted by this Court on October 12, 1942.

Argument.

I.

The holdings of the courts below that respondent Phipps as a shareholder in the Seminole Boat Company is not liable to petitioners because it was not shown that there was "fraud or other improper conduct or purpose in the creation or continued existence of the corporation" or that "the corporation was an artifice and a sham designed to execute illegitimate purposes" are erroneous. The rule in this Court, in other circuits, and in the State of Florida, is that when a corporation is not supplied with funds necessary for corporate independence; when officers of the corporation are subject to control and domination by the stockholders and have no true independence of action, receive no compensation for their services, and have no interest in the corporation, and are dependent upon approval of stockholders in cases where substantial repairs are needed; when the corporation is without credit of its own and must rely entirely upon the credit of its stockholders; and when the stockholders retain the use of, and do use, the corporate property as their own, the stockholders who so act are in fact principals and liable for the negligent acts of the corporation and its agents.

The District Court in holding that the respondent Phipps was not liable for the negligence found, based its conclusion upon the proposition of law that the organization of the Seminole Boat Company "was free from fraud or ulterior motive in the inception of its chartering and creation" (R. 3587). The Court held further that the Seminole Boat Company was a legal non-conductor between Phipps on the one hand and libellants (petitioners) and Pilkington on the other, "because there was no fraud or improper conduct or purpose in the creation or continued existence

of the corporation" (Concl. 2, R. 3589; 39 F. Supp. 142, at p. 145). The Circuit Court of Appeals held that "in order to hold Phipps to personal liability, appellants had the burden of establishing by a preponderance of the evidence, that the corporation was an artifice and a sham designed to execute illegitimate purposes in abuse of the corporate fiction and the immunity that it carries, and that its activities in reality were those of Phipps personally" (R. 3648).

We submit that both of these holdings are in conflict with the decision in *Chicago, Mil. & St. Paul R. R. Co.* v. *Minn. Civic Assn.*, 247 U. S. 490, at page 501, which laid down the following rule:

> "where stock ownership has been resorted to, not for the purpose of participating in the affairs of the corporation in the normal and usual manner, but for the purpose, as in this case, of controlling a subsidiary company so that it may be used as a mere agency or instrumentality of the owning company or companies" * * * "the courts will not permit themselves to be blinded or deceived by mere forms of law, but regardless of fictions, will deal with the substance of the transaction involved as if the corporate agency did not exist and as the justice of the case may require."*

That the substance of the transaction involved is the determining factor in determining whether corporate agency did exist has been repeatedly held by this Court;

U. S. v. *Lehigh Valley R. R. Co.*, 220 U. S. 257;

* This statement as repeated in *U. S.* v. *Reading Co.*, 253 U. S. 26, 62, 63, although made with respect to a case involving the commodities clause, has as pointed out by Frank, *C. J.*, "become a classic statement applied generally in cases piercing the corporate veil". *Weisser* v. *Mursam Shoe Corp.*, 127 F. (2d) 344, 346, note 4. See also an article entitled "Insulation from Liability Through Subsidiary Corporations" by William O. Douglas and Carrol M. Shanks, 39 Yale Law Journal, p. 193, where the cases decided before 1929 are collected.

McCaskill Co. v. *U. S.*, 216 U. S. 504;
Linn Timber Co. v. *U. S.*, 236 U. S. 574;
Southern Pacific Co. v. *Lowe*, 247 U. S. 330;
U. S. v. *Reading Co.*, 253 U. S. 26;
Gulf Oil Corp. v. *Llewellyn*, 248 U. S. 71;
Chicago, Milwaukee & St. Paul R. R. Co. v. *Minn. Civic Assn.*, 247 U. S. 490;
Davis v. *Alexander*, 269 U. S. 114;
Gregory v. *Helvering*, 293 U. S. 465;
Consolidated Rock Co. v. *DuBois*, 312 U. S. 510, 524.

In none of these cases is "fraud" or "other improper conduct or purpose" or "illegitimate purpose" made a test of liability of the parent (individual or corporate) of a corporation. On the contrary, the Courts have held that *domination and control* of the subsidiary by the parent creates liability.

The Circuit Courts of Appeal in other circuits than the Fifth have taken a like view.

In *The Willem van Driel, Sr.* (C. C. A. 4), 252 F. 35, certiorari denied 248 U. S. 566, an Admiralty case, the Circuit Court of Appeals for the Fourth Circuit held that, where the Pennsylvania Railroad Company through stock control dominated a company called the Central Elevator Company, the Pennsylvania Railroad Company was liable for the negligence of the Central Elevator Company in the operation of a grain elevator which caught fire and damaged the S. S. "Willem van Driel, Sr." The Court held that the liability of the Pennsylvania Railroad Company depended upon whether the Elevator Company was in substance a mere corporate agent or instrumentality of the Pennsylvania Railroad Company. It found that there was such a complete dominance and control of the Elevator Company by the Pennsylvania Railroad Company that the Elevator Company was a

"mere puppet" of the Railroad Company. The Court then adopted the language of Judge Wallace in *Lehigh Valley R. R. Co.* v. *DuPont* (C. C. A. 2), 128 F. 840, as follows:

> "Applying the language of Judge Wallace in *Lehigh Valley Railroad Co.* v. *DuPont*, 128 Fed. 840, 64 C. C. A. 478, the potential and ultimate control of all its property and business affairs of the elevator company was lodged in the railroad company, and this control was exercised as completely and as directly as the machinery of corporate organisms would permit. Such complete dominance and control by the railroad company made the elevator company its mere puppet. *United States* v. *Del. Lack. & West. R. R.*, 238 U. S. 516, 35 Sup. Ct. 873, 59 L. Ed. 1438" (252 Fed. 35, 39).

The *Willem van Driel, Sr.*, was followed by the Circuit Court of Appeals for the Fourth Circuit in *Luckenbach S. S. Co. et al.* v. *W. R. Grace & Co., Inc.* (C. C. A. 4), 267 F. 676, 681, and in *The Centaurus* (C. C. A. 4), 291 F. 751.

The same result was reached in the Second Circuit:

> *Lehigh Valley R. R. Co.* v. *DuPont* (C. C. A. 2), 128 F. 840.

The Circuit Court of Appeals for the Second Circuit followed the last cited case in *Lehigh Valley R. R. Co.* v. *Delaware* (C. C. A. 2), 145 F. 617, and in *Costan* v. *Manila Electric Co.* (C. C. A. 2), 24 F. (2d) 383, 384, and in the very recent case of *Weisser* v. *Mursam Shoe Corporation, et al.* (C. C. A. 2), 127 F. (2d) 344.

The Willem van Driel, Sr., *Luckenbach S. S. Co.* v. *W. R. Grace & Co., Inc.* and *Costan* v. *Manila Electric Co.*, were all cited by this Court in the case of *Consolidated Rock Co.* v. *DuBois*, 312 U. S. 510, 524.

In the case of *The Silver Palm* (C. C. A. 9), 94 F. (2d) 776, 780, the Circuit Court of Appeals for the Ninth Circuit held that the operating company of the vessel named was the *alter ego* of the owner. It stated that under the circumstances of that case the group of companies involved "constituted a family affair".

The Circuit Court of Appeals for the Sixth Circuit, in the case of *In re Lakes Transit Corporation and James Playfair*, 81 F. (2d) 441, held that Playfair was personally liable as owner of the vessel involved, since the facts showed that he was the real party in interest, although it was claimed that title was held by a corporation in which Playfair and his family owned 90% of the stock.

In none of these cases did the Court base its decision upon fraud, nor upon sham or illegal purpose. These decisions all rest upon the ground that the company had no independent existence and was in fact merely the *alter ego* of the stockholder.

The Florida cases are very clear on this point.

Biscayne Realty & Ins. Co. v. *Ostend Realty Co.*, 109 Florida 1, 8*; 148 So. 560, is the leading Florida case. In summing up its reasons for reversing a decree of the trial Court where it had declined to pierce the corporate veil, the Court said:

> "In the view we have of the case *it is unnecessary to say that the Ostend Realty Company was organized for an illegal purpose*, nor to say that the ownership of all its stock by Clarence M. Busch dissolved it. That is not necessary to a determination of the case. It is sufficient to say that the original bill, the answers thereto, and the evidence disclose a state of facts, at least suggest such facts, as would require

* Note that the opinion reported at page 1 is superseded by that beginning at page 8.

a court of equity* to look beyond the mere form of the corporate entity to the person who was the sole beneficiary of its activities, directed and managed the transactions, used the corporate name at his pleasure, incurred financial obligations in its name; conveyed to himself the corporate lands when he so desired, received all money paid to the corporation by way of consideration in its transactions, if any, assumed obligations primarily assumed in the corporate name which were originally intended to be taken over by him, used the name of the corporation and set it up as his principal, assumed the act as its agent when in fact the act in the corporate name was his act, and his act that of the Corporation. In the circumstances the interests of the two cannot be distinguished. In these transactions the Corporation by name became indebted to third persons. It was the *alter ego* of the defendant Busch" (109 Florida 22).

This case was followed by *The Third Avenue Company, et al,* v. *May, Bodine, Kiely,* 111 Florida 46, 149 So. 30, opinion filed May 30, 1933, petition for rehearing denied October 17, 1933. That case also involved a creditors' bill, whereby creditors of the defunct, "The Third Avenue Company," sought to charge Henry C. Phipps, John S. Phipps [the respondent herein], Biscayne Boulevard Company [a Phipps' corporation], and Palm Beach Company [the second of the Phipps' Companies used to finance the Yacht "Semihole"], Phipps Realty Company and Mortgage Discount Company, with the debts of The Third Avenue Company. In that case the allegations of the original bill were summarized by the court as follows:

"Through many allegations, made lengthy by de-

* Although a Court of Admiralty is not a Court of Equity it administers justice on equitable principles—*Watts* v. *Camors,* 115 U. S. 353, 361; *United States* v. *Cornell Steamboat Co.,* 202 U. S. 184, at p. 194.

tailed accounts of numerous alleged transactions, the fact is set up in reasonably clear and certain language that the Phippses organized and owned the five corporations; that while their names do not appear as stockholders or officers in any one of the corporations, they were nevertheless the owners of them, dominated, controlled and directed them through others, the employees of the Phippses, who used the names of such employees as officers and owners of the capital stock, although they paid nothing for their stock and constituted as such officers merely mouthpieces or agents for the Phippses who furnished the money for the stock held by their employees and who manipulated, managed and controlled all the activities of the different corporations solely and exclusively for the benefit of the Phippses and to their exclusive advantage; that the names of the corporations were used as a shield to protect from persons with whom the Phippses dealt through the names of the corporations the information of the personal liability of the Phippses; that the nominal stockholders, officers and directors of the corporations are as such mere employees of the Phippses, who pay them for their activities in the said corporations and who are used for superficially maintaining a legal government of the corporations and their legal corporate entities, but in reality to shield and cover the interests of the Phippses in the many transactions intended to be entered into for their exclusive financial benefit and to guard them from personal liability to persons who in the course of such transactions became ostensibly creditors of one or more of such corporations; that The Third Avenue Company was thus a mere device in the hands of the Phippses for the purpose of giving them absolute control of the property ostensibly purchased by that corporation while protecting them from personal liability for any indebtedness included in the name of the corporate entity; that Mrs. Keely became a cred-

itor of The Third Avenue Company in one or more transactions with that corporation under the conditions set forth above" (111 Florida, pp. 48, 49).

The Trial Court had sustained the demurrer to the original bill. As to this ruling the Supreme Court of Florida said:

"The allegations of the original bill state a ground for equity relief upon the doctrine announced by this Court in the case of *Biscayne Realty and Insurance Co.* v. *Ostend Realty Company, et al.*, decided at this term and filed May 24, 1933.

* * * The bill stated such a case as would require a court of equity to look beyond the mere form of the corporate entity to the persons who were the sole beneficiaries of its activities, directed and managed its transactions, used the corporate name at pleasure, incurred financial obligations in its name, conveyed to themselves corporate lands, and other property as desired, received the profits, if any, paid out money as the transactions required, and in fact set up and treated the corporate entity as their principal. In such circumstances the interests of the corporation and its owners became so blended, so indistinguishable, as to be identical.

The instant case is distinguished from the *Biscayne Realty Insurance-Ostend Realty Company* case in no essential element. According to the allegations of the original bill the Phippses merely concealed themselves beneath one more layer of names. Instead of using their own names as stockholders and officers they merely employed others in their service to use theirs, but whom they directed and manipulated as pawns in their complicated and deceptive game of trade. Whether the allegations of the bill can be proved by the complainant is another matter, but the allegations of the bill set up such a case" (111 Florida, pp. 50, 51).

In the present case neither Scott, Alley, Hawkins nor Riley held any stock in the Seminole Boat Company nor were they in any way interested in that company, except as employees of Phipps. The Seminole Boat Company never had any financial independence and at all times was dependent for its existence upon the respondent for payment of its bills. It had no capital funds nor money of its own. John S. Phipps originally contributed $50 and Henry C. Phipps $50, not even enough to pay the expenses of organization. This was the only cash which the corporation ever had as its own. All other moneys were advanced either by Boulevard Mortgage Company or by the Palm Beach Company for the account of the Phippses and were repaid to the advancing companies by the Phippses.* Scott, Alley, Hawkins and Riley re-

*The following is an extract from Respondent's Exhibit 4D (offered R. 1659, see reprint accompanying record) which is respondent's own summary of the financial operation of Seminole Boat Company.

ANALYSIS OF OPERATION OF SEMINOLE BOAT COMPANY

PERIOD OCTOBER 11, 1928 THROUGH DECEMBER 31, 1935

On November 11, 1928 the records of account for Seminole Boat Company were set up with Journal Entry #1 recording the subscription payment and issuance of 10 shares of its capital stock as follows:

S. L. Mackey	4 shares
L. C. Chester	3 shares
H. Kennedy	3 shares

On November 20, 1928, an account was opened with the First National Bank, Miami, Florida depositing $100.00, being the proceeds from the sale of the above listed stock.

The Boulevard Mortgage Company made cash advances to Seminole Boat Company, also paid sundry expense items for its account. Both the cash advances and disbursements for sundry expenses were set up on Seminole Boat Company records as Accounts Payable to Boulevard Mortgage Company. From time to time the Messrs. J. S. and H. C. Phipps would reimburse Boulevard Mortgage Company for

[Footnote continued on following page.]

garded themselves as representatives of the Phipps family and were dependent upon the Phipps family for their employment and dared not incur any major expense for repairs of the "Seminole" without obtaining approval of the Phipps family. The Seminole Boat Company was without any credit of its own and the credit which was extended was extended to the Phippses. The Phippses retained the yacht "Seminole" to use it at their pleasure, and did so use it, without corporate action recognizing their rights.

In the spring of 1935, Hawkins, Secretary-Treasurer of the Company, on the instructions of respondent Phipps, bought a small vessel called a "Prig" boat for $950. On further instructions from respondent Phipps, the purchase price was charged to Seminole Boat Company. After the fire the "Prig" boat was transferred to the respondent Phipps by bookkeeping entries. A corporation with less

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[Footnote continued from preceding page.]

such items—one-half each. When such reimbursements were made the Seminole Boat Company would, by journal entry, transfer its liability to Boulevard Mortgage Company to the Messrs. J. S. and H. C. Phipps.

The cash advances by Boulevard Mortgage Company and other cash receipts were deposited in Seminole Boat Company's bank account with First National Bank, Miami. From this account were paid the principal operating expenses to June 2, 1934. On this date the bank account was closed and Boulevard Mortgage Company paid all operating expenses to December 31, 1933. Palm Beach Company then paid all operating expenses from this date on. The Messrs. J. S. and H. C. Phipps reimbursed Boulevard Mortgage Company and Palm Beach Company for such expenses to December 31, 1934. Their reimbursements were handled as stated in above paragraph. Mrs. Guest acquired the one-half interest of Mr. H. C. Phipps on March 23, 1935, Mrs. Guest assuming his one-half of the expenses for period January 1, 1935 through March 23, 1935. Mrs. Guest and Mr. J. S. Phipps reimbursed Palm Beach Company for expenses to March 23, 1935—one-half each.

independence and more completely the *alter ego* of the respondent Phipps, could hardly be imagined.*

The subsequent Florida cases follow the same doctrine:

Hirsch v. *Lincoln Securities Co.*, 118 Florida 164, 168 So. 12;

Mayer v. *Eastwood-Smith Co.*, 122 Florida 34, 164 So. 684;

Fickling Properties, Inc. v. *Smith*, 123 Florida 556, 167 So. 42;

Bellaire Securities Corp. v. *Brown*, 124 Florida 47, 168 So. 625;

Wofford v. *Wofford*, 129 Florida 445, 176 So. 499;

Miakka Estates v. *B. L. E. Corporation*, 132 Florida 307, 181 So. 423.

In these last two cases, the Supreme Court of Florida quotes with approval the following language from its decision in *Mayer* v. *Eastwood-Smith Co.*, 122 Florida 34, at p. 43, where the Court said:

> "The overwhelming weight of authority is to the effect that courts will look through the screen of corporate identity to the individuals who compose it in cases in which the corporation was [1] a mere device or sham to accomplish some ulterior purpose, or [2] is a mere instrumentality or agent of another corporation or individual owning all or most of its stock, or [3] where the purpose is to evade some statute or to accomplish some fraud or illegal purpose" (the numbers in brackets are supplied by us).

The decisions of the courts below ignored category [2] as a ground for piercing the corporate veil. Merely because the facts here did not establish a case under category [1] (or, as was said below, because there was no evidence of

* In Appendix B, attached to this brief, p. 57, we have summarized respondent's evidence as to the Phipps' domination of the corporation.

fraud "or other improper conduct or purpose in the creation or continued existence of the corporation", or "that the corporation was an artifice and a sham designed to execute illegitimate purposes") the courts below held that the respondent Phipps was not liable. Because the facts do not justify a holding under category [1] that the corporate veil was pierced, is immaterial, since they do establish that the veil was pierced under category [2].

The law applied by the Admiralty courts is the same. In the leading case in Admiralty, which was also a case of tort, the *Willem van Driel, Sr.*, 252 F. 35, cert. denied 248 U. S. 566, the Court permitted the corporate veil to be pierced for identically the same reason as that given by the Supreme Court of Florida in category [2] in *Meyer v. Eastwood-Smith Co.*, 122 Florida 34. In the *Willem van Driel, Sr.*, the Circuit Court of Appeals for the Fourth Circuit said that liability:

> "depends upon the question of fact whether the elevator company although in the name and organization a distinct corporation, was in substance a mere corporate agent or instrumentality of the Pennsylvania Railroad Company." *So. Pac. Terminal Co. v. Int. Comm. Com'n.*, 219 U. S. 525, 31 Sup. Ct. 279, 55 L. Ed. 310; *Joseph R. Foard Co. v. State of Maryland*, 219 Fed. 827, 135 C. C. A. 497; *Lehigh Valley R. Co. v. Delachesa*, 145 F. 617, 76 C. C. A. 307."

See also:

Luckenbach S. S. Co. v. W. R. Grace & Co. Inc. (C. C. A. 4), 267 Fed. 676;
The Centaurus (C. C. A. 4), 291 Fed. 751;
The J. B. Austin Jr. (E. D. N. Y.), 1 F. (2d) 451.

Judge Wallace in the Second Circuit said in *Lehigh Valley R. Co. v. DuPont* (C. C. A. 2), 128 Fed. 840, that

"the potential and ultimate control" was the test. In none of these cases was fraud or illegitimate purpose an essential element in the case. The stockholder's liability rested upon the fact that the corporation lacked essential elements of corporate independence, and was subject to the domination and control of stockholder.

It is true that fraud may also be a ground for "piercing the corporate veil" and holding shareholders liable for the debts of the corporation, but since fraud can only be in an element in contract cases, category [1] is of no importance here. When a party voluntarily enters into a contract with a corporation, he knowingly contracts with the corporate entity, which has a limited liability. He cannot complain of that limited liability unless he can show that he has been misled or tricked or fraudulently induced to enter into a contractual relation with it. See:

Roos v. *Texas Co.* (C. C. A. 6), 43 F. (2d) 1;
New York Trust Co. v. *Carpenter* (C. C. A. 2), 250 F. 668, 673, 678;
Weisser v. *Mursam Shoe Corp.* (C. C. A. 2), 127 F. (2d) 344, 347, note 6.

Decisions in such cases have no application to tort liability. In tort cases there is nothing in the legal relations involved which admits of fraud as an element of liability.

Similarly there are cases where an improper purpose in the formation of a corporation may be sufficient for disregarding the corporate entity. The so-called bank stock cases may be cited as examples:

Coker v. *Soper* (C. C. A. 5), 53 F. (2d) 190, certiorari denied 285 U. S. 540;
Harris Inv. Co. et al. v. *Hood* (Fla.), 167 So. 25.

In tort cases the test is, was the corporation in fact an entity? Was it sufficiently independent of its shareholders and sufficiently free of their dominance and control to be regarded as more than a mere agent of the shareholders? We respectfully submit that the District Court was clearly wrong in holding that the Seminole Boat Company was not respondent Phipps under another name merely because no fraud was involved.

The test applied by the Circuit Court of Appeals of "artifice and sham designed to execute illegitimate purposes" is equally inapplicable.

That the corporate form does not effectively protect shareholders from tort liability when the corporation has no real independence, and the corporation is a mere name, is well established:

Davis v. *Alexander*, 269 U. S. 114;

Callas v. *Independent Taxi Owners Assn.* (C. C. A.), D. C., 66 F. (2d) 192; certiorari denied 290 U. S. 669;

Mangan v. *Terminal Transportation System, Inc.*, 284 N. Y. S. 183, 157 Misc. 627; aff'd 286 N. Y. S. 666, 247 App. Div. 853; appeal denied 272 N. Y. 676;

Auglaize Box Board Co. v. *Hinton*, 100 Ohio St. 505, 126 N. E. 881;

Joseph R. Foard Co. v. *State* (C. C. A. 4), 219 Fed. 827;

Oriental Investing Co. v. *Barkley*, 64 S. W. 80, 25 Tex. Civ. App. 543;

Erickson v. *Minnesota & Ontario Power Co.*, 134 Minn. 209, 158 N. W. 979;

Specht v. *Missouri Pacific R. R. Co.*, 154 Minn. 314, 191 N. W. 905;

Dixie Coal M. & M. Co. v. *Williams*, 221 Ala. 331;

Ross v. *Pennsylvania Railway Co.* (N. J.), 148 Atl. 741.

See also:

Weisser v. *Mursam Shoe Corp.* (C. C. A. 2), 127 F. (2d) 344 (Opinion with notes by Frank, *C. J.*; April 27, 1942).

No case could illustrate better than the instant case the injustice, and the harmful results, which will follow from the establishment of the rule laid down by the Courts below. Here the owner has thus far successfully avoided any responsibility for negligent operation of the yacht "Seminole" merely by creation of a corporation which was an empty shell. When "with the passage of time" gas tanks, always a serious hazard*, through lack of inspection and proper maintenance become defective and leaky and cause an explosion and fire which destroys a large number of vessels owned by innocent persons, such an owner should not under the circumstances of this case be permitted to hide behind the corporate veil. We submit, that to grant the immunity of corporate insulation in such a case, establishes a dangerous precedent and encourages the owners of yacht, or other vessel property, to employ this devious method of avoiding personal liability.

It cannot be said that the question of the control and domination of Seminole Boat Company by respondent Phipps is a question of fact decided by the lower Courts adversely to petitioners. Neither of the Courts below made any findings as to control and domination of the corporation by the respondent Phipps because in their view this was not important, in the absence of any showing of fraud or improper purpose in the creation or continued existence of the corporation.*

The facts admitted by respondent Phipps clearly establish that the Seminole Boat Company was no more than respondent Phipps under another name.

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* See *Gunnarson* v. *Robert Jacob* (C. C. A. 2), 94 F. (2d) 170, 172 (Learned Hand, *C. J.*).

II.

Both courts below concurrently found that the losses sued for were caused by the negligence of Seminole Boat Company and that negligence consisted in permitting gasoline tanks to become defective and leaky "through the passage of time". Such a condition could not have existed if there had been proper inspection. Since, as we have shown, this negligence of the Seminole Boat Company was in fact the negligence of respondent Phipps, respondent Phipps is not entitled to limit liability. If the tanks had been examined the defective condition of the tanks would no doubt have been discovered. Knowledge of what could have been discovered, if a proper inspection had been made, is imputed to Phipps. The decision of the District Court that the character of the negligence, *i. e.*, "the failure to do or perform a duty, or non-feasance", did not constitute "privity and knowledge" and did not preclude Phipps "from asserting * * * limitation of liability under the statute", U. S. C. Title 46, §183, is clearly erroneous and is in conflict with the decisions of other circuits.

The negligence of the Seminole Boat Company, which both courts below found was the cause of the losses sustained by petitioners, was in fact, as we have just shown, that of the respondent Phipps. That negligence consisted in permitting tanks to become defective and leaky "through the passage of time" (R. 3587; 39 F. Supp. at p. 144). In short, the petitioners' losses were due to the general decay of the yacht "Seminole"—decay which progressed with time. Nevertheless, the District Court held that if an owner's negligence consists of "the failure to do or perform a duty, non-feasance" (R. 3587; 39 F. Supp. 144), he may still limit his liability. Since the "Seminole"

after the explosion was a worthless wreck, this decision really exonerates Phipps from all liability.

Contrast the language of the District Court with that of the Courts in the following cases:

In *Chesapeake Lighterage & Towing Co., Inc.* v. *Baltimore Copper, etc. Co.* (C. C. A. 4), 40 F. (2d) 394, 395, the Circuit Court of Appeals for the Fourth Circuit said:

> "For authorities on the law that controls the question of privity or knowledge of the owner, reference to *The Virginian* (D. C.) 264 F. 986,* *Sorenson et al.* v. *Boston Insurance Co. of Boston, Mass.*, 20 F. (2d) 640, and *Bank Line* v. *Porter*, (*The Poleric*) 25 F. (2d) 843 will show the rule as laid down by this court. Under these decisions the judge below rightly held that the superintendent of the appellant company could, by proper inspection, have discovered the unseaworthiness of the barge, and that the appellant was therefore chargeable with knowledge of such unseaworthiness."

In *Sabine Towing Co.* v. *Brennan* (C. C. A. 5), 72 F. (2d) 490, at page 493, where an old tug, which was covered by certificates stating that she had been inspected and found fit, sank in weather, which she should have withstood, and caused the loss of a number of lives, the Court held that the owners were not entitled to limitation of liability. The Court went on to say that such difficulty as there was in the case was whether the petitioner was entitled to exoneration altogether, rather than whether he was entitled to limitation, because if negligence existed, its very nature was such that the petitioner could not limit against it. The Court said:

> "We think it plain, in fact, the record leaves no room for question, that whatever may be said in

* Cited with approval in *Spencer Kellogg Co.* v. *Hicks*, 285 U. S. 502 at p. 511.

favor of exoneration altogether, because of failure to prove negligence, this is not a case for limitation of liability. Whatever was done with the tug of about it was the act of the owner through its managing officers, and if there was negligence, the owner was privy to it. All of those who testified for appellant make this clear. While they testified positively that Guy was the port engineer and in charge of repairs, they testified too that he made no serious repairs without consulting the officers, and that everything that was done by him in actually equipping this vessel was done under their supervision, and with their approval. Under these circumstances, if there was negligence, the officers were privy to it, and appellant, present in the presence of its managing officers, was privy to it too. *Ft. Worth Elevators Co.* v. *Russell* (Tex. Sup.) 70 S. W. (2d) 397; *In re N. Y. Dock Co.* (C. C. A.) 61 F. (2d) 777; *Henson* v. *F. & C. Trust Co.* (C. C. A.) 68 F. (2d) 444; *The Malcolm Baxter, Jr.*, 277 U. S. 323; 48 S. Ct. 516, 72 L. Ed. 901; *The Miami* (D. C.) 43 F. (2d) 562; *The Vestris* (D. C.) 60 F. (2d) 273; *Kellogg & Sons* v. *Hicks*, 285 U. S. 511, 52 S. Ct. 450, 76 L. Ed. 903, (72 F. (2d) at p. 493).

See also *The 84 H.* (C. C. A. 2), 296 Fed. 427, cert. den. 264 U. S. 596.

Here it was an expensive matter to get at the tanks encased in the coal bunkers. Mr. Hawkins testified that he would not make any repairs to the "Seminole" beyond the sum of $500 without consulting the respondent Phipps, and Riley said that he could not order repairs in excess of $300 without consulting Phipps.* In these circumstances the tanks could not be thoroughly inspected without Phipps' consent.

* See Appendix B, p. 65, *infra*.

See also *In re Jacobsen*, 52 F. (2d) 179 at p. 180, and *The Friendship II (Just v. Chambers)* (C. C. A. 5),* 113 F. (2d) 105 at p. 107, where the Court said:

> "Responsibility for the injury having been established, it remains to be determined whether the appellant is entitled to a limitation of liability. Since a proper inspection of the vessel would have shown the defective condition of the pipes, and Yeiser was himself present and in charge, the injuries were not occasioned without the knowledge or privity of the shipowner. *Because he failed to make such an inspection he may not have limitation. The Republic*, (2 Circ.) 61 Fed. 109; *Christopher v. Grachy*, 40 F. (2d) 8."

See also the decisions of the Circuit Court of Appeals for the Second Circuit in *The Republic* (C. C. A. 2), 61 F. 109; *In re Jeremiah Smith & Son* (C. C. A. 2), 193 F. 395, and *In re P. Sanford Ross* (C. C. A. 2), 204 F. 248.

In *The Malcolm Baxter, Jr.* (C. C. A. 2), 20 F. (2d) 304, 305, the same Court denied limitation because structural defects existed, which, although not found by surveyors, could have been discovered by due diligence. This latter case was affirmed by this Court in *The Malcolm Baxter, Jr.*, 277 U. S. 323, at p. 322. There this Court said:

> "Respondents had purchased the vessel about one month before she sailed. At that time she was unseaworthy, due to a 'hog' or camber in her keel, a struc-

* The decision of the Circuit Court of Appeals, although it affirmed that of the District Court on the issues of negligence and limitation, reversed the decree of the District Court awarding damages to injured persons on the ground that because the tort-feasor had died, the cause of action abated with his death. Certiorari was granted by this Court, and in *Just v. Chambers*, 312 U. S. 383, the judgment awarding full damages, without limitation, of the District Court was restored.

tural weakness dangerous to the ship in heavy weather, which later caused the leak and made necessary the repairs at Havana. Following the purchase and before sailing from New Orleans a survey was made by the owner, which appears not to have disclosed her condition, but both courts below agree that the fact of her unseaworthiness could have been discovered by due diligence" (277 U. S. 332).

And, at page 331 of 277 U. S., this Court said:

"Both courts below agreed that the 'Baxter' was unseaworthy on sailing and that respondent failed to exercise due diligence to ascertain her condition before sailing. This was sufficient ground for denying the petition for exoneration and limitation of liability under the Harter Act, Act of February 13, 1893, c. 105, 27 Stat. 445, and acts permitting limitation of liability to the vessel and pending freight, R. S. 4282-4289."

In the case of *The Loyal* (C. C. A. 2), 294 F. 930, Judge Ward, in his concurring opinion denying limitation of liability, said:

"There is no proof of any regular system of inspection by any one, or *that its managing officers relied upon a competent person, to whom the duty of regular inspection was committed.*"

In *Dexter-Carpenter Coal Co. v. New York, O. & W. Ry. Co., et al.* (S. D. N. Y.), 50 F. (2d) 270, the Court said:

"It is my opinion that there should be no limitation of liability in this case. Limitation is permissible only where the owner can show lack of knowledge or privity of the unseaworthy condition. The burden of proving such lack of knowledge or privity is on the owner. *In re P. Sanford Ross, Inc.* (C. C. A.), 294

F. 248; *In re Reichert Towing Line* (C. C. A.), 251 F. 214. Where the unseaworthiness is due to a generally decayed condition of the vessel which renders it unable to withstand the ordinary wear and tear of service, as was the case with this old barge, *the owner's lack of knowledge can only mean that the owner did not inspect the vessel or provide a regular system of inspection. The Republic* (C. C. A.), 61 F. 109; *In re P. Sanford Ross, Inc., supra.*"

Similarly, in the case of *The Miami* (E. D. N. Y.), 43 F. (2d) 562, the Court said:

"These defects, of a most serious nature, had existed for a long time, and were structural. *In re P. Sanford Ross, Inc.* (C. C. A.), 204 F. 248-252. The company should have informed itself of this very apparent condition. *The Republic* (C. C. A.), 61 F. 109-113.

There is no proof that there was any serious system of inspection or reliance upon any really competent person for that purpose.

Under such circumstances not only has there been a failure of proof on the part of the petitioner, but the facts all indicate a situation that may well raise a presumption that the corporation must be presumed to have had knowledge of her condition. See *In re P. Sanford Ross, Inc.*, 204 F. 248 (C. C. A. 2)."

See also the very recent case in the Circuit Court of Appeals for the Second Circuit, *New York & Cuba Mail S. S. Co. v. Continental Ins. Co.* (C. C. A. 2), 117 F. (2d) 404, at p. 409.

Judge Hough in *The Argent*, 1940 A. M. C. 508, at p. 509, summed up the matter thus:

"It would, however, be a very easy matter for an owner to shelter himself behind an actual ignorance if lack of personal knowledge always constituted a

good defence to the extent of the protection accorded by statute. If lack of actual knowledge were enough, imbecility, real or assumed, on the part of owners, would be at a premium. Such assumption of ignorance would be peculiarly easy on the part of corporate owners. Corporate owners have of late years greatly multiplied, and it is accordingly found that the doctrine of imputed knowledge and imputed privity has grown to meet the demands of business.

* * *

As long ago as *Republic*, 61 Fed. 109, knowledge of what owners could have seen if they had looked was imputed to them. The same doctrine is assumed in *Conway*, 142 Fed. 1034; it is assumed in *Re Smith*, 193 Fed. 395, and fully applied under circumstances which in substance are very like this in *Re Sanford Ross*, 204 Fed. 248.

Parsons v. *Empire Transportation Co.*, 111 Fed. 202, certiorari denied, 183 U. S. 699, is authority for considering Conway as the managing agent or *alter ego* of the corporation. Personally I prefer the doctrine of imputed knowledge, but the result is the same."

In short, contrary to what the District Court held, the law in the United States is that where a vessel through the passage of time has become defective, the owner may not limit liability if the defects could have been seen if looked for.

The failure of an owner to inspect, or to provide an adequate system of inspection by competent persons, is sufficient to deprive an owner of the benefits of the statute. See Benedict on Admiralty, Fifth Edition, Sec. 498, as follows:

"*Neglect to inspect the vessel or properly to provide a system of inspection* creates ordinarily such privity with a disaster arising from a defective con-

> dition of the vessel as to preclude limitation and, where the owner has delegated power to a shipmaster or other agent and has relied upon him to see to it that the vessel is properly equipped or otherwise fitted for the contemplated service, *the burden of proving the competency of such representative* for the work entrusted to him rests upon the owner and, unless such competency is affirmatively shown, the owner cannot limit his liability.*

In cases such as *The Republic*, and *The Malcolm Baxter, Jr., supra*, where the defects were of long standing, *i. e.*, decay in the "Republic", and a hog or camber in the "Malcolm Baxter, Jr." limitation was denied because a proper inspection was not had. Both in *The Malcolm Baxter, Jr.* and in the *Sabine Towing Co.* cases, surveyor's certificates had been issued, yet that did not save the shipowner. Neither does the certificate of Surveyor Bernard** save the respondent in this case. Bernard visited the engine room of the yacht for only about fifteen minutes (R. 2246, 2225). He was afforded no facilities for inspection. There being no captain or engineer on

* See also Benedict on Admiralty, Sixth Edition, Vol. III, pp. 385-7.

** Bernard was the surveyor to whom the Circuit Court of Appeals referred in the passage reading:

> "It is undisputed that the vessel had been examined and pronounced fit by an experienced ship surveyor in February, 1935; that she developed no flaws during the cruise or prior to reaching Pilkington's; that the crew left her gasoline valves closed, her electric switches open, her gas tanks registering empty, and her bilges clean and free of gasoline or gasoline vapor; and that she was repeatedly examined by competent men between April 15 and June 24, 1935, who discovered nothing wrong with her" (R. 3647, 128 F. (2d) 703).

We do not know what the Court means by saying that these statements were not disputed, since we have contested them from the outset. We now repeat that there is not a scintilla of evidence which supports the Court's statement that the yacht "was repeat-

[Footnote continued on following page.]

board, he could not operate any of the machinery or controls in the absence of an owner's representative (R. 2225, 2228-9). He was not employed to make a thorough examination or "condition survey" (R. 2224, 2231). He did not and could not examine the tanks which leaked, because of their inaccessibility (R. 2215, 2231, 2248, 9). He received for his services the paltry sum of $17.50 (R. 1430). He conceded that his examination was superficial and that he did not intend it for a thorough examination, or represent it as such (R. 2224). Moreover, he testified that the construction of the yacht was such that only a small portion of the surface of the four cylindrical tanks, which the Court found leaked, could be seen or inspected (R. 2248-9). These tanks were contained in the old coal bunker, which they completely filled, and the only way that one could see the tanks would be to remove one of the steel walls of the bulkhead forming the coal bunker. Bernard testified that he would have charged about $25 for a proper survey, and that to place the yacht in proper condition after such survey, would have cost the owner $2,500 or more (R. 2238).

The inaccessibility of the tanks does not excuse failure on the part of the respondent to inspect them, nor his failure to take such measures as were required to pre-

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[Footnote continued from preceding page.]

edly examined by competent men between April 15th and 24, 1935, who found nothing wrong with her". In fact, the opposite is the case, for it is a fact that no one examined the "Seminole" from the time she was laid up on April 16, 1935 to the day of the fire. Later in the opinion the Circuit Court of Appeals concurred in the findings of the District Court and held that petitioners' losses were due to negligence of the Seminole Boat Company. This finding disposes of any inference from the remarks quoted to the effect that the shipowner had done all that it should have done in connection with the inspection of the "Seminole", because if the shipowner had done so, the Court's subsequent finding of negligence would be meaningless.

vent their becoming defective through lapse of time since their installation thirteen years before the fire, *i. e.*, 1922. Neither is it any excuse to say that this was the best place for them. A somewhat similar situation was discussed in *Gunnarson* v. *Robert Jacob* (C. C. A. 2), 94 F. (2d) 170, at page 172, where the Court, speaking through Judge Learned Hand, said:

> "But to say that such a tank was safest where it was put, is not to say that it was safe at all, and we do not think that it was, without more care on the owner's part. *It is of no moment that it was harmless so long as it did not leak, and that it would not leak if it was properly handled. In such cases liability depends upon an equation in which the gravity of the harm, if it comes, multiplied into the chance of its occurrence, must be weighed against the expense, inconvenience and loss of providing against it. The harm may be so great as to impose an absolute liability, regardless of any negligence;* in such cases the very activity, though lawful, entails responsibility, and reparation becomes a cost of the enterprise, as under workmen's compensation. *Exner* v. *Sherman Power Construction Co.*, 2 Cir., 54 F. (2d) 510, 80 A. L. R. 686."

It is common knowledge that gasoline used for driving an explosion engine, is dangerous, and, as Judge Hand says in the passage just quoted, although it may have been safer to put these tanks in an old coal bunker, where they would be protected from blows or other contacts with objects which would be likely to damage them, such protection would be of no moment if the tanks did actually leak.

Before concluding the argument under this heading, because the language is so apt, we call the decision in

Asiatic Petroleum Company, Ltd. v. *Lennard's Carrying Co., etc.** (1914), 1 K. B. 419, to the Court's attention.-

> Buckley, *L. J.*: "If the owner be guilty of an act of omission to do something which he ought to have done, he is no less guilty of "actual fault" than if the act had been one of commission. To avail himself of the statutory defense, he must shew that he himself is not blameworthy for having either done or omitted to do something or been privy to something. It is not necessary to show knowledge. If he has means of knowledge which he ought to have used and does not avail himself of them, his omission so to do may be a fault, and, if so, it is an actual fault and he cannot claim the protection of the section" ([1914] 1 K. B. at p. 432).

The reasons given in the instant case by the District Court to sustain its holding of absence of privity are the same as those given by Buckley, *L. J.*, for holding that there was privity. And in the same case, Hamilton, *L. J.*, took a similar position to that of Buckley, *L. J.*, when he said:

> "I recall with proper diligence the owners might have prevented all this and must have known the special perils attending the transport of benzine in bulk, for it was their trade. When those owners ask this Court to find that the fire, which naturally ensued in the circumstances 'happened without their actual fault or privity', I refuse." (1914) 1 K. B. 441.

It is true that the yacht "Seminole" was not in the trade of carrying benzine, but it did burn large quantities

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* Vaughan Williams, *L. J.*, dissented from the judgment of Buckley, *L. J.*, and Hamilton, *L. J.* The case, under the style of *Lennard's Carrying Company, Limited* v. *Asiatic Petroleum Company, Limited* (1915), A. C. 705, went to the House of Lords, which unanimously affirmed the decision below. In the course of his speech, Lord Dunedin specifically approved the ground upon which Hamilton, *L. J.*, placed his judgment.

of gasoline which it did carry in "defective" tanks. Respondent Phipps must have known the special perils attending gasoline. Those perils are matters of common knowledge. Obviously, with proper diligence these tanks would not have become defective. They could have been kept sound and tight. The fact that they were not, and that they leaked, and gasoline later exploded, were circumstances which naturally ensued. We submit that Hamilton, *L. J.*, was right when he refused to say that such circumstances happened without the privity and knowledge of an owner. The circumstance that the owner was ignorant of what he should have known, and neglected to provide any means which would enable even a visual examination of the tanks, much less a thorough test, is enough under the authorities cited above to deprive him of the benefits of the limitation statute.

For these reasons alone limitation should have been denied.

III.

The decision of the Circuit Court of Appeals that the respondent Phipps, if liable, is entitled to the protection of the limitation of liability statute, on the ground that privity or knowledge of the defective condition of the yacht "Seminole" could not "be imputed to him since he had exercised due care and diligence in selecting competent men to man the vessel, and had imposed on them full duties as to inspection and maintenance of her" is erroneous and is in conflict with the decisions in the Second, Sixth and Ninth Circuits. When the owner of the "Seminole" delegated full "duties as to inspection and maintenance" to these men, they became the owner's *alter ego*, and their knowledge and privity became the knowledge and privity of the owner.

In its opinion the Circuit Court of Appeals held that the respondent Phipps, if liable personally, was entitled to limitation of liability, because

> "the evidence affirmatively establishes that no actual privity to or knowledge of the defective condition obtaining on the 'Seminole' was attributable to Phipps personally, and that none could be imputed to him since he had exercised due care and diligence in selecting competent men to man the vessel, and *had imposed upon them full duties as to inspection and maintenance of her*" (R. 3649).

We do not concede that the men selected to man the vessel were competent. But even if they were competent, when the owner "imposed upon them full duties as to inspection and maintenance" they became the *alter ego* of the owner and their privity became that of Phipps.

The decisions of the Circuit Courts of Appeal in the Second, Sixth and Ninth Circuits so hold.

The Circuit Court of Appeals for the Second Circuit in the case of *In re New York Dock Co.* (C. C. A. 2), 61 F. (2d) 777, held that one, Converse, who, under R. S. 4286 was, in legal effect, the owner of a pile driver, could not limit liability because of the negligence of his superintendent, who was in complete charge of the inspection and rigging of the barge.

The Court said at page 779:

> "*So the scope of the authority delegated to Meyer by Converse was so broad that his privity or knowledge as to the unseaworthiness of the pile driver was in law that of Converse.* *Spencer Kellogg & Sons v. Hicks*, 285 U. S. 502, 52 S. Ct. 450, 76 L. Ed. 903; *In re P. Sanford Ross* (C. C. A.), 294 F. 248; *Chesapeake Lighterage & Towing Co., Inc., v. Baltimore Copper Smelting & Rolling Co.* (C. C. A.), 40 F. (2d) 394; *Boston Towboat Co. v. Darrow-Mann Co.* (C. C. A.), 276 F. 778."

The decision below is also in conflict with that of the Circuit Court of Appeals for the Ninth Circuit in *The Silverpalm* (C. C. A. 9), 94 F. (2d) 776, where that Court dealing with a similar situation, said at page 780:

> "In proceedings for limitation the owner may not escape liability by giving the managerial functions to an employed person acting as its agent, *whether the person be corporate or otherwise. So far as concerns privity and knowledge, such an agent is its alter ego.* *Craig v. Continental Ins. Co.*, 141 U. S. 638, 648, 12 S. Ct. 97, 35 L. Ed. 886; *Eastern S. S. Corporation v. Great Lakes Dredge Co.* (C. C. A. 1), 256 F. 497, 502; *Sperry Flour Co. v. Coastwise S. S. Co.* (C. C. A. 9), 84 F. (2d) 785, 786."

The decision below is also in conflict with that of the Circuit Court of Appeals for the Sixth Circuit in

In re Lakes Transit Corporation, Ltd. and James Playfair (C. C. A. 6), 81 F. (2d) 441. The Court held that that Playfair was in substance the owner of the vessel and liable as such, although it was claimed that title was in the name of a corporation, which Playfair controlled, and, in which he and his family owned more than 90% of the stock. The court further held that the knowledge and privity of the corporation's superintendent was the knowledge and privity of Playfair. The Court said at page 444:

> *"The statute does not require that knowledge be actual; it may be imputed if some one in charge for the owner had general authority to act for him and by the exercise of ordinary care could have discovered the fault. Craig v. Continental Insurance Co.*, 141 U. S. 638; 12 S. Ct. 97, 35 L. Ed. 886; *Spencer Kellogg & Sons, Inc. v. Hicks*, 285 U. S. 502, 52 S. Ct. 97, 35 L. Ed. 903; *In re Sanford Ross* (C. C. A.), 204 Fed. 248; *Texas & Gulf S. S. Co. v. Parker* (C. C. A.), 263 Fed. 864; *Pocomoke Guano Co. v. Eastern Transp. Co.* (C. C. A.), 285 Fed. 7; *Chesapeake Lighterage & Rolling Co.* (C. C. A.), 40 Fed. (2d) 394."

In short, the true rule is that when a shipowner imposes "full duties" upon a general agent and washes his hands of all responsibility, and the agent fails in his duties, then the shipowner is chargeable with the fault of such agent, even though his position is no more than that of a work's manager. In such a case the shipowner may not limit his liability. *Spencer Kellogg & Co. v. Hicks*, 285 U. S. 502.

The cases cited by the Circuit Court of Appeals in Note "2" of its opinion (R. 3649) do not support a contrary view.

In *Lord v. Goodall S. S. Co.* (C. C. D. Cal.), Fed. Cas. 8506, aff. 102 U. S. 541, the owner was a corporation and the vessel was found in fact seaworthy.

In *The Annie Faton** (C. C. A. 9), 75 F. 342, the owner was a corporation but it does not appear that the owner had delegated all his duties of management and inspection to the agent.

If *Van Eyken* v. *Erie R. R. Co.* (E. D. N. Y.), 117 F. 712, a District Court decision, and *The Tommy* (C. C. A. 2), 151 F. 570, a decision in the Second Circuit, be considered in conflict with the prevailing rule, they are no longer the law in the Second Circuit since the decision in *In re New York Dock Co.* (C. C. A. 2), 61 F. (2d) 777.

In the *84 H* (C. C. A. 2), 296 F. 427, the District Court had held there was no negligence but that the petitioner "knew all about the method of conducting business at the 'dump'" (p. 432). The Circuit Court of Appeals held that "where there is no negligence and no fault, privity is a matter of no consequence". (296 F. 432.)

In the cases of *The Alola* (E. D. Va.), 228 F. 1006, and *The Oneida* (C. C. A. 2), 282 F. 238, there was no failure of inspection and maintenance and the vessel was held to be seaworthy and competently manned. The owner was held to be without privity and knowledge of the negligence of the master in navigating the vessel.

In the case of *Erie Lighter 108* (D. C. N. J.), 250 F. 490, the Court held that the vessel had been rebuilt by competent men shortly before the accident (p. 495) and there had been no neglect in respect to inspection from which privity or knowledge could be inferred (p. 496).

* This and similar cases were criticized in the opinion in *In re Jacobson* (S. D. Tex.), 52 F. (2d) 179, 180, by Hutcheson, C. J., of the Circuit Court of Appeals for the Fifth Circuit, who did not participate in the decision below.

IV.

The shipowner owes a duty to appoint competent persons to care for and inspect his vessel. The failure to perform this duty precludes a shipowner from the benefits of the limitation acts.

Although, we submit, the reasons discussed under headings II and III are sufficient to dispose of the issue of limitation of liability, reference to the qualifications of the persons appointed to care for the "Seminole" may be helpful.

The record in this case discloses that the agents selected by the respondent Phipps to manage and inspect the "Seminole" were both incompetent and negligent. Scott, who was appointed by Phipps as President of Seminole Boat Company, and who had charge of her for the respondent Phipps for some months before the incorporation, was a lawyer in the employ of the Phippses (R. 1470-1). He did not profess any experience or competency in vessel management and none was shown. Scott delegated the management of the "Seminole" to a Mr. Simmon, "purchasing agent" in his office (R. 1471), who remained in charge for some time after the incorporation (R. 1476). Simmon had no qualifications for the job and conceded that so far as ship matters are concerned he was a "layman like the rest of us" (R. 2073; see also 2102-3).

Mr. Alley, Vice President of Seminole Boat Company, was also a lawyer, counsel for the Palm Beach Company (R. 1478-9). He professed no qualifications as to vessel management and none was shown. Hawkins, Secretary-Treasurer, following incorporation, pursuant to Mr. Scott's direction, had direct charge of the "Seminole" (R. 1472). Hawkins was Assistant Manager of the Miami office of the Phipps interests (R. 1352-5; 1377), and man-

aged the affairs of various members of the Phipps family in that office (R. 1451-2). He did not profess any familiarity with vessels or competency in their management, and none was shown.

In April 1931, after the chartering business had proved a complete failure, Scott, in disclaiming further responsibility for her, sent the "Seminole" to Fort Lauderdale for storage, and directed Mr. Alley to take charge of her, in the following picturesque language, from "now on it was his baby" (Hawkins, R. 1457). He told Mr. Alley to have Mr. J. F. Riley make regular inspections of the boat while she was in storage (R. 1472, 1480). Pursuant to these instructions, Alley told Riley "to take over control and management of the "Seminole" and to inspect her regularly while she was at Fort Lauderdale (R. 1480). Riley said that he was told that he was "to have charge of it" and "was to make inspections during the summer from time to time to see that the boat was in condition" (R. 1504). From that time on, the ordinary decisions about the upkeep and maintenance of the "Seminole" were made by Riley (R. 1505).

Riley had no mechanical experience (R. 1637). His limited education was in architecture (R. 1637, 1650), and his principal duties were in connection with the management of the personal estates of members of the Phipps family and their real estate interests (R. 1640, 1641; see also 1596). Mr. Phipps testified:

> "Mr. Riley used to buy and sell real estate for me, he manages my real estate in Palm Beach now; and he was doing the same service for me as Paul Scott or any of the people in our organization as we said before; Roy Hawkins, and others" (R. 1956).

Riley did not inspect "*the engineroom*" (R. 1595), where the explosion occurred. "I have been in the engineroom when she was in commission; I don't believe I ever have

been when she was in storage" (R. 1595). Riley admitted that to put his head through the engineroom window and look around was "about as good an inspection as I could make of the engineroom" (R. 1595).

Thus, on respondent's own testimony, it appears that Riley, who for four years had "control and management" of the "Seminole", and who alone had the duty "to inspect her regularly", and to make decisions concerning her upkeep and maintenance, was admittedly incompetent to inspect the engineroom, the very place where the dangerous conditions might be expected to develop, and where they did develop.

Mr. Riley testified:

> "I depended entirely on the captain and engineer to tell me whether there was anything necessary, repairs or replacements" (R. 1637).

There is, however, not one word of testimony to indicate that Riley ever instructed any boat captain or engineer to report to him "anything necessary". As a matter of fact, during the entire period of more than four years from April 1931 to the date of the fire, except for four short periods aggregating a little over four months, the "Seminole" was always in storage and out of commission, with no captain or engineer on board.

In short, the respondent on his own evidence has failed to show that he has borne the burden of proof to establish lack of privity or knowledge with respect to the dangerout conditions in the engineroom of the "Seminole".

Limitation is permissible only where an owner has shown that he had appointed competent persons to inspect his vessel. *The Miami*, 43 F. (2d) 562; Benedict on Admiralty (5th ed.), Sec. 498.

It will not do to say that these incompetent men had competent persons to advise them. In the first place,

as we have shown, the masters and engineers of the "Seminole" were not regularly employed. The vessel was laid up for long periods during which she had no crew and no master. And in the second place, as was said by this Court in *Spencer Kellogg Co.* v. *Hicks*, 285 U. S. 502, at p. 511, vessels of this type are not like ocean steamers where "there is no opportunity of consultation or cooperation or bringing the proposed action of the master to the owner's knowledge. The latter must rely upon the masters obeying rules and using reasonable judgment". Here a yacht, equipped with gasoline tanks which could not be thoroughly inspected, without removing a bulkhead, was placed in a shed with a large number of other vessels, without any person whatever on board of her. Although, as the District Court found, "just when the defective condition of the tanks made them leaky is in doubt" (R. 3587), they became leaky, and did permit gasoline fumes to enter the engine room and cause an explosion. We submit that when the owner delegated the duty to prevent catastrophe to Riley, who admitted his incompetency, by that very act the owner became privy to the negligence concurrently found below.

In closing we call the Court's attention to the rule that the burden of proof is upon respondent Phipps to establish absence of privity and knowledge.

> "The burden of proof of such absence of privity and knowledge is on the petitioning owner. *McGill* v. *Michigan S. S. Co.* (C. C. A. 9) 144 F. 788, certiorari denied 203 U. S. 593, 27 S. Ct. 782, 51 L. Ed. 332; *The Annie* (D. C.) 261 F. 797, 799, affirmed *sub nom. People's Nav. Co.* v. *Toxey* (C. C. A. 4) 269 F. 793; *Henson* v. *Fidelity & Columbia Trust Co.* (C. C. A. 6) 68 F. (2d) 144, 145; *Petition of Diamond Coal & Coke Co.* (D. C.) 297 F. 242, affirmed (C. C. A. 3) 297 F. 246, and certiorari denied *Diamond Coal & Coke Co.* v. *Hazelwood Dock Co.*, 265 U. S. 595, 44

S. Ct. 638, 68 L. Ed. 1197; *In re Reichert Towing Line* (C. C. A. 2) 251 F. 214, 217, certiorari denied *Reichert Towing Line* v. *Home Ins. Co.*, 248 U. S. 565, 39 S. Ct. 9, 63 L. Ed. 424; *In re Sanford Ross* (C. C. A. 2) 264 F. 248, 257; *The 84-H* (C. C. A. 2) 296 F. 427, 432, certiorari denied *Randolph* v. *Bouker Co.*, 264 U. S. 596, 44 S. Ct. 454, 68 L. Ed. 867; *Christopher* v. *Grueby* (C. C. A. 1) 40 F. (2d) 8." *The Silver Palm* (C. C. A. 9) 94 F. (2d) 776 at p. 777.

CONCLUSION.

The decrees below should be reversed with costs, and the District Court should be directed to enter a decree awarding to these petitioners their damages with interest* and costs.

Respectfully submitted,

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*United States Supreme Court General Rules, Rule XXX-4.

APPENDIX A.

Statutes with respect to limitation of liability of shipowners, U. S. Code, Title 46, Chap. 8, Sections 183, 184, 185, 186.

A. Statute as of June 24, 1935:

Sec. 183. LIABILITY OF OWNER NOT TO EXCEED INTEREST. The liability of the owner of any vessel, for any embezzlement, loss, or destruction, by any person, of any property, goods, or merchandise, shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred without the privity, or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel, and her freight then pending. (R. S. 4283.)

Sec. 184. APPORTIONMENT OF COMPENSATION. Whenever any such embezzlement, loss, or destruction is suffered by several freighters or owners of goods, wares, merchandise, or any property whatever, on the same voyage, and the whole value of the vessel, and her freight for the voyage, is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the vessel in proportion to their respective losses; and for that purpose the freighters and owners of the property, and the owner of the vessel, or any of them, may take the appropriate proceedings in any court, for the purpose of apportioning the sum for which the owner of the vessel may be liable among the parties entitled thereto. (R. S. 4284; Feb. 27, 1877, c. 69, §1, 19 Stat. 251.)

Sec. 185. TRANSFER OF INTEREST OF OWNER TO TRUSTEE. It shall be deemed a sufficient compliance on the part of such owner with the requirements of this chapter relating to his liability for any embezzlement, loss, or destruction of any property, goods, or merchandise, if he shall transfer his interest in

such vessel and freight, for the benefit of such claimants, to a trustee, to be appointed by any court of competent jurisdiction, to act as such trustee for the person who may prove to be legally entitled thereto; from and after which transfer all claims and proceedings against the owner shall cease. (R. S. 4285.)

SEC. 186. CHARTERER MAY BE DEEMED OWNER. The charterer of any vessel, in case he shall man, victual, and navigate such vessel at his own expense, or by his own procurement, shall be deemed the owner of such vessel within the meaning of the provisions of this chapter relating to the limitation of the liability of the owners of vessels; and such vessel, when so chartered, shall be liable in the same manner as if navigated by the owner thereof. (R. S. 4286.)

B. Statute as amended August 29, 1935.*

SEC. 183. LIABILITY OF OWNER NOT TO EXCEED INTEREST. The liability of the owner of any vessel, for any embezzlement, loss, or destruction, by any person, of any property, goods, or merchandise, shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel, and her freight then pending. PROVIDED, That the total liability of the owner or owners of any sea-going sailing, steam, or motor vessel, whether American or foreign, other than tugs, barges, fishing vessels and their tenders, for the entire loss of life or personal injuries caused without the fault or privity of such owner or owners to any person, shall be in an amount not less than an amount equal to $60 for each ton of the tonnage of such vessel or vessels, or the amount or value of

* Section R. S. 4283A relating to stipulations limiting time for filing claims and commencing suits omitted.

the interest of such owner in such vessel and her freight then pending, if the latter be the greater amount. The tonnage of a steam or motor vessel shall be her gross tonnage without deduction on account of engine room, and the tonnage of a sailing vessel shall be her registered tonnage, provided that there shall not be included in such tonnage any space occupied by seamen or apprentices and appropriated to their use. The owner of every sea-going vessel or share therein shall be liable in respect of every such loss of life or personal injury arising on distinct occasions to the same extent as if no other loss or injury had arisen. (Act of Aug. 29, 1935, 49 Stat. 804, §1.)

In respect of loss of life or bodily injury, the actual privity or knowledge of the master of a sea-going vessel (other than tugs, barges, fishing vessels and their tenders), or of the superintendent or managing agent of the owner thereof, at or prior to the commencement of each voyage, shall be deemed conclusively the privity or knowledge of the owner of such vessel. (Act of Aug. 29, 1935, 49 Stat. 804, §2.)

* * * * *

SEC. 184. APPORTIONMENT OF COMPENSATION. Whenever any such embezzlement, loss, or destruction is suffered by several freighters or owners of goods, wares, merchandise, or any property whatever, on the same voyage, and the whole value of the vessel, and her freight for the voyage, is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the vessel, in proportion to their respective losses; and for that purpose the freighters and owners of the property, and the owner of the vessel, or any of them, may take the appropriate proceedings in any court, for the purpose of apportioning the sum for which the owner of the vessel may be liable among the parties entitled thereto. (R. S. 4284; Feb. 27, 1877, c. 69, §1, 19 Stat. 251.)

* * *

SEC. 186. CHARTERER MAY BE DEEMED OWNER. The charterer of any vessel, in case he shall man, victual,

and navigate such vessel at his own expense or by his own procurement, shall be deemed the owner of such vessel within the meaning of the provisions of this chapter relating to the limitation of the liability of the owners of vessels; and such vessel, when so chartered, shall be liable in the same manner as if navigated by the owner thereof. (R. S. 4286.)

C. Statute as amended June 5, 1936.*

SEC. 183. AMOUNT OF LIABILITY; LOSS OF LIFE OR BODILY INJURY; PRIVITY IMPUTED TO OWNER; "SEAGOING VESSEL". (a) The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

(b) In the case of any seagoing vessel, if the amount of the owner's liability as limited under subsection (a) is insufficient to pay all losses in full, and the portion of such amount applicable to the payment of losses in respect of loss of life or bodily injury is less than $60 per ton of such vessel's tonnage, such portion shall be increased to an amount equal to $60 per ton, to be available only for the payment of losses in respect of loss of life or bodily injury. If such portion so increased is insufficient to pay such losses in full, they shall be paid therefrom in proportion to their respective amounts.

(c) For the purposes of this section the tonnage of a seagoing steam or motor vessel shall be her gross

* Section R. S. 4283A relating to stipulations limiting time for filing claims and commencing suit, and Section R. S. 4283B relating to stipulations limiting liability for negligence omitted.

tonnage without deduction on account of engine room, and the tonnage of a seagoing sailing vessel shall be her registered tonnage: PROVIDED, That there shall not be included in such tonnage any space occupied by seamen or apprentices and appropriated to their use.

(d) The owner of any such seagoing vessel shall be liable in respect of loss of life or bodily injury arising on distinct occasions to the same extent as if no other loss of life or bodily injury had arisen.

(e) In respect of loss of life or bodily injury the privity or knowledge of the master of a seagoing vessel or of the superintendent or managing agent of the owner thereof, at or prior to the commencement of each voyage, shall be deemed conclusively the privity or knowledge of the owner of such vessel.

(f) As used in subsections (b), (c), (d), and (e) of this section and in section 183b of this title, the term 'seagoing vessel' shall not include pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels or their tenders, self-propelled lighters, nondescript self-propelled vessels, canal boats, scows, car floats, barges, lighters, or nondescript non-self propelled vessels, even though the same may be seagoing vessels within the meaning of such term as used in section 188 of this title. (As amended Aug. 29, 1935, c. 804, §1, 49 Stat. 960; June 5, 1936, sec. 521, §1, 49 Stat. 1479.)

* * *

Sec. 184. APPORTIONMENT OF COMPENSATION. Whenever any such embezzlement, loss, or destruction is suffered by several freighters or owners of goods, wares, merchandise, or any property whatever, on the same voyage, and the whole value of the vessel, and her freight for the voyage, is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the vessel, in proportion to their respective losses; and for that purpose the

freighters and owners of the property, and the owner of the vessel, or any of them, may take the appropriate proceedings in any court, for the purpose of apportioning the sum for which the owner of the vessel may be liable among the parties entitled thereto. (R. S. 4284; Feb. 27, 1877, c. 69, §1, 19 Stat. 251.)

Sec. 185. PETITION FOR LIMITATION OF LIABILITY; DEPOSIT OF VALUE OF INTEREST IN COURT; TRANSFER OF INTEREST TO TRUSTEE. The vessel owner, within six months after a claimant shall have given to or filed with such owner written notice of claim, may petition a district court of the United States of competent jurisdiction for limitation of liability within the provisions of this chapter and the owner (a) shall deposit with the court, for the benefit of claimants, a sum equal to the amount or value of the interest of such owner in the vessel and freight, or approved security therefor, and in addition such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 183 of this title, or (b) at his option shall transfer, for the benefit of claimants, to a trustee to be appointed by the court his interest in the vessel and freight, together with such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 183 of this title. Upon compliance with the requirements of this section all claims and proceedings against the owner with respect to the matter in question shall cease. (As amended June 5, 1936, c. 521, §3, 49 Stat. 1480.)

Sec. 186. CHARTERER MAY BE DEEMED OWNER. The charterer of any vessel, in case he shall man, victual, and navigate such vessel at his own expense or by his own procurement, shall be deemed the owner of such vessel within the meaning of the provisions of this chapter relating to the limitation of the liability of the owners of vessels; and such vessel, when so chartered, shall be liable in the same manner as if navigated by the owner thereof. (R. S. 4286.)

Appendix B.

SUMMARY OF RESPONDENT'S TESTIMONY RELATIVE TO THE CORPORATION, SEMINOLE BOAT COMPANY, AND OWNERSHIP OF THE YACHT "SEMINOLE".

Ownership

Respondent Phipps testified that he acquired a half interest in the yacht "Seminole" from his brother, H. C. Phipps in 1915 (R. 1883, Fdgs. 2 and 3, R. 3582-83). Nevertheless, for many years before 1929, the "Seminole" was registered at the Custom House at Miami as being solely owned by the respondent John S. Phipps (Certificates of License, Exhs. 30 and 31, offered R. 249). In October, 1928, respondent Phipps and his brother "formed the corporation" Seminole Boat Co. (R. 1885). Each exchanged his half interest in the "Seminole" for half of the common stock of the company (R. 1883). Respondent Phipps remained the owner of one-half of the capital stock down to the date of the fire and thereafter, but on March 23, 1935, H. C. Phipps sold his one-half interest "to Mrs. Amy Guest, his and respondent Phipps' sister" (Fdg. 5, R. 3584). At that time, there was an opportunity to sell the "Seminole" for $5,000. H. C. Phipps wished to sell but respondent Phipps did not. Mrs. Guest, his sister, then purchased H. C. Phipps' "half of the Seminole" (R. 1886).

The Corporation Was Not Supplied With Capital Funds.

The only funds paid into the treasury of the corporation by the stockholders were the nominal amounts of $50 by each of the brothers as consideration for their stock subscriptions (Exh. 4D, offered R. 1659, see reprint accompanying record).

The same exhibit shows that the organization expenses were $98.76, plus the expense of recording abstracts $45.31 (Reprint, Exh. 4D, pp. 2 and 3). Thus it appears that the sums furnished as working capital were insufficient to meet even the organization expenses.

The operation of the corporation was made possible only by cash advances and payment of sundry expense items for its account by the Boulevard Mortgage Company* which advances and expenses were reimbursed to Boulevard Mortgage Company from time to time by Messrs. J. S. and H. C. Phipps, one-half each (Reprint, Exh. 4D, p. 1).

The Corporation Was Never a Going Concern.

In the three months of its corporate life in 1928, it received no income and its expenses were $499.95 (Reprint, Exh. 4D, p. 3).

In 1929 its expenses paid through its bank account out of the advances by Boulevard Mortgage Company amounted to $14,418.74. In addition, expenses paid directly by Boulevard Mortgage Company amounted to $2,113.48, thus making total expenses of $16,532.22 (Reprint, Exh. 4D, p. 4). Income from charters amounted to $8,554.38 (Reprint, Exh. 4D, p. 3). The operating loss, therefore, amounted to $7,977.38.

In the year 1930, its expenses paid through the bank account out of advances by Boulevard Mortgage Company amounted to $10,374.53 (Reprint, Exh. 4D, p. 5). Its expenses paid directly by Boulevard Mortgage Company

* Boulevard Mortgage Company was one of a large number of corporations having a common office in Miami of which "the Phipps family and all of their kindred" were considered "the principals" (R. 1355). Other Phipps corporations mentioned by Mr. Scott and Mr. Hawkins included the Bessemer Properties, Inc. (R. 1352); New Miami Shores Corporation (R. 1352); Boulevard Mortgage Company (R. 1355); Biscayne Boulevard, Inc. (R. 1358); Duval Mortgage & Security Corporation (R. 1358); Miami Plaza, Inc. (R. 1358); Regent Land Company (R. 1359); Blackhawk Corporation (R. 1359); The Mayaca Company (R. 1359) and Boulevard Amusement Company (R. 1359).

amounted to $4,495.30 (Reprint, Exh. 4D, p. 6), a total of $14,869.83. Its income from charters amounted to $4,284 (Reprint, Exh. 4D, p. 5), thus showing a net loss of $10,585.83.

In the year 1931, its expenses paid through its bank account were $131.45 (Reprint, Exh. 4D, p. 6). On June 2nd, its bank account was closed because it was so inactive (R. 1472, 1477). In that year there were also expenses paid by Boulevard Mortgage Company amounting to $7,265.46 (Reprint, Exh. 4D, p. 7) or a total expense of $7,396.91. There was no income.

In the year 1932, its expenses paid by Boulevard Mortgage Company amounted to $4,034.62. That year the company had no income (Reprint, Exh. 4D, pp. 7 and 8).

In the year 1933, its expenses paid by Boulevard Mortgage Company amounted to $1,702.16 and again there was no income (Reprint, Exh. D, p. 8).

In the year 1934, its expenses paid by Palm Beach Company* amounted to $2,784.12 and again there was no income (Reprint, Exh. 4D, pp. 8 and 9).

In the year 1935, its expenses paid by Palm Beach Company amounted to $5,503.36 and again there was no income (Reprint, Exh. 4D, pp. 8 and 9). Of this sum, medical expenses, $2,378.43, and expenses of R. C. Abel, $610, were incurred subsequent to the total loss of the "Seminole", the only asset of the corporation (R. 1423-4).

Even then its expenses did not cease. In the year 1936, expenses were incurred and paid by Palm Beach Company and charged to Seminole Boat Company aggregating $7,952.81 (Reprint, Exh. 4D, p. 10), of which $5,000 represented a settlement of the claim of the widow of R. C. Abel, who lost his life in the fire (R. 1423-25, 1444, 1490-92), a settlement which was approved by the respondent Phipps personally (R. 1959, 1962), a release being obtained releasing respondent Phipps and his sister person-

* Palm Beach Company was the chief Phipps Company in Palm Beach. Respondent's Exhibit 38, offered R. 1484, is a list of a large number of Phipps companies, and individuals, members of the Phipps family and connections, for whom Palm Beach Company made advances and disbursements.

ally, as well as Seminole Boat Company (R. 1962-3, Exh. 114, offered R. 1963). Payments for this year also included $2,854.25 and medical expenses of John Thomas, who was injured in the fire.

In the year 1937, expenses were paid by Bessemer Properties, Inc., a Phipps corporation, successor to Boulevard Mortgage Company, amounting to $1,008 (Reprint, Exh. 4D, p. 10). In 1938, $615, paid by Bessemer Properties, Inc.

This record shows a total cash loss on the part of the corporation from 1928 through 1935 of $40,484.34, more than four times the figure at which the "Seminole" was valued, when the corporation was formed, which was $10,000 (Exh. X, offered R. 1274, Journal Ledger, Seminole Boat Company). The respondent Phipps, his brother, H. C. Phipps, and his sister, Mrs. Guest, had reimbursed Boulevard Mortgage Company and Palm Beach Company for their advances and expenses paid as follows:

J. S. Phipps	$13,665.63
H. C. Phipps	12,440.72
Mrs. Guest	1,224.90
Total	$27,331.25

Additional payments of $5,000 each by the respondent Phipps and Mr. H. C. Phipps in October, 1929, were treated as increase in capital stock and are not included in these totals (Reprint, Exh. 4D, pp. 15 and 16).

In addition to these sums, the aggregate of expenses paid by Palm Beach Company and Bessemer Properties, Inc. in the years 1936 to 1938 inclusive, subsequent to the destruction of the corporation's only asset, aggregated $9,575.81. Respondent Phipps professed ignorance as to whether the disbursing corporations had been repaid these amounts (R. 1959), but testified that he expected to pay his pro rata share as there was no other source from which the disbursing agents could be repaid (R. 1950).

THE ORGANIZATION OF THE CORPORATION LEFT THE METHOD OF FINANCING EXPENSES OF THE YACHT "SEMINOLE" SUBSTANTIALLY AS IT HAD BEEN WHEN THE YACHT WAS REGISTERED IN THE NAME OF RESPONDENT PHIPPS.

The division of the expenses of maintenance and upkeep of the vessel equally between the brothers was the same as it had been prior to the formation of the corporation (R. 1883, 1939). On November 4th, 1929, a year after the formation of the corporation, Mr. Scott wrote Mr. Simmon in the Miami office—"Any expenses on the boat after its return * * * are to be divided between Mr. John S. and Mr. Henry C. *as usual.*" (Italics ours. See letter dated November 4, 1929, a part of Exh. Z offered R. 1275, printed R. Vol. 6, p. 28). The only difference between the methods of financing before and after incorporation, was that the periods during which the bills were allowed to run before reimbursement by the brothers were somewhat longer after the formation of the corporation than it had been before that event (R. 1938-39).

THE OFFICERS OF THE CORPORATION.

The officers of the corporation, Seminole Boat Company, who were also the directors, were selected by the respondent Phipps and his brother (R. 1944). The officers were Paul R. Scott, President, R. A. Alley, Vice-President and Roy, H. Hawkins, Secretary-Treasurer. These men were managers or assistant managers of "the family offices" (R. 1944). They represented the "family interests" in Miami and Palm Beach (R. 1908) and were known as family representatives (R. 1911). They were not stockholders and had no interest in the company (R. 1363). They received no compensation from Seminole Boat Company and no part of their salaries, which were paid by the general paymaster of the Phipps interests (Hawkins, R. 1353-4; Alley, R. 1486) were charged to Seminole Boat Company (R. 1354-5, 1486). Their

services to Seminole Boat Company were gratuitous and undertaken for the accommodation of the respondent Phipps and his brother (R. 1395). The respondent Phipps testified as follows:

> "Q. Mr. Scott, the President of the corporation was your family representative in Miami at that time? A. That is correct.
>
> Q. And as such you could call on him to take care of your personal business matters, couldn't you? A. Yes, and for all members of the family.
>
> Q. And that was true of Mr. Hawkins also? A. Yes.
>
> Q. You could call on him for your personal business when you required it? A. Yes.
>
> Q. And that was true of Mr. Alley in Palm Beach? A. Yes" (R. 1911, see also 1944).

The extent to which these men were subject to the personal whims and demands of the respondent Phipps and other members of the Phipps family was described by Mr. Hawkins as follows:

> "I do a great deal of work for all of the members of the Phipps family, their sons and cousins and friends, or anybody who may pass through here who happened to be friends of theirs. For instance, last week one of the younger members of the family was through here and I arranged a fishing trip on Captain Starke's boat, and arranged transportation for him to and from the boat. I do things for different members of the family. I might buy a dog for them, a bird-dog, or birds, or different kinds of properties. Yesterday I bought 135 bonds for one of the members of the family" (R. 1451-2).

Mr. Scott, who was manager of the Miami office, testified that this statement was equally applicable to him (R. 1477). Mr. Alley, who was head of the Palm Beach office, testified that as to himself "I am afraid it was

more so, because members of the family lived there" (R. 1485).

The officers directed their actions toward reflecting the wishes of the stockholders (R. 1446). Respondent Phipps testified that he "hoped they would" do exactly as he and his brothers desired them to do, "I trusted them" (R. 1944); and that he and his brother would have removed them if they had failed to follow their instructions "unless they had a very good reason for not doing it" (R. 1945-6).

Many Other Phipps Employees Served the Corporation Without Charge.

In addition to the officers, many other employees of the Phipps corporations rendered services to the corporation without charge to the corporation. Mr. Riley, who was entrusted with control and management of the "Seminole" and the duty of regular inspection for four years preceding the fire (R. 1480) was assistant manager of the office of the Phipps interests in Palm Beach and in charge of the management of their physical properties (R. 1479-80). He was paid by the Palm Beach Company (R. 1481). No part of his salary was charged to Seminole Boat Company and he received no pay from that company (R. 1582-3). In like manner, as the officers, he was subject to the orders and requirements of the respondent Phipps and other members of the Phipps family in connection with their personal business (R. 1582). Respondent Phipps testified:

> "Mr. Riley used to buy and sell real estate for me, he manages my real estate in Palm Beach now; and he was doing the same service for me as Paul Scott or any of the people in our organization as we said before, Roy Hawkins, and others" (R. 1956).

Others who served the corporation without charge were the bookkeepers in the Miami office (R. 1368); E. J.

Anderson, an accountant, who later kept the corporation's records in the Palm Beach office (R. 1658-59, 1716) and his assistant, J. M. Gorham (R. 1694); A. A. Simmon, of the Miami office, who was in charge of the "Seminole" before the formation of the corporation (R. 1471) and continued in charge for a period thereafter (R. 1476) without expense to the corporation (R. 1477). See also Webber (R. 1117); Davis (R. 1253-4).

THE DUTIES OF THE OFFICERS AND PHIPPS' EMPLOYEES IN RESPECT OF THE "SEMINOLE" WERE NOT MATERIALLY DIFFERENT AFTER THE FORMATION OF THE CORPORATION THAN THEY HAD BEEN BEFORE.

Mr. Scott had been responsible for the operation and management of the "Seminole" for a year before the formation of the corporation (R. 1471). He delegated this duty to Mr. Simmon, an employee in the Miami office (R. 1471). Mr. Simmon continued to act as manager of the yacht after the incorporation of the Seminole Boat Company as long as he was in the office of the Phipps family at Miami (R. 1476). Mr. Hawkins was assistant to Mr. Scott at that time and was familiar with the vessel (R. 1270-1). It was he who suggested the formation of the corporation (R. 1885). Mr. Riley had at one time been in charge of paying the crew of the "Seminole" (R. 1503).

Hawkins arranged the sale of the "Iolanthe", a yacht admittedly the personal property of John S. Phipps (R. 1368-70, 1454). He also made disbursements from time to time for the "Iolanthe" (R. 1398-9). Riley was in charge of the yacht "Iolanthe" and another vessel, the "Clip", owned by respondent Phipp, and had similar duties with respect to them (R. 1585). He was also in charge of the boat "Dorothy", which belonged to Mrs. Guest (R. 1586, 1584) and approved the bills with respect to that boat (R. 1532). He managed all the family boats (R. 1596-7).

THE AUTHORITY OF THE OFFICERS TO INCUR EXPENSE WAS LIMITED BECAUSE THE CORPORATION WAS WITHOUT FUND. BEFORE ANY EXPENSE COULD BE INCURRED IT WAS NECESSARY TO ASCERTAIN WHETHER RESPONDENT PHIPPS OR HIS BROTHER WOULD SUPPLY THE MONEY TO PAY THE BILL. THE CORPORATION WAS WITHOUT CREDIT.

The officers of the corporation and Mr. Riley, custodian of the vessel, recognized that they had only limited authority in incurring expenditures for the upkeep of the vessel. They knew that the corporation was without funds and, if a bill was incurred, the Phipps family would have to pay it. Mr. Hawkins testified: "I would incur to the limit of $500.00 or more without talking to anybody" (R. 1380), a limitation which he recognized generally in acting for individuals or companies at the Miami office (R. 1381). Mr. Riley, the custodian of the vessel, testified: "I had a limit in my own mind, something like a couple hundred dollars or $300.00 depending on what the repairs was" (R. 1505). On an occasion when the generator of the "Seminole" needed overhauling at a cost of $300, he did not feel free to incur the expense until he had secured the personal approval of the respondent Phipps and had prepared a memorandum on which he secured a written approval from his brother and co-stockholder, H. C. Phipps (R. 1505-6, 1596, Exh. 3T1 offered, R. 1507, printed, R. Vol. VI, p. 18).

In incurring expenses and making disbursements for the account of the corporation, the officers always knew that in substance they were spending the stockholders' money. Hawkins testified: "I didn't think they would repudiate any debts" (R. 1400). Respondent Phipps testified: "I think our credit is alright" (R. 1941). It is clear that the corporation could not, and did not, at any time transact any business, except on the personal credit of its stockholders.

THE CORPORATE FORM WAS IGNORED AND THE OFFICERS TOOK THEIR INSTRUCTIONS FROM THE STOCKHOLDERS DIRECTLY WITHOUT CORPORATE ACTION.

No corporate action authorized the use of the "Seminole" by the respondent Phipps. His word alone was enough and his authority was recognized (R. 1388-9).

Before bringing the boat to Miami in 1935 for sale Hawkins consulted the stockholders (R. 1282-3, 1381). He understood it was their wish to sell (R. 1382). When an offer of $5,000 was obtained Hawkins submitted it to the stockholders (not to the officers and directors) (R. 1297). H. C. Phipps, respondent's brother, told Hawkins to accept the offer (R. 1298). The respondent, Phipps did not wish to sell, and arranged for his sister, Mrs. Guest, to buy out H. C. Phipps' interest (R. 1299, 1886-7). On instructions of the respondent Phipps the offer was refused (R. 1300-1).

In March 1935, a "Prigg" boat, suitable as a tender for the "Seminole", was found available for purchase. Hawkins consulted the stockholders (not the officers and directors). Respondent Phipps was uncertain whether to buy this boat for himself or for the corporation but directed its purchase. It was bought by Hawkins for $950 and Boulevard Mortgage Co. paid the bill (R. 1333). Later after consultation with his sister, Mrs. Guest, who was then his co-stockholder, respondent Phipps authorized its purchase for the corporation (R. 1887) and it was charged to Seminole Boat Co. (R. 1333). After the fire this boat was transferred to respondent Phipps and the corporation credited with the purchase price (R. 1392). No corporate action authorized these transactions.

Even after the formation of the corporation, the respondent Phipps dealt directly with the vessel. He sent her "north" in 1929 (R. 1898). He negotiated directly with Pilkington and protested against his rates for storage of the "Seminole" and told Pilkington that he just couldn't afford to pay high rates for the storage of the boat

(Riley, R. 1509; 1597-9. *Cf.* Pilkington, R. 433-4, 510-11, 552-3). He went to the storage yard in April, 1932 in company with the captain and ordered the "Seminole" made ready for use in a hurry (R. 438, 507, Exhs. 41 and 42, offered R. 435, 438, R. Vol. 6, pp. 4 and 5). He instructed Riley to attempt to secure lower rates on both the "Seminole" and the "Iolanthe" by memoranda endorsed on Pilkington's bill of August 31, 1932 (Phipps, R. 1926-7, Riley, R. 1567-8).

THE RESPONDENT PHIPPS CONTINUED TO MAKE PERSONAL USE OF THE "SEMINOLE" AFTER THE FORMATION OF THE CORPORATION (R. 1387).

Respondent Phipps testified that it was understood that if the boat was not chartered "then we could use it" (R. 1886). He further testified that he had the right to use the boat when he wanted it when she was not chartered or a charter being negotiated. If a charter was being negotiated, he testified—"I would have taken the money • • • I would have chartered it. • • • I would rather charter it than to take it myself" (R. 1915). Except for these considerations, he used the "Seminole" when he wanted it.

For several years after the formation of the corporation, the yacht "Seminole" continued to be registered with the New York Yacht Club as the personal yacht of respondent Phipps (R. 1905, 1965-7; Answer (i), R. 89). In the summer of 1929 he sent the "Seminole" north for several months for the use of his father and family (R. 1898-9, R. 313). She flew his personal pennant while there (R. 346, 375). In March of 1932, he went to the shipyard with the captain and ordered the boat made ready in a hurry because he was anxious to make a trip (Pilkington, R. 438, 507; Bryant, R. 329; Exh. 42, R. Vol. 6, p. 5, offered R. 438, is an explanation of the extra charges incurred in this connection, R. 507). In August, 1932, the yacht was taken out for a trip by

the respondent Phipps for whose account Riley purchased groceries (R. 1643, 1645, 1647, 1917). In March of 1934, the yacht was removed from storage for use on a letter signed "John S. Phipps, by Roy H. Hawkins" (Exh. 46, offered R. 444, R. Vol. 6, p. 10). In April, 1935, respondent Phipps, after refusing an offer for purchase of the "Seminole", used the vessel for a trip to the Keys with his family and friends after which the "Seminole" was returned to storage (R. 1301-4, 1387, 1400, 1436, 1915).

The "Seminole" was not chartered after the spring of 1930 (Fgd. 3, R. 3583). From that time until the time of the fire, she was continuously in storage at Fort Lauderdale except for the occasions mentioned above, and for a period from November 20, 1930 to April 20, 1931. There is no record of her use during this period. There is no evidence of any use of the yacht "Seminole" subsequent to April, 1931, other than personal use by the respondent Phipps.

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 246.

CHARLES CORYELL, *et al.*,

Petitioners,

—against—

JOHN S. PHIPPS,

Respondent.

REPLY BRIEF OF PETITIONERS.

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REPLY BRIEF OF PETITIONERS.

The Findings Below That the Seminole Boat Company Was Organized for a Legitimate Purpose and That the Formalities Were Observed Are Insufficient to Show Absence of Control.

At pages 3, 7, 9, 10 and 13 of respondent's brief, the attempt is made to show that there were concurrent findings below that the respondent Phipps did not control and dominate the Seminole Boat Company. The main reliance of respondent seems to be that both Courts found that the Seminole Boat Company was organized for a legitimate purpose, observed all the formalities, and for these reasons it should be treated as an entity free from the dominance of Mr Phipps. This is a *non sequitur*, for as is pointed out by Mr. Powell at page 19 of his book on "Parent and Subsidiary Corporations, much relied upon by respondent Phipps:

> "* * * the observance of these formalities is all of no avail when the proof as a whole shows that in the actual conduct of the business the parent corporation completely dominated the subsidiary and used it as mere creature." (Powell, "Parent and Subsidiary Corporations," p. 19).

See also *Biscayne Realty and Ins. Co. v. Ostend Realty Co.*, 109 Florida 8, at p. 22.

In an effort to show that the Seminole Boat Company was regularly engaged in business, respondent lays great emphasis on the contract with Baker, by which Baker was authorized to charter the "Seminole". Giving full weight to the Baker contract, it is significant that by its terms it ran for one year only (Exh. CC; R. vol. VI, p. 19) and that at its expiration it was apparently not renewed. Although Hawkins testified that Baker received his salary for two years, the corporation's records show that the final payment of Baker's salary thereunder was on Nov. 7, 1930 (see Check Book, Exh. AA; Ledger, Exhibit X, account headed "Wages"). For five years before the explosion no business had been done (Fdg. 3, R. 3583). Respondent says that when Phipps used the "Seminole" he chartered her. The proof is that he paid no charter hire and no charter agreement was ever made with him. All he did was that he told Hawkins or Riley that he wanted to use the yacht (R. 1915-16, 1387).

Credit Was Not Extended to Seminole Boat Company But to Phipps.

Insufficiency of capital has always been considered cogent proof of domination of the corporation by the stockholders ("Insulation from Liability Through Subsidiary Corporations", 39 Yale Law Review, p. 193, Douglas and Shanks). Respondent says that Seminole Boat Company had adequate credit and capital (Respondent's Brief, p. 14); and that because Boulevard Mortgage Company and Palm Beach Company actually extended credit to Seminole Boat Company does not show domination of Seminole Boat Company by Phipps. His own words refute him.

The bills of the Seminole Boat Company were not paid by it;[1] they were paid by Boulevard Mortgage Company and Palm Beach Company, which respondent calls "fiscal

[1] Except for the period prior to June 2, 1931, when a part of its bills were paid out of its bank account out of funds advanced to it by Boulevard Mortgage Company.

agents" of Seminole Boat Company.[2] He says: "Credit was extended to Seminole Boat Company not its stockholders" (Respondent's Brief, p. 17). But Mr. Anderson's testimony (R. 1658 *et seq.*) and the Analysis of Operation of Seminole Boat Company, Exh. 4 D, prepared by him summarizing the records of the company which are in evidence (R. 1659-61), shows that these companies were reimbursed for these expenditures by respondent Phipps and his brother, not by the Seminole Boat Company, before any entry was made on the Seminole Boat Company's books. Indeed, on this same page 17 of respondent's brief it is stated that a bill paid by the Palm Beach Company "was repaid by two Bessemer Investment Company checks from stockholders' funds". At page 19 it is stated that Boulevard Mortgage Company and Palm Beach Company extended credit to all the members of the Phipps family and corporations controlled by it and paid their bills. At page 25 of respondent's brief it is said that the reason that Hawkins and Riley felt that they could not incur substantial expenses for the Seminole Boat Company without the stockholders' authority, was because of "the financial position of the corporation." Respondent criticises us for saying in our main brief that neither of these men dared incur any major expense without obtaining Phipps's approval. We submit that respondent's own summary of the facts fully supports our statement.

Again, at pages 18 and 23 of respondent's brief it is argued that because Phipps owned only 20 per cent of the stock of the Bessemer Investment Company which controlled the Boulevard Mortgage Company and Palm Beach Company, the willingness of these two companies to extend credit to the Seminole Boat Company does not show domination by Phipps. Can respondent be so naive as to think that credit was extended to the Seminole Boat Company on its own financial standing? Certainly Hawkins,

[2] No fees, commissions, nor interest were ever charged by either of these "fiscal agents" to the Seminole Boat Company (R. 1358). It is unique to find such generosity shown by one corporation to another.

as an officer of Boulevard Mortgage Company, and Alley, as an officer of the Palm Beach Company, would not have used a cent of the money of one of these corporations for the Seminole Boat Company, which they knew was hopelessly bankrupt, unless they were assured that the money would be repaid. They knew that "the actual financial position" (Respondent's Brief, p. 22) of the Seminole Boat Company was such that advances could never be repaid by it. The Seminole Boat Company was, nevertheless, eligible to obtain advances because it was owned by members of the Phipps family (R. 1357-1359); these advances were "charged to the stockholders" (R. 1281) and billed to them (R. 1323); Boulevard Mortgage Company was "just an intermediary" in payment of expenses (R. 1324) in the same manner as when it paid the expenses of other vessels or property owned by the Phippses (R. 1369). Such advances and payments were made in the confidence that they would be repaid by the Phippses as they always had been (R. 1399-1400). It was to Phipps that the credit was extended, not to Seminole Boat Company. Hawkins testified: "I didn't think they [the Phippses] would repudiate any debts" (R. 1400).

Petitioners Did Suffer Because of the Financial Condition of Seminole Boat Company.

Respondent's repeated statement that petitioners did not suffer because of lack of credit of the Seminole Boat Company nor because Hawkins and Riley did not feel that they could incur a major expense, cannot be supported in the light of the concurrent findings below. Both Courts have found that negligence which permitted gasoline vapors to accumulate in the engine room of the "Seminole," caused the explosion which in turn caused the loss of petitioners' vessels (forty-five boats, the loss involved in this suit). They found further that this negligence consisted in permitting gasoline tanks to become leaky "with passage of time". In other words, the negligence found consisted in failing to discover leaks and to make the tanks tight. With

constantly mounting deficits, the two men (Hawkins and Riley) responsible for this state of affairs, did nothing. What is the reason for their failure to act? It is found on page 22 of respondent's brief, where he discusses the reason for Hawkins obtaining respondent Phipps's authority for the purchase of the Prig boat. They were anxious not "to increase the deficit"; they had an eye to the "financial circumstances" and "an eye to the actual financial position" (Respondent's Brief, p. 22). Obviously, the officers of this so-called "corporation" avoided spending money whenever they could. When they called in the surveyor Bernard, they obtained an insurance survey at a fee of $17.50 (R. 1430, 2237) rather than a condition survey at a fee of $235.00 and a probable cost to the owner of $2,500. (R. 2238). Respondent's witness Bernard also testified that there was no way to make an examination of the tanks, the leaky condition of which the Courts found to be the cause of the loss, because they were encased in the tank compartment (R. 2248-9). To remove a bulkhead to examine these tanks would have been expensive. To say in these circumstances that the lack of funds, the mounting deficits, had no relation to the disaster, is to ignore the findings below. Since the only place to get money was from the Phippses; since the highest bid for the boat received some months before the explosion was $5,000., and since the probable cost to the owner of a thorough examination would be at least $2,500., the leaky condition of the tanks was never discovered, and the explosion, with its disastrous results, occurred.

Because of the Bankrupt Condition of Seminole Boat Company Hawkins and Riley, to Whom Phipps Had Delegated the Management of the Yacht "Seminole", Did Not Feel Free to Incur Necessary Expenses for Major Repairs.

There are suggestions in respondent's brief that Hawkins and Riley had full authority to spend money. It is not stated from whom they had such authority. The empty treasury of the Seminole Boat Company, and their feelings

against incurring expenses in substantial amounts, because they had "an eye to the actual financial position", renders such authority an empty gesture even if they had it. Both Hawkins and Riley have made it entirely clear that before incurring any substantial expense they wanted Phipps's authority. In short, while nominally officers of this empty shell, Seminole Boat Company, they were acting for Phipps. They were his servants. Their negligence was Phipps's negligence.

Applying Mr. Powell's tests to the conduct of Mr. Phipps in relation to the Seminole Boat Company we have the following:

The Seminole Boat Company was financially helpless, and it could only call upon Mr. Phipps for funds when it pleased Mr. Phipps to grant them. Mr. Powell states that such circumstances are "cogent evidence that the subsidiary is a mere tool in the hands of the parent." (Powell, "Parent and Subsidiary Corporations," pp. 14-15.)

The Seminole Boat Company had no funds or means to meet its payroll or other current expenses. Mr. Phipps occupied the fortunate position of being one of the Phipps family to whom the Phipps companies extended credit (Respondent's Brief, p. 19). The current expenses were paid in Florida; salaries were paid through the New York offices of the Phipps family[3] (R. 1353-4). In such case, Mr. Powell says: "a strong case against the parent corporation is made

[3] At page 23 of his brief, respondent states that we argue that a corporation is but a personal venture when its officers have no financial interest in the Company. We made no such argument. What we did say, at page 23 of our main brief, in commenting upon *The Third Avenue Company* v. *Keely*, 111 Fla. 46, was that there was a likeness between the Seminole Boat Company and The Third Avenue Company (the Phipps company criticised in that case) in many respects, among which was that the officers in both companies had no financial interest in the company. At page 42 of its brief, respondent criticises us for citing *The Third Avenue Company* case, stating that the allegation of the bill was never proved. The respondent failed to say, however, that on February 10, 1934, after the case came back to the trial court, an order of dismissal *with prejudice* was entered on consent.

out" (Powell, "Parent and Subsidiary Corporations", page 15).

Mr. Powell points out at page 17, that where the parent corporation refers to the subsidiary as a department or division of the parent corporation, or its business is referred to as the business of the parent corporation, such circumstances have probative value to establish the fact that the subsidiary has no real independent existence. So also here, where the persons who served the Seminole Boat Company were referred to as "family representatives of the Phippses" (R. 1911, 1944, 1956) and Phipps referred to the "Seminole" as "my boat" (R. 1960; see also R. 1886), had the Seminole registered for several years at his yacht club as his own vessel (R. 89, Answer to Interrogatory (i); R. 1905-7, 1964-7) and used his own house flag on the boat (R. 346, 375), such circumstances have probative value to show dominance.

The Facts as to Dominance of Phipps Over the Seminole Boat Company Are Almost Identical With Those in Centmont Corporation v. Marsch, 68 F. (2d) 460.

The Seminole Boat Company did not conform to the usual formal requirements of a corporation. Although it did have some books and it did hold formal meetings, it conducted no business; it did not keep its own books; it had no funds of its own; for the most part it did not pay its own bills; it had no bank account for four years before the fire. In many respects the case is strikingly like *Centmont Corporation* v. *Marsch*, 68 F. (2d) 460 (C. C. A. 1), where the Court, in finding that the Southern New England Railroad Corporation was a mere instrumentality of the Central Vermont Railway Company or the Grand Trunk Railway, enumerated the following circumstances:

1. The corporate records do not show that any business was done by the directors or executive committee or stockholders of the Southern New England except to authorize or take such action as required by the laws of Massachusetts or to fill vacancies in office.

2. The claim of the Central Vermont is made up from its charge on its books to the Southern New England and not from any notes or other acknowledgements of indebtedness by the Southern New England, except as the same accountants made debit or credit charges on both sets of books.[4]

3. While two sets of books were kept, they were kept in St. Albans, the headquarters of the Central Vermont, and under the supervision of the chief accountant of the Central Vermont.[5]

4. The balance sheets of the Southern New England do not indicate that it handled much cash, and the master's report discloses that much of the expense of construction was paid directly by the Central Vermont and charged on the books to the Southern New England.

5. The salary of the president of both companies was paid by the Central Vermont, and a certain proportion charged to the Southern New England.

All of these practices, which the Court found sufficient to support a finding of dominance of the Southern New England by the Central Vermont, exist in the present case but in a more aggravated form. For example, in the present case, no salaries whatever were paid to the officers of the Seminole Boat Company by that company. These men were all paid as servants of the Phipps family, and no part of their salaries was even charged to the Seminole Boat Company.

The Federal Courts have been much more ready to look through the corporate veil than have the courts of New York, yet in *Berkey v. Third Avenue Railway Co.*, 244 N. Y.

[4] There were no notes or other acknowledgements of indebtedness from Seminole Boat Company to Boulevard Mortgage Company, Palm Beach Company or to the Phippses.

[5] Before 1934 the books of the Seminole Boat Company were kept by bookkeepers in the Miami offices of the Phipps corporations. (R. 1365, 1368). After 1934 the books were kept by Anderson, the bookkeeper of the Palm Beach Company and Bessemer Properties, Inc. at Palm Beach. (R. 1658).

84, the necessity for "separate organization" as "the mark of a separate existence" was noted (244 N. Y. at p. 94). In the recent case of *Mangan v. Terminal Trans. System, Inc.*, 157 Misc. 627; affirmed without opinion, 247 App. Div. 853; appeal denied, 272 N. Y. 676, on the presentation of circumstances warranting a holding of dominance, the Court did not hesitate to hold the parent liable for negligence of the subsidiary. At page 33 of his brief, respondent seems to have come around to this view, thus abandoning the positions taken below, for he says that a shareholder "may so dominate a corporation that it becomes his instrument for whose torts he is liable".

In re Watertown Paper Company (C. C. A. 2), 169 F. 252, a decision of the Circuit Court of Appeals for the Second Circuit, was criticised by the Circuit Court of Appeals for the Sixth Circuit in *New York Trust Co. v. Carpenter* (C. C. A. 6), 250 F. 668, on the ground that control alone was insufficient to make a parent company liable for the acts of its subsidiary. It was suggested that something more was required. However, in the opinion in *New York Trust Co. v. Carpenter*, 250 F. at p. 676, the Court took pains to discuss *Foard Company v. State of Maryland*, 219 F. 827 (C. C. A. 4). After pointing out that the *Foard* case involved "negligence in admiralty" and that there was a holding that "the two corporations must be regarded *as to the outside public*, identical," it stated that the ground of the decision was that it would be unjust to hold the stevedoring company alone responsible for damage when the Foard Company, acting through the stevedoring company, was really responsible.

In the *Foard Company* case the stevedoring company was engaged in storing dynamite in a ship, and an explosion caused great damage. Here, the yacht "Seminole," which contained gasoline in tanks, was placed in a shed with a great many other boats. Gasoline vapor, which escaped because of the leaky condition of the tanks, exploded and caused great damage. Carelessness in both cases caused the loss. For identically the same reason in both cases,

there would be a grave injustice in permitting a mere shell of a corporation to prevent "innocent third persons" from regovering their losses. If owners may avoid liability by such devices, there is an easy means for every operator of dangerous instrumentalities, to immunize himself against all possibility of liability for carelessness.

Rules Applicable to Parent and Subsidiary Corporations Apply to Cases Where the Shareholder Is An Individual.

Respondent argues that what we say may be true as to the parent corporation and a subsidiary corporation, but it does not apply to the case of a person holding shares of a corporation. Mr. Powell, at Section 11 of his book, pages 37 and 38, says:

> "The rules applicable to parent and subsidiary corporations apply with equal force to cases of a person holding all or most of the capital stock of a corporation. If it is his mere instrumentality, its separate corporate entity will be disregarded and he will be held personally liable. Indeed, as a matter of practical judicial psychology, it is perhaps easier to jump the gap between corporation and stockholder in the case of a one-man corporation than in the case of a parent and a subsidiary corporation." Citing many cases. Particularly *Luckenbach S. S. Co.* v. *W. R. Grace & Co.*, 267 F. 676 (C. C. A. 4) and *Wenban Estate, Inc.* v. *Hewlett*, 193 Cal. 675.

See also *Biscayne Realty & Ins. Co.* v. *Ostend Realty Co.*, 109 Fla. 8, 148 So. 560.

The subservience of the Seminole Boat Company to Mr. Phipps was caused by the shareholders' failure to supply the corporation with sufficient means to conduct any business independently or to keep its property in good condition—even to make it possible to inspect it.

> (a) The adequacy or inadequacy of the capital and financial arrangements of the subsidiary weigh heavily in the determination of liability or non-liability of the

parent, greatly over-shadowing the other so-called indicia of identity between the companies such as common officers, directors, office and lack of separate books." ("Insulation from Liability through Subsidiary Corporations", Douglas and Shanks, Yale Law Journal, December, 1929, at p. 218).

As Thomas Deloney, "the ballating silk weaver" of the 16th Century, put it:

> "Be it better or be it worse,
> Please you the man that bears the purse."

This is all especially true when the so-called "officers" of the corporation were in the pay of the Phipps family—and not in the pay of the Seminole Boat Company.

The Florida Cases, Although Not Involving Torts, Declare the Florida Law on the Whole Subject of Dominance of a Corporation by a Shareholder. Those Principles Are Identical With Those in the Admiralty Cases Which Do Involve Torts.

Respondent Phipps at pages 41 and 42 dismisses all of the Florida cases because the rights of third parties are not involved. This circumstance does not warrant ignoring them. This cause of action arose in Florida, and the Supreme Court of Florida in each of these cases discusses the Florida law on this whole subject of liability of shareholders for the act of a subsidiary. Obviously, the applicable law is either that of Florida or the law of Admiralty. The Florida cases clearly show that if the law of Florida is to be applied, Phipps is liable. If the Admiralty law is to be applied, the same result follows. See two Admiralty cases directly in point, *The Willem van Driel, Sr.* (C. C. A. 4) 252 F. 35, cert. den. 248 U. S. 566, and *Foard Co.* v. *State of Maryland* (C. C. A. 4) 219 F. 827.

The Concurrent Findings Below as to Negligence and the Cause of the Explosion Are Fully Supported by the Evidence.

The respondent repeatedly attacks the concurrent findings below that the cause of the fire was the explosion of gasoline vapor in the engineroom (R. 3587-8), that the presence of gasoline vapor resulted from the defective and leaky condition of the gasoline tanks (R. 3588) which "with the passage of time * * * did leak" (R. 3587), and that "there is no evidence" of any "third person agency intervening which brought about the means whereby gasoline escaped with attendant fumes" (R. 3588). See Respondent's Brief, pp. 5, 6, 43, 44. Since the Circuit Court of Appeals concurred in the findings of the District Court (R. 3648) we shall not trespass upon the time of the court unduly with a discussion of evidence supporting the concurrent findings below.[6]

The tanks were of a type that would inevitably deteriorate, become defective, and leak with the passage of time and would certainly have leaked at the time of the disaster thirteen years after the original installation in the vessel (R. 842-3, 974, 1002, 3030). While the trial in the District Court was in progress, the gasoline tanks of the "Seminole" were secretly removed from the vessel and transferred to a machine shop in Miami where *ex parte* tests (referred to in Respondent's Brief, pp. 48-9) were

[6] Respondent suggests in a footnote (Resp. Brief, p. 2) that these findings by the District Court do not meet the requirements of Rule 46½ and do not have the force of findings. The same point was made in Respondent's Brief In Opposition to the Petition for Writ of Certiorari, pp. 6-7, and fully answered in the Reply Brief on Behalf of Petitioners, pp. 2-3. The District Judge said: "I find" (R. 3587) and "I am satisfied, and find" (R. 3588). Surely such expressions followed by clear statements of the matters found are a sufficient compliance with Rule 46½ and are not to be disregarded as findings merely because they do not appear in separately numbered paragraphs. In fact respondent, when it suits his purpose, refers to the statements of the District Court under the head of Discussion as "findings" (Resp. Brief, pp. 46, 47-8, 7). The Circuit Court of Appeals accepted these findings (R. 3648).

made on the tanks by respondent's representatives. When this fact appeared (R. 3162, *et seq.*), the Court directed that the case be reopened (R. 3167) and an inspection of the tanks by the District Judge in person followed (R. 3168-3171). Upon inspection, it was found that sections had been cut out of each of the tanks so that no further tests were possible (R. 3174). It also appeared that when tested *ex parte* by respondent's representatives all of the tanks leaked (R. 3173-4, 3179). Subsequently, sections from the four tanks were examined by Commander Edward Ellsberg, formerly of the United States Navy, later chief engineer in charge of construction for a large oil company, and a consulting engineer at the time he gave his testimony (R. 3464). He testified on the basis of his examinations of these sections, as follows:

> The tank is completely unsuitable as a container for gasoline, it is unsuitable in the workmanship on the plates, it is unsuitable from lack of caulking on the seams, it is unsuitable from very poor riveting, and with gasoline in this tank you could expect seeps around rivet heads and around the seams. It is the type of tank that is very evidently never designed for holding gasoline, and the type of tank which anyone who was acquainted with the difficulty of holding a penetrating liquid like gasoline in a tank would reject immediately for that service." (R. 3478-9).

He continued:

> Well, in a tank that is built for holding water, you can get away with a moderate amount of poor workmanship, and, if the tank, is not to be under pressure, with a fairly bad job, because the water leaking through around the rivets and through the seams will ultimately cause rusting on the rivets of the seams, which will give you a fair degree of tightness with water; if, however, you put gasoline in a tank, in the same tank, either before or after it has had water—if you put it in when the tank was brand new you would immediately get bad leaks immediately—but if the tank has previously been used for water so that it has had a chance to rust up around the shanks of the rivets and through the uncaulked seams, then it would hold gasoline to a moderate degree and perhaps even for a short time

well until the gasoline has cut through the rust. Any oil, and gasoline in particular, instead of rusting a metal and sealing itself up, will cut away the already existing rust and cause a leak *which will gradually increase in amount as the years go on.* Consequently, a tank to hold gasoline has got to be properly built and properly maintained, or you will have leaks in it, whereas the same kind of a tank, or even a worse built tank will hold water satisfactorily, and particularly when the tank is not under pressure. Furthermore, a small leak of water which would make no difference, because the water has no intrinsic value of its own and will do no damage, can be stood, whereas the same loss of gasoline is highly dangerous." (R. 3479). (Italics ours.)

* * * * * * * * * *

"Well, if the tank has been previously made tight because of the rusting of the rivets and the seams, what you will have, once you have put gasoline in it, and the gasoline has had a chance to work on the rust, is that it will seep through here and there in weeps and drips, and will, of course, as it runs out, evaporate. It doesn't mean, unless you had a clear hole through here, that you would have a stream of gasoline shooting out under pressure or squirting out." (R. 3480).

The tanks were evidently constructed as water tanks (R. 842, 966, 3271, 3479). They would probably have leaked before 1935 (R. 3502).

With such testimony before the court, and taking into consideration the personal inspection of the tanks by the District Judge himself,[7] there is obviously no basis for the respondent's attack on the concurrent findings of the lower courts that the tanks did become defective and leaky and did leak resulting in the presence of gasoline fumes in the engineroom, which were the proximate cause of this explosion and ensuing disaster. The fact that the District Judge in his findings specifically mentioned the fact that "a day or two after the fire, a diver found the four gasoline tank valves wide open, and the two valves on the gasoline

[7] The District Judge had also personally inspected the tanks on board the wrecked vessel as well as the entire wreck on a previous occasion in the course of the trial (R. 2330-4).

drain line opened one-third of a turn" (Fdg. 10, R. 3586), shows that the District Judge did not overlook this fact in making his finding that the defective and leaky condition of the tanks with resulting presence of gasoline fumes in the engineroom was the proximate cause of the damage done to the vessels of the libellants (R. 3587).[8]

Respondent Concedes That the Gasoline Tanks of the "Seminole" Could Not Be Tested Except By a Hydrostatic Test. There Is No Evidence of Any Hydrostatic Test, and Even If There Had Been Such a Test, It Would Have Been Insufficient.

Respondent inferentially concedes that the tanks, which were installed in the old coal bunkers were inaccessible and could not have been visually examined without tearing out a bulkhead (see Petitioners' Brief, pp. 5, 32, 38, 49), but asserts that it was not necessary to examine the tanks visually because it was a simple matter to test them hydrostatically (Respondent's Brief, p. 45). There is, however, no evidence, or even suggestion, that a hydrostatic test was ever made on the tanks in the thirteen years prior to the fire that they had been thus installed. Due to their inaccessibility and the piping arrangements, a hydrostatic test of the tanks individually or collectively would have been impractical without removing the bulkhead (R. 3151-3). Such a test would, in no event, have been of any value without thorough interior cleaning of the tanks which was impossible because of their construction (R. 3025; 1046, 1048-9; 967-8). Moreover, a hydrostatic test involving the use of water obviously would show nothing as to the tightness of the tanks against "a penetrating liquid like gasoline" (R. 3479). The importance of visual examination clearly ap-

[8] See respondent's brief, p. 44, where it is asserted that the open valves account for the presence of gasoline in the engineroom and the District Court's finding that the tanks leaked is attacked, and it is even asserted that the District Court should have held Pilkington liable as bailee in possession "because the valves were opened while the vessel was in his custody".

pears from Commander Ellsberg's description of the nature of the leak to be expected in such a tank, namely, "weeps and drips" from which the gasoline "will, of course, as it runs out, evaporate" (R. 3480).

Respondent asserts (Respondent's Brief, p. 46) that there were two systems of inspection which petitioner has ignored in charging that the respondent failed to provide for proper inspections of the "Seminole". It is asserted that Captain Baker inspected the "Seminole" and that matters of upkeep and repairs were in his charge. Baker's contract (Respondent's Exh. CC, R. Vol. 6, p. 19) expired, by its terms, one year from its date, which was October 21, 1929. After that he was paid "only when he worked on the Seminole" or "when he did anything on it" (R. 1353). Baker testified that when he was not on the payroll as master he "didn't go up there and do any work" (R. 2045, 2048). If he did, he got paid for it (R. 2045). The records of Seminole Boat Company disclose no payments to Baker after 1930 except for a short period in April-May, 1934 and again in March, 1935, when the "Seminole" was at Miami for sale, a few months before the fire (Exh. Y). There is no evidence in the record of any instructions to Baker or any delegation to Baker of any responsibility with respect to repair and construction of the "Seminole" after 1930. In fact, in April 1931 the "Seminole" was sent to Fort Lauderdale for storage (R. 1472, 1454-5, 1457) where "custody and control of the boat", as well as the duties of "control and management" and the duty "to inspect her regularly" were turned over to Mr. Riley who had "the management of the physical properties" of the Phipps family in that vicinity (R. 1480; see also Phipps, R. 1956). There is no evidence that Riley ever consulted with, or had any contact with Baker, or ever gave Baker any instructions, or relied on any inspections by Baker. The supposed system of examination by Captain Baker was non-existent.

Pilkington Was Not Under Any Duty to Inspect the Engine Room of the "Seminole", Nor Did He Make Any Inspection of Her Engine Room.

Respondent further asserts that it was Pilkington's duty, as bailee in possession, to inspect the "Seminole" and that the court below so found (Respondent's Brief, p. 46). It is further asserted by respondent's counsel that the "Seminole" had been regularly inspected by Pilkington and that Pilkington admitted that he had gone "all through" the "Seminole" five days before the fire. These statements are misleading. The fact is that when the "Seminole" was laid up at Pilkington's in April 1935, Pilkington was expressly forbidden to enter the engineroom or touch the engines. Baker testified that he told Pilkington that "I didn't want him fooling with the engines * * * I didn't want him in the engineroom" (R. 2025-6; see also R. 2047). The engineroom was of course the very place where the fatally defective conditions which caused this disaster arose. There is not one word of testimony in the record to justify the statement that the respondent or the respondent's representatives instructed Pilkington to inspect the engineroom or the engines and their appurtenances, including the tanks, or that they relied on his doing so. Moreover, in giving his testimony quoted in respondent's brief that he had gone all through the vessel on Wednesday, five days before the fire, he made it abundantly clear that he referred to parts of the vessel outside of the engineroom and that he did not and could not enter the engineroom because it was locked and he had no key (R. 460-2, 520). Pilkington did not admit, as asserted in Respondent's Brief, p. 44, that he had been in the engineroom and had tried to run the generator but, on the contrary, emphatically denied both the allegation and the assertion that he had previously made such an admission (R. 545-6).

The District Court did not find that Pilkington owed any duty to the respondent Phipps to inspect the vessel. The finding of the District Court referred to (R. 3588) was with respect to Pilkington's duties *to the libellants* to inspect

the "Seminole" and to avoid storing a dangerous vessel, such as the "Seminole", in the covered storage basin together with libellants' vessels. The libellants had alleged breach of this duty (Libel, paragraph Seventh, subdivisions 3, 4 and 5, R. 12 and 13). The District Court found that while Pilkington "owed certain duties to libellants as owners storing their vessels with him as warehouseman" and might "be criticized for not having detected and avoided the gaseous fumes on the 'Seminole' * * * I do not find that his dereliction in that regard was sufficient on which to base liability" (R. 3588). This finding is of no aid to the respondent Phipps and does not establish either discharge or delegation of respondent Phipps's duty of inspection.

Respondent's argument (Respondent's Brief, p. 49) that, since Pilkington did not discover the dangerous conditions existing in the engineroom of the "Seminole" when he went through the vessel five days before the fire, an inspection with due care would have disclosed nothing, fails, because Pilkington did not enter or inspect the engineroom where the dangerous conditions existed (R. 460-3; 519-20; 522).

Ex Parte Tests Made After Fire.

Respondent argues further that an inspection of the "Seminole" prior to the fire would not have shown that the tanks leaked asserting that "Pressure tests after the fire disclosed no leaks where the tanks had not been burned by fire" (Respondent's Brief, p. 48). The reference is to the *ex parte* tests of the tanks made by respondent's representatives during a late stage of the trial discussed *supra*, pp. 12 and 13. As a matter of fact, the tanks, when filled with water, leaked badly in the course of these tests (R. 3173-4, 3179). The tests were thereupon discontinued and the tanks mutilated so that no further test was possible (R. 3174). It is asserted that the tanks leaked only in their side seams where they had been soldered and the solder had melted off during the fire (Respondent's Brief, p. 48). The tanks, in fact, were not soldered on their side seams except for a short distance and not on all of the seams (R. 3192, 3215-6,

3253, 3473, 3524-5), and the rivets in the bottom seams were not soldered (R. 3477, 3486-9, 3525-6). The soldering was at best a makeshift, improper and unsafe method of securing tightness in the tanks (R. 3488, 3490, 3526).

The argument is an attempt to reargue and attack the findings of the District Judge, made after hearing all the arguments now propounded, and personally inspecting the tanks on two different occasions, that the tanks were leaky and defective at the time of the fire. In the face of such findings, it is idle to say that a proper inspection would not have disclosed this condition.

The Superficial Inspection of Bernard.

Respondent makes repeated references to the superficial inspection of the "Seminole" by the surveyor Bernard in March 1935 (Respondent's Brief, pp. 45, 47-8). As we have pointed out in our principal brief, pp. 37-8, Bernard conceded that he was in the engineroom for only about 15 minutes (R. 2246, 2225); that he did not make a thorough examination, nor represent his examination as such (R. 2224, 2231), and that he made no examination whatever of the tanks because this was impossible under the conditions (R. 2248-9). In view of the discussion in our principal brief, it is unnecessary to burden the court with further discussion relative to Bernard's examination.

Respondent's Attempt to Distinguish Petitioners' Cases on the Question of Limitation of Liability Fails.

At pp. 49, *et seq.* of respondent's brief, an attempt is made to distinguish the various cases cited in our principal brief relative to limitation of liability on the theory that the fact situations are different. It is said that petitioner seeks to apply to a vessel laid up in dead storage "in possession of a competent bailee charged with the duty of inspecting and caring for the vessel, the rules of law applicable to an owner in possession of a vessel in active operation".

Respondent's attempted distinction is utterly valueless since it appears clearly that the bailee Pilkington was not "charged with the duty of inspecting" the engineroom of the "Seminole", where the dangerous conditions arose, but on the contrary had been ordered to stay out of the engineroom (R. 2047).

Respondent's brief, pp. 53, *et seq.*, asserts that there can be no *alter ego* for an individual vessel owner in the matter of privity or knowledge. The cases do not support this assertion. The authorities are the other way.

The Circuit Court of Appeals for the Ninth Circuit in its decision in the case of *The Silverpalm* (C. C. A. 9), 94 F. (2d) 776, 780, did not recognize any such distinction. It held that in proceedings for limitation of liability the owner "may not escape liability by giving the managerial functions to an employed person as its agent *whether the person be corporate or otherwise*", and that in either case such an agent is the owner's "*alter ego*".

The Circuit Court of Appeals for the Sixth Circuit in its decision in the case of *In re Great Lakes Transit Corporation and James Playfair* (C. C. A. 6), 81 F. (2d) 441, applied this principle to an individual owner. The Court held that Playfair could not limit his liability because it imputed to Playfair the failure of his superintendent to discover a fault in the vessel which he could have discovered by the exercise of ordinary care.

In respondent's brief (p. 58), it is said that this decision was dictum because the Court also expressed the view that Playfair was deprived of limitation of liability because of breach of a warranty of seaworthiness in a contract which it considered personal. It might equally be said that this part of the decision was dictum, but it is fairer to say that there were two separate and distinct grounds for the decision of the Court.

Respondent's counsel says that the Circuit Court of Appeals for the Second Circuit in its decision in *In re*

New York Dock Co. (C. C. A. 2), 61 F. (2d) 777, overlooked the fact that the owner was an individual and applied the corporate rule by mistake and that the court later applied the correct rule applicable to individual owners in the case of *Flat Top Fuel Co., Inc.* v. *Martin* (C. C. A. 2), 85 F. (2d) 39 (Respondent's Brief, p. 59). The distinction between the two cases, however, is clear. In the first case, the Court held that "*the scope of authority delegated* to Heyer by Converse *was so broad* that his privity and knowledge as to the unseaworthiness was in law that of Converse" (61 F. (2d) 779).

In *Flat Top Fuel Co.* case there had been no such broad delegation of managerial powers and duties by Martin to his subordinate. Martin had retained his managerial duties and responsibilities and had merely instructed a competent master to look after the vessel in the course of her active operation and report any needed repairs. The master failed to detect an obscure defect at the inception of a particular voyage. Although this was negligence, the owner was, nevertheless, allowed to limit since the negligence was that of a competent employee within the limited scope of his duties.

In the present case, as in *In re New York Dock Co.*, *supra*, the respondent Phipps in the language of the Circuit Court of Appeals below, had imposed on his delegees "full duties as to inspection and maintenance" (R. 3649). Phipps retained no managerial duties or functions. As the court said in *In re New York Dock Co.*, *supra*:

> "The scope of authority delegated * * * was so broad" as to make the privity of those to whom he delegated so broad an authority, his own.[9]

[9] In the case of *The Ariel* (S. D. N. Y.), 33 F. Supp. 573, cited in respondent's brief, page 59, the District Court held that the vessel was not unseaworthy and that there was no liability on the part of the *corporate* owner. The court's remarks relative to limitation of liability were, therefore, quite irrelevant. The Circuit Court of Appeals in affirming the decree, *The Ariel* (C. C. A. 2), 119 F. (2d) 866, 868, ignored them.

Principle, as well as authority, requires the result that when a vessel owner completely delegates all his functions, duties and responsibilities in respect of his vessel to another, that other should be held to be his *alter ego* and the negligence, knowledge and privity of that other, the negligence, knowledge and privity of the owner; otherwise a vessel owner could in all cases divest himself of any personal responsibility and assure himself of limitation of liability in all cases. To use the pungent language of Judge Hough in the case of *The Argent*, 1940 A. M. C. 508, at page 509—

> "If lack of actual knowledge were enough, imbecility, real or assumed, on the part of the owners, would be at a premium."

Nothing contrary to this view will be found upon analysis of the decisions cited by the respondent (Respondent's Brief, p. 56). To say that the adoption of this view "would destroy the limitation statutes as fully as if Congress repealed them", or that "on petitioners' theory an individual can never limit his liability" (Respondent's Brief, p. 61) is clearly not accurate and the assertion scarcely deserves notice.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1942

No. 246

CHARLES CORYELL, *et al.*,
Petitioners,

against

JOHN S. PHIPPS AND GEORGE J. PILKINGTON,
Respondents.

BRIEF FOR RESPONDENT PHIPPS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE

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No. 246

CHARLES CORYELL, *et al.*,
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AGAINST

JOHN S. PHIPPS and GEORGE J. PILKINGTON,
Respondents.

BRIEF FOR RESPONDENT PHIPPS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Statement

Petitioners seek to review a decision of the Fifth Circuit Court of Appeals affirming a final decree of the District Court for Southern Florida dismissing petitioners' libel against both respondents. They sued to recover for damage to their vessels on June 24, 1935 at respondent Pilkington's boat storage shed near Fort Lauderdale, Florida, which was destroyed by fire. The fire began on the charter boat *Seminole* owned and operated by Seminole Boat Company, a Delaware Corporation, of which respondent Phipps owned one-half the stock.

Pleadings

The libel, Art. Third (R. 8), alleges that the *Seminole* was owned by Seminole Boat Corporation but predicates Phipps liability upon allegations that he "operated or controlled" the *Seminole* and that his servants were negligent. Not until after issue had been joined did it appear, in an affidavit of counsel, that it would be claimed that Seminole Boat Company was "a dummy corporation" (R. 62, 69). Thereafter, by leave of court, Phipps amended his answer to plead limitation of liability pursuant to R.S. §§ 4283 and 4284 (R. 56-61).

The Trial

The trial consumed upwards of thirty court days. Forty-five witnesses were called and thirty-six of these testified in the presence of the Court. Printed briefs aggregating more than 800 pages were submitted and the Court heard argument for four days.

The Facts

Prior to February 1915 the *Seminole* was owned by H. C. Phipps, a brother of respondent Phipps. In that month respondent Phipps bought from his brother a one-half interest in the boat (R. 1882-3, Exh. 4-P). In 1922 her steam power plant was removed and gasoline engines and their necessary appurtenances substituted. In 1927-1928 she was largely re-built, her gasoline tanks were removed, opened, examined, cleaned, re-riveted, tested and

re-placed, her electric wiring was placed in conduit, etc. (R. 349-51, 1894-5, 1906-7, 2061-73).

The Seminole Boat Company was incorporated in Delaware in October, 1928, at the instance of the brothers Phipps. Shortly thereafter each brother sold his one-half interest in the *Seminole* to the corporation for one-half the corporate stock. The purpose of incorporating was to put the *Seminole* in the charter business for hire. The corporation promptly made a contract with an experienced charter boat master to operate the *Seminole* on charter for hire and in 1929 and 1930 she was chartered on several occasions. Thereafter she was always available in the charter market but due to the stock market crash in 1929 she proved too expensive in the depression years, and no charterer was found for her after 1930 (R. 1270-1, 1280, 1363-5, 1470-2, 1883-6, 1893-4, 1900-10, 1943, 1982, 1985-6; Exhs. V, W-1, W-2, CC, 4-P to 4-V incl., minutes of Seminole Boat Company for January 28, 1929 in Exh. U).

From incorporation to and including the time of the fire Paul Scott, R. C. Alley and Roy H. Hawkins were the directors and, respectively, President, Vice-President and Secretary-Treasurer of the corporation and were in full, complete and active charge of the management of the vessel. Because of the inability to obtain charters, Scott, the President, determined in 1931 to lay her up at Pilkington's basin (R. 1277-8, 1351-2, 1363, 1370, 1471-3, 1479-81, 1503-5, Exh. U).

In February, 1935, Hawkins, Secretary-Treasurer, upon his own initiative, decided to remove the *Seminole* from storage at Pilkington's, bring her to Miami, put her in commission, and offer her for charter or for sale. She was placed at the Royal Palm Dock where a "For Charter"

sign was placed upon her and she was listed with the brokers. Hawkins had her surveyed by an experienced ship surveyor who found her in good condition in all respects. No charterer was found and an offer to buy her was deemed inadequate and was rejected. Thereafter H. C. Phipps, owner of one-half the corporate stock, sold his stock to Mrs. Amy Guest. From that time on the stock was owned one-half by Mrs. Guest and one-half by respondent Phipps. No change in the management of the vessel ensued. She was managed exclusively by the corporate officers (R. 1273-4, 1282-1301, 1381, 1886, 2211-19, Exhs. F, V, W-3 and Journal Voucher 95 in Exh. Z).

In April, 1935, after the charter season was over and no charterer had been found, the stockholders, members of their families and friends went on a ten-day fishing trip in the *Seminole*. The crew was procured by the corporation's officers. The operating expense of the cruise was assumed by respondent Phipps but the expense of maintaining the vessel, as at all other times, was borne by the corporation. During the cruise the vessel operated perfectly and with no sign of any defect. The party left the *Seminole* at Lower Matecumbe. From there the master, upon orders from the Secretary-Treasurer of the corporation, returned the *Seminole* to Pilkington's where, on April 15, 1935, she was delivered to Pilkington for dead storage, having been prepared therefor by her crew. All her gasoline valves were left shut tight and the gasoline supply gauge showed empty. Her bilges were clean and free of gasoline and gasoline vapor. She remained in Pilkington's possession from April 15 to and including the day of the fire. Pilkington, as he admitted, went "on the boat, all through it, on Wednesday [five days] before

the fire and I didn't smell nothing and everything was in good shape" (R. 416, 462, 1301-4, 1513-14, 1746-9, 1754-9, 1764-70, 1887-9, 1914-16, 1970-8, 1983-4).

On June 24, 1935 Seminole Boat Company through Riley, who was authorized by the corporate officers to act for the corporation, employed R. C. Abel to proceed to the *Seminole* and inspect her. Abel drove his own car and bought gasoline for the trip, writing on the charge ticket the words "Seminole Boat Co.", thus indicating who his employer was. He presented to Pilkington written authority from Seminole Boat Company, by Riley, to board the *Seminole* and Pilkington gave him the keys. In the course of his inspection of the engine room an explosion occurred followed by the disastrous fire. His companion, John Thomas, who accompanied Abel to inspect a rope net, survived and testified that there was no odor of gasoline or vapor in the engine room (R. 251, 260, 299, 525, 1519-20, 1536-42, 1593, 1641-2, Exh. S reproduced at p. 27 of Vol. 6 of the record).

The District Court Decision

With relation to the ownership history of the *Seminole*, her sale to the corporation and her operation by the corporation the District Court found the facts substantially as above. Specifically the Court found:

"4. From the beginning and down to and including the time of the fire the directors and officers of the corporation were Paul Scott, R. C. Alley and Roy H. Hawkins, who were, respectively, President, Vice-President and Secretary-Treasurer. These men, as officers of the corporation, assisted by James F. Riley, and advised by Captain Baker and other boat captains, operated, controlled, maintained,

and managed the vessel from the time of her purchase by the corporation down to and including the time of the fire." (R. 3583)

"12. The Seminole Boat Company was incorporated in good faith for the bona fide purpose of taking title to the *Seminole*, and operating her in the charter business, and long prior to June 24, 1935. While it made no profits and no charters after 1930, it continued in existence as a bona fide corporation, and there is no fraud or other reason to disregard the corporate entity, pierce the corporate veil, or regard it as an agent of either of its stockholders. It stands as a non-conductor between the libellants and Pilkington on the one hand, and the stockholders on the other." (R. 3586)

Among other things the Court concluded:

"2. Seminole Boat Company, a Delaware corporation, was at all pertinent times a bona fide corporation, a valid creature of the law, not to be regarded as sham or fiction, or Phipps' agent, but as a legal non-conductor between Phipps on the one hand and libellants and Pilkington on the other, because there was no fraud or other improper conduct or purpose in the creation or continued existence of the corporation." (R. 3589)

"3. The *Seminole* was owned, operated, controlled and maintained by Seminole Boat Company, not respondent Phipps, and respondent Phipps is not liable for any acts or omissions of the Seminole Boat Company, or any persons who acted on its behalf." (R. 3589)

The Court made no findings as to the cause of the fire, i.e. whether or not the spark occurred through negligence or how the gasoline vapor that exploded (if it was gasoline vapor) got into the engine room. However, with its findings and conclusions the Court, under the heading "Discussion," indicated a view as to these points. The Court found that after the fire the gasoline valves were open (R. 3586) but failed to determine who opened them, or to explain how an inference that the tanks leaked could be

justified (there was no direct evidence of leaks) when the valves were open.

This "Discussion" amounts to an opinion merely and does not meet the requirements of Admiralty Rule 46½ that the Court "shall find the facts specially" and does not, therefore, represent facts determined in this case. *Interstate Circuit, Inc.* v. *United States*, 304 U. S. 55; *Fleischmann Construction Company* v. *United States*, 270 U. S. 349; *Harvey Co.* v. *Malley*, 288 U. S. 415. In brief, to hold respondent Phipps, libellants had to establish (1) that the fire was negligently caused and, (2) that the entity of the corporation owning the *Seminole* should be disregarded. A determination on either of these points favorable to Phipps must result in a dismissal as to him. The Court made formal findings on the corporate entity point only. The case in the District Court, therefor, was determined solely on the corporate point without any determination of the negligence issues.

As to the defense of limitation of liability the Court found that Phipps left the *Seminole* at Lower Matecumbe, that the *Seminole* was sent thence to Pilkington's upon the instructions of Hawkins, Secretary-Treasurer of the corporation, that she was prepared for lay-up at Pilkington's by her crew upon Hawkins' instructions and that Phipps "was not present and took no part in such preparation" (R. 3584-5). The Court concluded that

"4. Respondent Phipps was without privity or knowledge of the events that led up to and brought about the explosion and fire, and if corporate liability be disregarded, which in my opinion should not be, Phipps would be entitled to limit his liability to the value of his interest in the wreck of the *Seminole* after the fire under the Limitation of Liability statutes." (R. 3589)

The Circuit Court Decision

The Circuit Court of Appeals held that "the basic dispute turns upon the ultimate facts" and that "the evidence preponderates in favor of the findings made in each material instance" (R. 3648). In its opinion the Court pointed out that the *Seminole* was in Pilkington's possession when the fire occurred (R. 3645), set forth the ownership history of the *Seminole* substantially as stated above (R. 3646), and as to her operation and condition when and while stored with Pilkington, said:

"It is undisputed that the vessel had been examined and pronounced fit by an experienced ship surveyor in February, 1935; that she developed no flaws during the cruise or prior to reaching Pilkington's; that the crew left her gasoline valves closed, her electric switches open, her gas tanks registering empty, and her bilges clean and free of gasoline or gasoline vapor; and that she was repeatedly examined by competent men between April 15 and June 24, 1935, who discovered nothing wrong with her." (R. 3647)

The Court further found that the *Seminole* was at all times managed and operated by the officers of her corporate owner and that there existed no reason for disregarding the corporate entity saying:

"At all times after the title to the *Seminole* was transferred to the corporation her movements were directed by the officers of the corporation, she was manned by a crew employed by those officers, and all business dealings in connection with her operation and management were conducted by those officers." (R. 3647)

"Under the evidence, the case presents itself in this aspect: Appellants' vessels sustained damages by reason of the negligence of the Seminole Boat Company. In order

to hold Phipps to personal liability, appellants had the burden of establishing, by a preponderance of the evidence, that the corporation was an artifice and a sham designed to execute illegitimate purposes in abuse of the corporate fiction and the immunity that it carries, and that its activities in reality were those of Phipps personally. This burden was not discharged." (R. 3648)

The Court further held that even if the corporate veil should be pierced the libel must nevertheless be dismissed because Phipps did not have privity or knowledge of the cause of the fire and would, therefore, be entitled to limitation of liability under R. S. § 4283 saying:

"The evidence affirmatively establishes that no actual privity to or knowledge of the defective condition obtaining upon the *Seminole* was attributable to Phipps personally, and that none could be imputed to him since he had exercised due care and diligence in selecting competent men to man the vessel, and had imposed upon them full duties as to inspection and maintenance of her." (R. 3649)

Questions Presented

Petitioners pose several questions said to be presented (pp. 17-18). None of them is in fact presented. The questions stated by petitioners relate to "the individual owner of a yacht", "an owner of a vessel" and "an owner". On the contrary petitioners alleged in their libel that the *Seminole* was "owned by, and registered in the name of the Seminole Boat Corporation" (R. 8). The corporation is not a party to this suit. There was no issue as to ownership and both Courts found that the corporation was the owner and that respondent was merely owner of half its stock.

The real questions presented are:

1. Did respondent in fact so dominate the corporate owner of the *Seminole* that the corporate entity had been abandoned and should be disregarded? This presents only a question of fact which both Courts below found favorably to respondent.

2. If the corporate entity were disregarded and if Phipps were therefore regarded as one of two co-owners, did he have privity or knowledge of the cause of petitioners' losses such as to deny him the right to limitation of liability? This question was never reached by either Court below because each refused to disregard the corporate entity. However, each expressed the same opinion on the issue, i. e., that respondent did not in fact have knowledge or privity of the cause of petitioners' losses and would be entitled to limitation of liability if he were liable.

POINTS

I. No question of law is presented.

The Circuit Court of Appeals was right in saying that "the basic dispute turns upon the ultimate facts" (R. 3648). Whether petitioners contend that the corporation was a sham, or was dominated by Phipps, or was Phipps' agent, the ultimate questions are of fact, viz. whether corporate protocol was observed, whether the purpose of incorporation was legitimate, whether the directors and officers were independent of the stockholders, whether the

stockholders interfered with corporate activities out of character as stockholders, and whether the corporate officers and agents were upon corporate business, or upon stockholders' business as individuals, when acting in respect of the *Seminole* in any matter that related to the fire and petitioners' damage. Plainly these are questions of fact. The Courts below concurrently found these facts against petitioners.

There need be no fear that as a result of the decision below "yacht and other boat owners will be encouraged to utilize the fiction of corporate ownership without actual corporate independence as a means of escaping liability" (Petition, p. 2). Both courts below found that the corporation was the actual owner, was incorporated in good faith and that its officers acted for it, not the stockholders, and were independent of the stockholders (R. 3583, 3587, 3589, 3647, 3648).

Many issues of fact are raised by the petition (pp. 3-6). While Scott, Alley and Hawkins were "family representatives" in other matters they had never been endowed with any authority from Phipps to act for him in respect of the *Seminole*. The fact that they were Phipps' representatives in other matters is immaterial (R. 1351-2, 1362-3, 1452-7, 1471-3, 1479-84, 1503-5, 1943-5). The District Court rightly found as a fact that these men operated the *Seminole* "as officers of the corporation" (R. 3583).

It is said (Petition, pp. 3-4) that the directors and officers had no stock interest in the corporation and received no compensation. No authority is cited to suggest that these considerations are controlling. This Court has held that the question, Who is the servant's master?, must be

determined by the answer to the question, Whose work was the servant doing?, and that compensation is collateral. *Denton* v. *Yazoo & Mississippi Valley Railroad Co.*, 284 U. S. 305. There Hunter, paid by the Illinois Central Railway, was held to be in the employ of the United States from which he received no pay.

Petitioners assert (p. 4) that the corporation was not furnished with sufficient capital funds. Even if that were true their loss arises from no such deficiency. The corporation was sufficiently financed to meet normal strains. The financial backers of an enterprize where a single vessel is put in the charter business cannot fairly be required to finance the corporation so largely that it can pay the tremendous loss resulting from this catastrophic fire upon pain of a disregard of the corporate entity. Any such requirement would emasculate one of the legitimate purposes of incorporation.

Petitioners complain (p. 4) about the manner in which the corporate books were kept. Its bills were paid by other corporations which extended it credit and which were duly repaid. The corporation kept its own books, showing a record of every expense, of every item of income, and of every re-payment of a debt (R. 1673-5, 1698-9, 1703, 1722-4). Because it operated at a loss after 1930 does not render it non-existent as a separate entity. Cardozo, J. said in *Petrogradsky M. K. Bank* v. *The National City Bank of New York*, 253 N. Y. 23:

> "Neither bankruptcy • • • nor cessation of business • • • nor dispersion of stockholders, nor the absence of directors • • • nor all combined, will avail without more to stifle the breath of juristic personality. The corporation abides as an ideal creation, impervious to the shocks of these temporal vicissitudes" (pp. 31-2).

There is no justification for petitioners' assertion (p. 4) that the officers acted pursuant to the stockholders' directions on all except minor routine matters. Of cource the stockholders were consulted concerning the proposed sale of the *Seminole*, the principal corporate asset, and the purchase of an additional vessel. The proposal to sell the *Seminole* was tantamount to a proposal that the corporation go out of business and the officers' consultation with the stockholders was natural and in character as stockholders. The proposal to buy another vessel was a proposal to double the size of the "fleet" and, to say the least, the officers were entitled to ascertain the wishes of the stockholders as to this. These consultations indicate no breakdown of the corporate entity (R. 1295-1301, 1333, 1381, 1389-90, 1463-4, 1886-8, 1914, 1942).

Petitioners assert (pp. 4-5) that the corporate officers could not incur more than nominal expense without express authority from the stockholders. There is no basis in fact for this assertion. On individual items Hawkins, Secretary-Treasurer, limited himself to $500., and Riley limited himself to $300., because the corporation was operating at a loss. No limitation was imposed by respondent. These limitations were *self-imposed* (R. 1334, 1380, 1505, 1912-14).

There is no support for petitioners' statement (p. 5) that respondent made personal use of the vessel whenever he desired. As petitioners say (p. 6) the *Seminole*, after April, 1930, "was continuously in storage up to the time of the fire except for only four brief occasions". The trip in March-April, 1932, was not for respondent but for both stockholders (R. 1507-8). Who used her on the August, 1932, trip was not proved (R. 1916-17). There is no proof

that the use in March-April, 1934, was for respondent. In 1935 the *Seminole* was not put in commission for respondent but by an officer of the corporation "upon his own initiative" to offer her for charter or for sale (R. 3584). The 1935 cruise was originally planned in another boat hired for the purpose but when all hope of chartering the *Seminole* in that season had vanished both stockholders, not respondent alone, used the vessel for ten days (R. 1282-3, 1373, 1824, 1887-8). These uses by both stockholders together do not tend to establish domination by respondent. Moreover they were not uses adverse to the corporate interest but favorable to it. It is obviously easier to charter a vessel, and better for her maintenance to have her in commission rather than laid up in dead storage. Furthermore, petitioners were in no way affected by these uses since the vessel was in dead storage and had been for upwards of two months when the fire and their damage occurred.

Respondent never owned more than one-half the corporate stock and for upwards of five years before the fire the corporation, not respondent, owned, operated and controlled the *Seminole*, as both courts found. Stockholders need not remain utterly aloof from the corporate business to maintain the separate entity. As stockholders they are entitled to evidence a legitimate interest and assert a legitimate control over the corporate affairs. Both Courts below found as fact that respondent did no more. In *Eichelberger* v. *Arlington Building, Inc.*, 280 Fed. 997, the Court said: "It is true the stockholders control it, but that surely does not render it invalid" (p. 1000).

II. There is no conflict of decisions as to the corporate entity.

Manifestly quotations from the decisions below cannot be understood except in the light of the facts and the issues determined. Petitioners cite no case reasonably analogous on the facts the decision of which is inconsistent with the decisions below.

Davis v. *Alexander*, 269 U. S. 114, was a case "where one railroad company actually controls another and operates both as a single system" (p. 117). In *Chicago, Milwaukee & St. Paul Rg. Co.* v. *Minneapolis Civic Assn.*, 247 U. S. 490, two railroad companies took over and operated a third as a "completely controlled agency" of certain terminal delivery tracks as an adjunct of *their own* businesses. *United States* v. *Lehigh Valley R. R. Co.*, 220 U. S. 257, was a prosecution for violation of the Anti-Trust Act where the parent corporation had deliberately gained control of, and operated, the subsidiary for the purpose of doing indirectly what the Anti-Trust Act forbade it to do directly. Nothing decided, or said, below conflicts with these.

Lehigh Valley R. R. Co. v. *DuPont*, 128 Fed. 840 (C. C. A. 2), was a death action against a rail carrier. The passage ticket was issued by the defendant and the relationship of passenger and carrier existed between plaintiff and defendant. The carrier attempted to force liability on its subsidiary but could not escape *its own* contract.

Lehigh Valley R. R. Co. v. *Delachesa*, 145 Fed. 617 (C. C. A. 2), turned on the trial court's instructions to the jury, viz., that the parent company was not liable to the

plaintiff unless the jury found that the parent was *itself* engaged in delivering the iron at the dock during the course of which plaintiff sustained his injuries. The language of the opinion is soundly criticized by Douglas and Shanks in *Insulation from Liability Though Subsidiary Corporations*, Yale Law Journal, Vol. 39, pp. 206-7.

In *Costan* v. *Manila Electric Co.*, 24 F. (2d) 383 (C. C. A. 2), the parent, disregarding its subsidiary's existence, appointed *its own* manager of the subsidiary's property, authorizing him to "hire operating employees on its behalf, to fix their salaries, and to discharge them, and to purchase labor, materials and supplies, in its name and on its behalf" (p. 384). In these circumstances the Court found that the operating employees were in fact employees of the parent, not the subsidiary, and held the parent liable for the negligence of *its own* employees.

In *The Willem van Driel Sr.*, 252 Fed. 35 (C. C. A. 4), certiorari denied 248 U. S. 566, the railroad company acquired a 999-year lease of the property and franchises of the corporation owning the grain elevator which the court held "were constructed and operated merely as a facility to the business of the railroad company" (p. 39).

In *Luckenbach S. S. Co.* v. *W. R. Grace & Co. Inc.*, 267 Fed. 676 (C. C. A. 4), the parent wholly owned the subsidiary and operated the subsidiary's vessel as a unit of *its own* fleet. There was no question of a parent's liability for a subsidiary's tort.

In *Consolidated Rock Co.* v. *Du Bois*, 312 U. S. 510, this Court recently stated the proposition for which the two cases last cited, and others relied upon by petitioners, stand, viz.

"* * * it is well settled that where a holding company directly intervenes in the management of its subsidiaries so as to treat them as mere departments of its own enterprise, it is responsible for the obligations of those subsidiaries incurred or arising during its management" (p. 524).

We do not dispute this proposition and petitioners' authorities establish nothing more. It is not applicable here because the corporation was no department or subordinate part of any business of respondent.

In Re Great Lakes Transit Corp., 81 F. (2d) 441 (C. C. A. 6), involved no disregard of corporate entity. Playfair, not the corporation, was held to be in fact the owner of the vessel (p. 442).

In *The Silver Palm*, 94 F. (2d) 776 (C. C. A. 9), petitioner for limitation of liability alleged that it was "owner and operator" of the vessel. After liability had been imposed, however, it sought to establish that another corporation was the operator. One Thompson was manager both of petitioner and the corporation which the petitioner belatedly claimed was operator. The Court held only that his knowledge, whether gained as manager of one company or the other, constituted privity under the limitation statute. No corporate entity was disregarded.

Counsel for petitioners misunderstand the reference of the Courts below to fraud. Petitioners' contention as to domination was squarely presented below—see the excerpt from our main brief in the Circuit Court of Appeals printed *infra* as Appendix A. The Courts below did not refer to fraud in the sense of false dealing between two parties. They meant, and with reasonable clarity said, that Seminole Boat Company was honestly conceived and continued in

existence for proper purposes without domination by the stockholders out of character as such. The fraud the Courts found nonexistent was fraud upon the law, referring doubtless to Powell on *Parent and Subsidiary Corporations* where the author says:

"If stockholders' immunity is thus grounded in the basic law of corporations, the only justification for its judicial denial is that it should not be recognized in cases in which the legislature or common law never contemplated it should be granted. In other words, the immunity was created for certain legitimate purposes and it should not, therefore, be permitted for purposes that are not legitimate. The basis, therefore, for abrogating the normal immunity of stockholders is *an abuse of the privilege to do business in corporate form*, or in other words, *a fraud upon the law*" (p. 2).

III. There is no conflict of decisions as to limitation of liability.

Both Courts below held respondent not liable. Both expressed the opinion that *if* he were liable he could limit.

The fallacy in petitioners' claim of a conflict of decisions lies in their attempt to apply to an individual the corporate rule as to privity. The question cannot arise unless the corporate entity of the Seminole Boat Company be brushed aside and Phipps be regarded as one of two individual co-owners.

Richardson v. *Harmon*, 222 U. S. 96 involved a petition for limitation by three individual co-owners of a vessel. This Court said:

"In view of the manifest policy of Congress to further encourage the ship owning industry and the very broad terms employed in this last legislation, we can but infer

that the policy of the Government was to confine the risk of an owner *not personally at fault* to his interest in the ship" (p. 104, italics ours).

"Thus construed, the section harmonizes with the policy of limiting the owner's risk to his interest in the ship in respect of all claims arising out of the conduct of the master and crew, whether the liability be strictly maritime or from a tort non-maritime, but leaves him liable for *his own* fault, neglect and contracts" (p. 106, italics ours).

Compare Benedict on Admiralty, 6th Edition (1940) Vol. 3, pages 384-5.

Both Courts below found that respondent was "not personally at fault", and that he had no knowledge of, and was not privy to, the cause of petitioners' losses.

The difference in the privity rule arose as a result of corporate ownership. Since a corporation has no physical being and of necessity acts through natural persons who are its agents, the knowledge of certain of those agents must be held to be the knowledge of the corporation. Otherwise a corporation would never have privity or knowledge and could always limit its liability. Numerous cases stemming from *Craig* v. *Continental Insurance Co.*, 141 U. S. 638, hold that where the owner is a corporation its privity or knowledge is that of an officer or agent having managerial status. Petitioners sought (unsuccessfully) to brush the Seminole Boat Company aside, regard respondent as one of two co-owners, and yet apply the corporate privity rule, and impute to him the privity or knowledge (claimed but not proved) of the officers of Seminole Boat Company.

The Silver Palm, 94 F. (2d) 776 (C. C. A. 9) involved a corporate petitioner, not an individual. The Court merely held that a corporate vessel owner is charged with the

privity or knowledge of its agent having managerial capacity, whether that agent be an individual or another corporation. The person referred to in the italicized portion of the quotation from this decision at page 14 of the petition is the corporate agent of the vessel owner, not the vessel owner itself.

In re Great Lakes Transit Corporation, 81 F. (2nd) 441 (C. C. A. 6) involved petitions by a corporation and the individual who, as the Court found, was the owner. Limitation was denied to the individual because he had personally contracted to supply a seaworthy vessel, an obligation against which an owner cannot limit his liability in any event.* By way of dictum the Court added that the individual owner could not limit because of imputed knowledge but wholly overlooked the distinction between the corporate and the individual rule. The cases cited by the Court to support its opinion on this point are all corporate owner cases (p. 444).

In re New York Dock Company, 61 F. (2d) 777, (C. C. A. 2) involved an individual but the Court overlooked that fact and applied the corporate rule. No issue was raised as to which privity rule, corporate or individual, should apply and only cases involving corporate owners were cited by the Court to support its ruling (p. 779).

Wherever the point has been squarely raised the Courts have invariably held that privity or knowledge may not be imputed to an individual owner. *The Yungay*, 58 F. (2d) 352; *The Chehaw*, 54 F. (2d) 645; *Christopher* v. *Grueby*, 40 F. (2nd) 8; *Successors de Esmoris & Co.* v. *Whitney & Bodden Shipping Co. Inc.*, 39 F. (2nd) 191;

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* *Pendelton* v. *Benner Line*, 246 U. S. 353.

Petition of Liebler, 19 F. Supp. 829; *The City of Camden*, 292 Fed. 93 (C.C. A. 3); *James McWilliams Towing Line* v. *Shaw*, 288 Fed. 74; *Flynn* v. *Christenson*, 273 Fed. 385, (C. C. A. 9); *The Tommy*, 151 Fed. 570 (C. C. A. 2); *Quinlan* v. *Pew*, 56 Fed. 111 (C. C. A. 1); *In re Leonard*, 14 Fed. 53.

If petitioners' theory were sound it would destroy the limitation statutes so far as individual owners are concerned as fully as if Congress repealed them. The individual owner could never limit. If he operated the vessel personally he would necessarily always have knowledge. If he employed a person to operate her for him, no matter how competent such employee might be, the knowledge of that person would always be imputed to him.

IV. There is no conflict of decisions concerning the nature of the negligence involved.

Petitioners assert (pp. 15-17, 32-3) that the District Court allowed respondent to limit his liability because the character of the negligence involved was non-feasance rather than misfeasance and that such decision is in conflict with decisions elsewhere. There is no basis for this contention. The District Court in its "Discussion" said:

> "Furthermore, the character of the negligence which this record discloses is the failure to do or perform a duty, or nonfeasance. Such failure of duty does not give rise to an application of the alter ego or agency doctrine. I can well conceive of cases where a positive wrong, an act of positive negligence, may lead to individual liability of a stockholder in a corporately owned offending vessel, but this is not such a case" (R. 3587).

The Court was not discussing the limitation question. It was discussing petitioners' contention that respondent should be held for the corporation's alleged tort, a question of liability not of limitation. It is elementary that nonfeasance by a corporate officer (a stockholder is less than that—respondent was neither a director nor an officer) does not give rise to personal liability to third parties injured by the corporation's tort. Only misfeasance gives rise to such third party liability and such liability of the corporate officer is not for the corporation's tort but for his own.

Even if the record showed that there was a failure to inspect or that there was a failure to establish a regular system of inspection by competent inspectors, respondent would not be affected because he was not more than a stockholder in the corporation which owned and operated the vessel. He owed no duty to petitioners to inspect or set up any system of inspection. The cases cited by petitioners on this point have no relation to the problem presented by the facts here.

Petitioners (p. 16) challenge the finding of the Circuit Court of Appeals that

> "The evidence affirmatively establishes that no actual privity to or knowledge of the defective condition obtaining upon the *Seminole* was attributable to Phipps personally, and that none could be imputed to him since he had exercised due care and diligence in selecting competent men to man the vessel, and had imposed upon them full duties as to inspection and maintenance of her" (R. 3649).

There is no basis for petitioners' challenge. Pilkington, in whose possession the *Seminole* was, was obliged under the contract to inspect her and testified that he did so "almost every other day" (R. 319, 516-20, 746-7).

Baker, her master, was likewise charged with the duty of inspecting her and did so (R. 1968, 1983, 1987, 2023-4, 2044-7). A system of inspection by the master has been held to be enough. *California Yacht Club* v. *Johnson*, 65 F. (2d) 245 (C.C.A. 9).

In March, 1935, three months before the fire, the corporation employed an experienced marine surveyor to inspect the *Seminole* thoroughly. He made a "close internal examination of the hull and the parts", found no indication of anything wrong, reported that all Government requirements had been fully complied with, and that the vessel was in good seaworthy condition (R. 2211-18, 2230, 2246-9).

Whether or not the corporation's officers (Scott, Alley, Hawkins, Riley) were competent to inspect is immaterial. They managed the business of the vessel. For practical inspections they relied upon the master, the marine surveyor, and Pilkington, in whose possession she was.

It is anomalous indeed for petitioners to complain about inspections. An inspection was in progress at the time their loss occurred. Abel, an experienced boat captain, had been sent by the corporation to "inspect the *Seminole*" and was inspecting the engine room when the explosion occurred (R. 252-6; Finding 8, R. 3585).

V. The petition for certiorari should be denied.

Respectfully submitted,

CHAUNCEY I. CLARK,
EUGENE UNDERWOOD,
Counsel for respondent Phipps.

Dated: New York
August 21, 1942.

APPENDIX A

Extract from Respondent's Brief in the Circuit Court of Appeals*

THE LAW AS APPLIED TO THE FACTS HERE.

It must be apparent that quotations from decisions cannot ordinarily be applied except in relation to facts fairly analogous to those that evoked the language used. The fraud cases have no application because the claims here do not arise out of any mutual dealings but out of an alleged tort in which no fraud is claimed. Nor do the cases concerned with the creation of corporations to evade the law have any bearing because there is no evidence that the Seminole Boat Company was formed for any other than proper corporate purposes. The only principle of law relied upon that could be relevant here is that illustrated by the domination cases. These, however, do not support our adversaries' conclusions. To avoid the corporate concept domination must be out of character as stockholder, *for the benefit of him who dominates, in his own affairs, as distinguished from the benefit of the corporation in its affairs;* the dominated corporation must be used as an agent *in the dominator's business and for his purposes*—a fraud upon the law. Accordingly we ask, In what personal business of his did Phipps use the Seminole Boat Company? The answer must be, None. He never used the corporation. The transfer of one's property to, and investment of money in, a corporation is not using the cor-

* Referred to *supra*, p. 17.

poration in one's business, yet that is the sum and substance of what Phipps did—and not alone, but with a co-stockholder, equally. His infrequent use of the boat, as charterer without hire but at his own expense, was neither using the corporation in his own business nor against the corporation's interests. The argument that Hawkins *et al.* were acting in Phipps's business when they acted in respect of the corporation begs the question and assumes the non-existence of the corporation. When they acted for the *Seminole* they acted for both stockholders equally, *as stockholders, i.e.*, for the corporation. No case cited holds that a corporation should be disregarded because its agents are the stockholders' agents in other affairs. The rule to be gleaned from the cases cited is that control, fixing liability on him who controls, must be exercised in some *personal* business *adverse to the corporate business*. The evidence in this case shows no such incident. Phipps's every act in respect of the *Seminole* after the corporation embarked in business, and they were few enough, was consistent with a stockholder's proper interest in the affairs of the corporation *for the benefit of the corporation*.

Libellants give little or no attention to what constitutes domination. Our position is that to warrant setting aside the corporate entity, domination and control must be so complete that the corporation has no mind, no will, no existence of its own. The cases cited in the opposing brief are not contradictory but support this statement of the law. We have reviewed the evidence bearing upon Phipps' alleged domination at pp. 101-133. It will support only the conclusion that his co-stockholder exercised an equal authority and that every exercise of authority was as stockholder for the corporation not adverse to it (pp. 162-4).

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 246

CHARLES CORYELL, *et al.*,
Petitioners,

against

JOHN S. PHIPPS,
Respondent.

RESPONDENT'S BRIEF

CHAUNCEY I. CLARK,
EUGENE UNDERWOOD,
Counsel for Respondent.

Post Printing Company, Inc., 225 Varick Street, New York, N. Y.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

CHARLES CORYELL, *et al.*, Petitioners, against JOHN S. PHIPPS, Respondent.	No. 246

BRIEF FOR RESPONDENT PHIPPS

Statement

This is an admiralty suit by Charles Coryell, et al. against George J. Pilkington and John S. Phipps to recover for the loss of upwards of forty vessels consumed by fire on June 24, 1935 while stored in Pilkington's shed at Fort Lauderdale, Florida. The fire began on the houseboat *Seminole*, owned and operated by Seminole Boat Company, a corporation of which Phipps owned one-half the stock. All the vessels, including the *Seminole*, were in Pilkington's possession as bailee.

The Pleadings

The libel alleges that the *Seminole* was owned by Seminole Boat Corporation (*sic*) but predicates Phipps' liability upon the allegation that he "operated or controlled" her (R. 8). Phipps admitted that the *Seminole*

was owned by the Seminole Boat Company and denied that he operated or controlled her (R. 48-50). Upon petitioners' subsequent motion for discovery it was first asserted, in an affidavit of counsel, that Seminole Boat Company was a dummy corporation organized for Phipps' convenience (R. 62, 69). Thereafter, by leave of Court, respondent amended his answer to claim the benefits of the limited liability statutes, R. S. §§ 4283 and 4284 (R. 56-62).

The libel has never been amended to allege that Seminole Boat Company was a dummy corporation or was dominated by respondent.

The Trial

The trial consumed upwards of thirty court days and forty-five witnesses were called, of whom thirty-six testified in the presence of the Court. Findings of fact and conclusions of law, accompanied by a discussion,* were filed June 5, 1941 (R. 3582-90).

Facts

In 1915 respondent purchased from his brother H. C. Phipps a one-half interest in the houseboat *Seminole* (R. 1882-3, Exh. 4-P). In late 1928 or early 1929 respondent

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* The District Court's remarks under the heading "Discussion" do not meet the requirements of Admiralty Rule 46½ and do not have the force of findings. *Interstate Circuit Inc.* v. *United States*, 304 U. S. 55; *Fleischmann Construction Company* v. *United States*, 270 U. S. 349; *Harvey Co.* v. *Malley*, 288 U. S. 415; *Matton Oil Transfer Corp.* v. *The Dynamic*, 123 F. (2d) 999 (C. C. A. 2); *Java Coconut Oil Co. Ltd.* v. *Pajaro Valley National Bank*, 300 F. 305 (C. C. A. 9); *Lahman* v. *Burnes National Bank*, 20 F. (2d) 897 (C. C. A. 8); *Rasmussen* v. *Eddy's Steam Bakery Inc.*, 57 F. (2d) 27 (C. C. A. 9); *Macomber* v. *Goldthwaite*, 22 F. (2d) 638 (C. C. A. 9).

and his brother each sold his one-half interest in her to Seminole Boat Company, a Delaware corporation (R. 1882-3, 1894, 1900-3; Exh. 4-P).

The Seminole Boat Company was incorporated in Delaware on October 11, 1928 (Exh. T). The purpose of incorporating was to put the *Seminole* into the business of chartering for hire. Respondent and his brother each bought half the corporate stock. The corporation made a contract (Exh. CC, R. Vol. VI, pp. 19-21) with Captain Baker, an experienced charter boat master, to operate the *Seminole* in the charter business and she was put on the market for charter. In 1929 and 1930 she was chartered on several occasions but following the stock market crash there was no demand for vessels of her size and, although continued attempts were made to charter her and she was always available in the charter market up to the time of her destruction, no charterer was found for her after 1930 except the stockholders themselves (R. 1270-1, 1280, 1363-5, 1470-2, 1885-6, 1893, 1908-10, 1943, 1982, 1985-6; Exhs. V, W-1, W-2, 4-S and 4-V).

From the beginning the corporate directors were Paul Scott, R. C. Alley and Roy H. Hawkins who were respectively President, Vice-President and Secretary-Treasurer (Exh. U). They had full and complete charge of the management of the vessel. Until April, 1931, the President exercised active supervision over the business management. In that month he sent her to Pilkington's for storage and instructed the Vice-President to take charge with the assistance of Riley. These men, without interference from the stockholders, made all routine decisions as to her management, maintenance, upkeep, etc., being guided as to technical matters by the master and the engineer (R. 1277-8, 1351-2, 1363, 1370, 1471-3, 1479-81, 1503-5).

In February, 1935, the Secretary-Treasurer, upon his own initiative, ordered her removed from storage, taken to Miami and put into commission in the hope of chartering her. His letter (Exh. F; R. Vol. VI, p. 12) was signed "Seminole Boat Company". Captain Baker brought her to Miami where she was surveyed by an experienced ship surveyor who found her in all respects in good condition, after which she was placed at the charter dock and listed with all the leading brokers. However, no satisfactory offers for charter developed and the best offer to buy her was inadequate and was refused. On March 23, 1935 H. C. Phipps sold his stock in the Seminole Boat Company, one-half the outstanding shares, to Mrs. Amy Guest. Since that time the stock of Seminole Boat Company has been owned one-half by respondent and one-half by Mrs. Guest (R. 1273-4, 1282-1301, 1381, 1886, 2211-19; Exhs. V, W-3 and journal voucher 95 in Exh. Z).

In April, after the charter season was over and no charterer was found, the two stockholders and members of their family went on a ten-day fishing trip in the *Seminole*. During the trip no leak appeared anywhere in the gasoline tanks. The cruise ended at lower Matecumbe, below Miami, where all but the crew left the vessel. The Secretary-Treasurer of the company ordered Captain Baker to take the *Seminole* to Fort Lauderdale and store her with Pilkington. She was prepared for storage by the crew who left all her gasoline valves tightly closed. There were no leaks (R. 416, 1301-4, 1513-14, 1746-9, 1754-5, 1759, 1764-70, 1887-9, 1914-16, 1970-8, 1983-4).

The *Seminole* was left in Pilkington's custody at his pier on April 15th. Thereafter no one entered the *Seminole's* engine room by the authority of her owner or any person

connected with it until the day of the fire. Pilkington asked for the keys to the *Seminole* which were sent to him by letter dated April 20, 1935, signed "Seminole Boat Company" which Pilkington acknowledged by letter three days later (Exhs. 54, 61, R. Vol. VI, pp. 13-14). *After receiving the keys* Pilkington put the *Seminole* under his shed. Thereafter, almost every other day, he boarded and inspected her. He found nothing wrong with her, and neither saw nor smelled any gasoline. He went "on the boat, all through it, on Wednesday (5 days) before the fire and I didn't smell nothing and everything was in good shape" (R. 453, 459-62, 513-17, 1108-12, 1249-52, 1305-6, 1555-6, 1672, 1979).

On the day of the fire Seminole Boat Company employed an experienced boat captain, Abel, to go to Pilkington's and inspect the *Seminole*. Abel obtained the keys from Pilkington, entered the engine room and proceeded aft direct to the switchboard. He did not approach the gasoline tanks or valves which were situated in the opposite direction. After he had closed about five switches sparks occurred about a foot to the left of the last switch closed, followed by an explosion and fire. Abel did not survive (R. 254-8, 277, 525, 1537-9; Exhs. A and S).

What exploded was not shown. There was no proof that it was gasoline. Thomas, who accompanied Abel, smelled no gasoline either before or after the explosion (R. 260-2, 299).

After the fire the valves of each of the four gasoline tanks and two gasoline drain valves, which had been left shut tight when the *Seminole* was delivered into Pilkington's possession, were found open (R. 159, 165, 203-7).

Whether Pilkington,* one of his staff, or a trespasser opened them and left them open does not appear. There is no direct evidence that the gasoline tanks or their appurtenances leaked. How an inference that the tanks leaked is justified when the valves were open has not yet been made clear. Assuming *arguendo* that the explosion justifies an inference that there was gasoline vapor in the engine room, the inferred presence of such vapor cannot justify an inference that the tanks leaked because it is established by petitioners' first witness, Holm, that the valves were open. Any gasoline that got out of the tanks into the engine room is accounted for by the open valves. These were left shut tight when the *Seminole* was delivered into Pilkington's custody, and were not opened by any person for whom respondent or Seminole Boat Company is responsible, for no such person, except Abel, entered the engine room while the *Seminole* was in Pilkington's custody and Abel did not approach the valves (R. 256-7, 514-16, 1111, 1259, 1672, 1766-8, 1976-8).

Outline of Argument

The corporate point

From petitioners' brief it appears that the District Court sustained the corporate existence of Seminole Boat Company only because it found that petitioners had not been the victims of fraud† On the contrary the District Court

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* While the fire was still burning Pilkington admitted that he tried to run the generator while the *Seminole* was in his custody (R. 1100-1, 1113-14, 1310-11, 1545-7). To do so he must have opened at least some of the valves. He may have left them open.

† The fraud the Court found absent was not fraud in the sense of false dealing but fraud upon the law; cf. Powell on *Parent and Subsidiary Corporations*, p. 2.

found that proper corporate practice was observed and that the corporation was legitimately independent of its stockholders. In the following quotations from the District Court we have italicized the considerations other than fraud that led the Court to its decision.

"From the beginning and down to and including the time of the fire *the directors and officers of the corporation* were Paul Scott, R. C. Alley and Roy H. Hawkins, who were, respectively, president, vice-president and secretary-treasurer. These men, *as officers of the corporation,* assisted by James F. Riley, and advised by Captain Baker and other boat captains, *operated, controlled, maintained and managed the vessel* from the time of her purchase by the corporation down to and including the time of the fire." (Finding 4, R. 3583).

"The Seminole Boat Company was incorporated in good faith for the bona fide purpose of taking title to the *Seminole,* and operating her in the charter business, and long prior to June 24, 1935. While it made no profits and no charters after 1930, *it continued in existence as a bona fide corporation,* and *there is no* fraud or *other reason to disregard the corporate entity, pierce the corporate veil, or regard it as an agent of either of its stockholders.* It stands as a non-conductor between the libellants and Pilkington on the one hand, and the stockholders on the other" (Finding 12, R. 3586).

"The organization of the corporation, Seminole Boat Company, was a natural, normal development of ownership of a pleasure yacht, free from any fraud or ulterior motive in the inception of its chartering and creation. Likewise, *it was free of any of the other elements, treated in the reported and cited cases incident to the presence of bad faith, which apply the doctrine of piercing the corporate veil*" (Discussion, R. 3587).

"Seminole Boat Company, a Delaware Corporation, was at all pertinent times *a bona fide corporation, a valid creation of the law, not to be regarded as sham or fiction, or Phipps agent,* but as a legal non-conductor between Phipps on the one hand and libellants and Pilkington on the other, *because there was no* fraud or other *improper conduct or purpose in the creation or continued existence of the corporation*" (Conclusion 2, R. 3589).

The Circuit Court of Appeals found:

"In 1927 the boat was completely overhauled, and in 1928 the Phipps brothers organized the Seminole Boat Company, to which the boat was transferred in furtherance of the corporate purpose to enter the charter business for profit. The stockholders of the corporation held meetings, elected officers, kept minutes; and the corporation, *through its duly elected officers*, promptly took appropriate steps to launch the *Seminole* upon her career as a charter vessel" (Opinion, R. 3646; italics ours).

"At all times after the title to the *Seminole* was transferred to the corporation her movements were directed *by the officers of the corporation*, she was manned by a *crew employed by those officers*, and *all business dealings* in connection with her operation and management *were conducted by those officers*" (Opinion, R. 3647; italics ours).

"Upon these facts the court below found * * * that the Seminole Boat Company was incorporated in good faith for a valid purpose, and *no reason was shown to justify disregarding the corporate entity or treating it as agent and alter-ego of John S. Phipps;* * * * we think the evidence preponderates in favor of the findings made in each material instance" (Opinion, R. 3647-8; italics ours).

"In order to hold Phipps to personal liability, *appellants had the burden of establishing*, by a preponderance of the evidence, that the corporation was an artifice and a sham designed to execute illegitimate purposes in abuse of the corporate fiction and the immunity that it carries, and *that its activities in realty were those of Phipps personally.* This burden was not discharged" (Opinion, R. 3648; italics ours).

It is apparent from the above that both courts concurrently found as a fact that the corporation was conceived and continued in existence in good faith for proper corporate purposes and that it was independent of any improper influence or control by respondent. As the Circuit Court of Appeals said (R. 3648) "the basic dispute turns upon the ultimate facts". We shall show that there is ample evidence in the record to support the concurrent findings

below and that there is no basis under the authorities for brushing aside this bona fide corporation on the ground that it was dominated by respondent.

The limitation point

The District Court found that the *Seminole* was largely rebuilt in 1927-8 (R. 3583); that the installation of the tanks was proper (R. 3587), and that respondent "was without privity or knowledge, even though he should be considered as owner" (R. 3588-9).

The Circuit Court of Appeals found that:

"It is undisputed that the vessel had been examined and pronounced fit by an experienced ship surveyor in February, 1935; that she developed no flaws during the cruise or prior to reaching Pilkington's; that the crew left her gasoline valves closed, her electric switches open, her gas tanks registering empty, and her bilges clean and free of gasoline or gasoline vapor; and that she was repeatedly examined by competent men between April 15 and June 24, 1935, who discovered nothing wrong with her" (R. 3647).

The Circuit Court of Appeals held:

"The evidence affirmatively establishes that no actual privity to or knowledge of the defective condition obtaining upon the *Seminole* was attributable to Phipps personally, and that none could be imputed to him since he had exercised due care and diligence in selecting competent men to man the vessel, and had imposed upon them full duties as to inspection and maintenance of her" (R. 3649).

We shall argue that in the case of an individual vessel owner* such as this, privity or knowledge sufficient to deprive him of the benefits of the limitation statute must be

* Phipps must be regarded as one of two individual co-owners if the corporation is disregarded.

personal and may not be imputed, and shall show that the evidence will not support any finding other than that made by both Courts below, viz., that respondent was in fact without privity or knowledge.

Concerning petitioners' argument that a proper system of inspection was not maintained we shall show that there were two systems of inspection, one by the master and one by the bailee in possession; also that the rule relied upon by petitioners concerning the necessity for inspections, while applicable to vessel owners in possession of and operating their vessels, has never been applied to a vessel owner not in possession but whose vessel has been delivered to a competent bailee for storage where the bailee is charged with the duty of inspecting.

As to petitioners' argument that the officers of Seminole Boat Company were respondent's alter egos, whose privity and knowledge are his, we shall show that the alter ego doctrine is limited in its application to corporate vessel owners and is not applicable to individual vessel owners.

POINTS

I. The Seminole Boat Company was an independent legal entity not dominated by Phipps.

Having failed to prove the allegations of their libel that Phipps "operated or controlled" the *Seminole* (R. 8) petitioners attempt to show that the corporation which owned, operated and controlled her was so dominated by Phipps that it ceased to have independent existence, from which the conclusion is drawn that Phipps must be regarded as one of two individual co-owners and is liable. Petitioners seek to apply to a small, specialized and separate charter-

ing venture the authorities applicable to great corporate structures and would hold this small venture of two stockholders to the protocol incident to vast and successful corporate enterprise. A review of the evidence will show that Seminole Boat Company was legitimately conceived for a proper purpose and that its affairs were controlled by its officers and directors without undue interference by either of its stockholders. In a certain sense all corporations are dominated by their stockholders but such domination does not destroy their legal existence unless it be out of character as stockholder for improper purposes. Petitioners ignore the fact that one who owns one-half the stock of a corporation is entitled to evidence a legitimate, even an active, interest in the affairs of the corporation.

The formation of the corporation

Seminole Boat Company was organized in 1928 to put the *Seminole* in the public chartering business. Baker, with whom a contract was later made, convinced the Phipps brothers that he could put the boat in the charter business at a profit to them "and make a good living out of his share". The Phipps brothers considered the plan good and caused the corporation to be formed (R. 1364-5, 1389, 1396, 1399, 1470-1, 1885, 1908-9).

A certificate of incorporation was duly filed with the Secretary of State of Delaware on October 11, 1928 (Exh. T, offered R. 1271). The incorporators met on the following day and adopted by-laws, designated a Delaware agent, authorized the directors to issue the capital stock, and elected Scott, Alley and Hawkins directors. Thereafter the Board of Directors held annual meetings as required by the by-laws and special meetings in addition, nine in

all, prior to the destruction of the *Seminole*. The stockholders likewise held annual meetings at the time fixed by the by-laws from 1931 to 1935 inclusive. Among other things officers were elected annually, the Treasurer was authorized to open a bank account, a place of business was established, a corporate seal was adopted, a form of stock certificate was adopted, the officers were authorized and directed to procure the necessary authority to transact business in any State, counsel was appointed, the purchase of the *Seminole* for stock was approved and confirmed, the President was authorized to employ Baker to put the *Seminole* in the chartering business, and the form of that contract was approved (Exh. U, offered R. 1272).

All requisite tax returns were filed and taxes due paid each year, including Federal income tax and Federal, Florida and Delaware capital stock taxes (R. 2578-9).

The issuance of stock

Stock certificates were procured, a stock book kept, and stock certificates were issued. Originally ten shares were issued, divided between Scott, Alley and Hawkins. In due course these were transferred, five shares to John S. and five shares to H. C. Phipps. Subsequently thirty additional shares were issued, fifteen to John S. and fifteen to H. C. Phipps. It is noteworthy that when H. C. Phipps sold his stock to Mrs. Guest in 1935 his certificates were surrendered and cancelled and a new certificate for twenty shares, one-half the outstanding shares, was issued to Mrs. Guest. If the corporation was not a living, legal entity this would not have been done, but it was done only *three months prior to the fire* (R. 1272-4, 1301; Exhs. V and W-1-3, offered R. 1272-3).

The contract with Captain Baker

To accomplish the purpose for which the corporation was formed the President negotiated a contract with Captain Baker by which the corporation employed Baker as master of the *Seminole* and agreed to pay him $200 per month and 30% of the net profits of the operation. Baker in turn agreed to "maintain and operate" the *Seminole* "for the primary purpose of doing a public chartering business" (Exh. CC, offered R. 1279, printed R. Vol. VI, pp. 19-21). Pursuant to this contract the *Seminole* was delivered to Baker who in 1929 and 1930 made several charters and collected a total hire upwards of $12,000 (Exh. X, account entitled "Charter of *Seminole*", offered R. 1274). Although Baker offered her for charter thereafter right down to the time of the fire, she was too large and expensive to operate following the stock market crash and no further charters could be obtained (R. 1280, 1353, 1943, 1982-3, 1985-6). In spite of the fact that the *Seminole* was difficult to charter in the financially dark days from 1930 to 1935 the Seminole Boat Company continued in business and kept her available for charter at all times. Hawkins testified that "the boat was always available for charter". In 1935 when she was put into commission Baker hoped and thought he could charter her and she was put at the Royal Palm Dock, the center of Miami charter activity, so that she would be more readily available for inspection by prospective charterers. A "For charter" sign was displayed on her (R. 1284, 1373, 1382, 1399).

The financing of the corporation's business

While the Seminole Boat Company was formed in November, 1928, it did not begin to do business until October, 1929, when it made its contract with Captain Baker (Exh. CC, R. Vol. VI, pp. 19-21). Baker agreed to "maintain and operate" the *Seminole* and was to receive the charter hire, pay the expenses in the first instance and "account for all moneys and revenues derived from the operation of said boat and pay over to owner promptly all moneys above the cost of operating said boat, the same to be divided under the terms hereof" (Exh. CC, R. Vol. VI, p. 20). With this contract in force there was no need for the corporation to have a large working capital.

Petitioners stress Exhibit 4-D.* According to that document, in 1929 proceeds from charter hire were $8,544.38, less than the operating expenses and the deficit was made good by loans from Boulevard Mortgage Company; in 1930 proceeds from charter hire were $4,284 and the deficit was again made good by loans from Boulevard Mortgage Company. There is no suggestion in the record that the Seminole Boat Company did not have adequate capital or credit with which to meet all its ordinary needs. There is no suggestion that any creditor ever went unpaid. There is no proof that lack of funds or credit caused anything to be done or left undone that contributed in any way to the fire or petitioners' losses.

It is not for petitioners to complain of the financing of Seminole Boat Company. Their claims do not arise out of any voluntary dealings with it or the *Seminole*, or any lack of finances to meet the "normal strains" of the business.

* This was offered for identification merely (R. 1659).

Petitioners' claims arise out of an alleged tort upon the occasion of which the principal asset of the company was destroyed. If, as petitioners say, Seminole Boat Company was an "empty shell" it was such only after the fire. Prior thereto it had valuable property in the *Seminole* and the Prigg boat and substantial credit.

The corporation's books of account

Books of account were kept in which the Seminole Boat Company's receipts, expenditures, assets and liabilities were fully and accurately recorded (Exhs. X, Y and Z, offered R. 1274-5). Inasmuch as no annual net profits were realized the deficits were made good by the stockholders. Appropriate accounts were maintained in the name of each stockholder, recording the indebtedness of the corporation to the stockholders for the amount of their advances. When H. C. Phipps sold his stock to Mrs. Guest a balance was struck showing that the corporation was indebted to him for past advances in the sum of $12,440.72 and this was transferred to Mrs. Guest's account and entered on the books of the corporation as a debt to Mrs. Guest. This entry was made on June 22, 1935, *two days before the fire*. The making of these corporate records is inconsistent with sham and establishes a living, *bona fide* corporation (R. 1664-5, 1686-7, 1698-9, 1718-19; see accounts in the names of Mrs. Guest, H. C. Phipps and John S. Phipps in Exh. X; also journal vouchers 95 and 96 in Exh. Z).

Counsel were at pains to elicit from the bookkeeper that the transactions recorded in the Seminole Boat Company's books were already fully recorded on the books of the Palm Beach Company or the Boulevard Mortgage Company, which made payments for Seminole Boat Company

after that company's bank account was closed out. Counsel contended that Seminole Boat Company's books were, therefore, a "superfluity" (R. 1673-5, 1703). It follows, however, not that the books were "superfluity" but that they served a very real purpose, viz., the purpose of the Seminole Boat Company to keep *its own* records as a going concern. The very keeping of its own books in these circumstances proves a settled purpose to maintain the independent existence of the corporation (R. 1698-9, 1722-4). *In re Watertown Paper Company*, 169 Fed. 252 (C. C. A. 2), the fact that separate books were kept was held significant by the Court in concluding that a creditor of the bankrupt paper company was a separate entity from the bankrupt and entitled to assert a claim against the bankrupt's estate (pp. 255, 257).

Between January 1, 1935, and the day of the fire Boulevard Mortgage Company paid thirty bills incurred in respect of the *Seminole* (Exhs. GG to 3-J, inclusive, offered R. 1322-46). In every instance but three* these payments were charged against Seminole Boat Company when the checks were drawn, as appears on the duplicate vouchers. Those payments are typical of the method in which the Seminole Boat Company's bills were paid and charged following the closing out of its own checking account and clearly establish the *bona fide* existence of Seminole Boat Company as a separate entity individually charged with and responsible for its financial obligations.

The same care was exercised by Palm Beach Company when it paid the Seminole Boat Company's bills. Payments

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*These were for food supplies, newspapers, laundry, etc., on the 1935 cruise, i. e., consumable stores, and were charged to Phipps personally because he incurred them personally (Exhs. ZZ, 3-I and 3-J).

were contemporaneously charged against Seminole Boat Company, a practice consistent only with the understanding that Seminole Boat Company continued to exist as a living, separate entity. The engineer's wages were charged against Seminole Boat Company (vouchers 8032 and 8444 in Exh. 3-U, offered R. 1512). The wages of the captain hired to inspect the *Seminole* on the day of the fire were charged to Seminole Boat Company, as was the gasoline he purchased for his automobile to make the trip (voucher 8320 in Exh. 3-V, offered R. 1517; Exh. 4-I-2, offered R. 1730). Each payment to Pilkington for storage of the *Seminole* was charged to Seminole Boat Company (Exh. 75, offered R. 1536).

The payment of the corporation's bills by others

The fact that the Seminole Boat Company's bills were paid by Boulevard Mortgage Company and Palm Beach Company does not indicate an abandonment of the corporate existence or domination by respondent. These companies were fiscal agents of Seminole Boat Company. Credit was extended to Seminole Boat Company not its stockholders. The payment of Seminole Boat Company's personal property tax on February 2, 1935, is an example. On the duplicate voucher check, drawn by Boulevard Mortgage Company, Seminole Boat Company was charged with $53.01, the amount of the tax (Exh. GG, offered R. 1322-5). Palm Beach Company paid Boulevard Mortgage Company, in turn debiting Seminole Boat Company, and was repaid by two Bessemer Investment Company checks from the stockholders' funds (Exhs. 5-G and 5-H, offered R. 2178-9).

How careful Boulevard Mortgage Company and Palm Beach Company were in distinguishing between Seminole

Boat Company and its stockholders appears throughout the record. Of the thirty payments made by Boulevard Mortgage Company in 1935, prior to the fire, eight cover items that were in part for Seminole Boat Company and in part for Phipps. They were distinguished, separated and charged accordingly. Two are particularly noteworthy. Exhibit NN (offered R. 1332) covers payment for wharfage on two boats, the *Seminole* and *K-21215*, a fishing boat owned by Phipps. That portion covering the *Seminole* was charged to Seminole Boat Company but that portion covering the fishing boat was charged to Phipps. Exhibit ZZ (offered R. 1340) covers certain expenses for the *Iolanthe* (owned by Phipps) and *two classes* of expenses on the *Seminole*, viz., stores consumed during the 1935 cruise and maintenance expenses and wages prior thereto. Those for the *Iolanthe* were charged to Phipps because he owned it. The consumable stores on the cruise were likewise charged to Phipps because they were personal expenses, but the maintenance items and wages incurred in putting the *Seminole* in commission in the hope of chartering her were charged to Seminole Boat Company. It is clear that those concerned well knew the distinction between Seminole Boat Company, a corporation, and its stockholders, and acted upon that difference consistently.

The willingness of Boulevard Mortgage Company and Palm Beach Company to extend credit to Seminole Boat Company does not show domination of Seminole Boat Company by Phipps. He owned only one-half the stock of that company and only 20% of the stock in the parent holding company that controlled Boulevard Mortgage Company, Palm Beach Company and Bessemer Investment Company. After June, 1932, he did not even own a benefi-

cial interest in that 20%; he transferred it to a trustee in trust (R. 1473-5; Exh. 3-R, offered R. 1475). There is no proof that Phipps dominated any of these companies or that they extended credit to Seminole Boat Company because of his interest in that company. On the contrary these companies extended credit to all the members of the Phipps family, to corporations in which they owned an interest and to corporations in which they had no interest. Boulevard Mortgage Company, for example, paid bills for seventeen other corporations and nine individuals. Palm Beach Company did likewise (R. 1321, 1355-60, 1482-4). It is plain, therefore, that Boulevard Mortgage Company and Palm Beach Company extended credit to Seminole Boat Company because of a settled practice of long standing and not because of any personal domination of Seminole Boat Company by Phipps.

In *In re Watertown Paper Company*, 169 Fed. 252 (C. C. A. 2), the pulp company had no bank account and all its bills were paid by the bankrupt paper company. Nevertheless the Court held that the two corporations were separate entities and that the pulp company was entitled to assert a claim against the bankrupt.

The lack of a bank account

Seminole Boat Company had a checking account from 1928 to 1931. In the latter year, when the President decided to put the *Seminole* in storage, he closed out the bank account because it was so small that the bank imposed a service charge (R. 1275, 1416, 1472). Since the corporation was unable to charter the *Seminole* it had no income and no funds to bank. That fact, however, does not make it any the less a corporation. Even if it had

been insolvent or bankrupt its corporate existence would still continue. In *Petrogradsky M. K. Bank* v. *National City Bank of New York*, 253 N. Y. 23, Judge Cardozo wrote:

"Neither bankruptcy * * * nor cessation of business * * * nor dispersion of stockholders, nor the absence of directors * * *, nor all combined, will avail without more to stifle the breath of juristic personality. The corporation abides as an ideal creation impervious to the shocks of these temporal vicissitudes" (pp. 31-2).

Solvency is not the test of corporate existence and the lack of a bank account does not prove that a corporation is dominated improperly by its stockholders. Few corporations show net profits at the outset but they are none the less live legal entities. The length of time they continue to live on capital or credit instead of income cannot be the criterion of their life span. Here the corporation preserved its principal asset, the vessel, kept it in condition, and offered it for charter during the season immediately prior to the fire. While it did no business it had not ceased trying to do business.

The corporate deficits and their payment by the stockholders

Whether the stockholders were prudent investors in continuing to pay deficits is immaterial. The main asset of the corporation was preserved and offered for charter, which was the business of the corporation. The payment of deficits by the stockholders was consistent with the hope that better times would come in which the losses might be recouped (R. 1399). Many a stockholder in a brewery corporation paid assessments in the prohibition years in the hope, realized since repeal, that business might resume.

No domination by respondent is suggested by the payment of the deficits. He did not pay them all. He owned one-half the stock and paid only one-half the deficits (R. 2175-82; Exh. 5-E, offered R. 2176).

In *Peterson* v. *Chicago Rock Island and Pacific Ry. Co.*, 205 U. S. 364, this Court quoted with approval the following langauge from *United States* v. *American Bell Telephone Company*, 29 Fed. 17:

"For one person to supply means for another to do business on is not the doing of that business by the former" (p. 393).

In *National Labor Relations Board* v. *Timken Silent Automatic Co.*, 114 F. (2d) 449 (C. C. A. 2), the Court said:

"Nor does an agreement to assume and discharge the obligations of the subsidiary operate as a merger of the two" (p. 451).

A corporation may validly borrow money from its stockholders and such a transaction does not establish improper domination. *Arnold* v. *Phillips*, 117 F. (2d) 497 (C. C. A. 5), cert. denied 313 U. S. 583.

In paying the deficits payments were made by Bessemer Investment Company on behalf of the stockholders direct to the creditor companies rather than to Seminole Boat Company for transmission by it to its creditors because Bessemer Investment Company acted as a financing agent for various members of the Phipps family, had running accounts with the creditor companies but had none with Seminole Boat Company (R. 2193-4). This was a matter of convenience merely and does not spell improper domination or break-down of the corporate existence

The purchase of the Prigg boat

There is no foundation for petitioners' suggestion that the circumstances of the purchase of the Prigg boat in 1935 showed either improper domination by respondent or a break-down of the corporate entity. Both stockholders, not respondent alone, were consulted and both approved of the purchase by Seminole Boat Company before title was taken by that company, and before the purchase price was charged to it. The stockholders were consulted because of the financial position of the company and not because of the abandonment of the corporate entity. The corporation had had no business income for some time, and the amount involved was substantial. The effect of the purchase would be to increase the deficit. No prudent officer of a business corporation in such financial circumstances could be expected to add another vessel to the "fleet" without the stockholders' approval. The fact that the stockholders were consulted establishes merely that the officers conducted the affairs of the company with an eye to the actual financial position. The purpose in buying the boat was to make the *Seminole* more attractive to prospective charterers by providing her with a better tender (R. 1333, 1463-4, 1886-7, 1942).

The proposed sale of the *Seminole* in 1935

Petitioners suggest that the fact that the stockholders were consulted about the proposed sale of the *Seminole* indicates a break-down of the corporate entity. On the contrary no one can reasonably deny that it is proper corporate practice for the officers of a corporation to consult the stockholders as to the possible sale of the entire corporate business. The proposed sale was tantamount to a proposal

that the corporation go out of business. It is true that the stockholders were not called into formal session and the gavel rapped to bring them to order. They were consulted informally, but the wheels of industry would be retarded to no purpose if in small businesses, formal stockholders' meetings were necessary in such situations.

Moreover, respondent did not make the decision. *Both* stockholders were consulted. They could not agree, respondent desiring to have the corporation continue in business and his brother desiring to sell. The stalemate was resolved by the sale of respondent's brother's stock to Mrs. Guest. If the corporate concept had been abandoned, or if respondent truly dominated the corporation, he would merely have taken the boat and paid his brother for his share. In fact, however, he found a new co-stockholder and the business continued (R. 1295-1301, 1381, 1389-90, 1886, 1914).

The independence of the corporate officers

Petitioners cite no authority to support their argument that a corporation is but a personal venture of the stockholders unless its officers have some financial interest in it or are paid for their services. These are not legal prerequisites to independence but matters of private bargain. The corporation earned no profits out of which to pay salaries. If it had nevertheless paid them and the stockholders made them good, petitioners would argue that this was a break-down of the separate entity. The motives of the officers in undertaking the corporate function are not important. *None of these men was in respondent's employ.* They were employed by corporations in which respondent had only a 20% interest in trust (Exh. 3-R 1-3, offered R.

1475). There is no proof that respondent dominated the corporate employers of these men or that he dominated the family. If the willingness of these men to function for Seminole Boat Company arose from the fact that Phipps was a member of the family that ultimately controlled their employers, this does not establish either that Phipps dominated the Seminole Boat Company unduly or that it was not a corporation. The fact that respondent owned only one-half the stock is completely ignored.

The fact that the officers were "family representatives" in some sense, does not establish that they were respondent's representatives when acting for the *Seminole* any more than it would establish that Hawkins acted for the Seminole Boat Company when he sold the *Iolanthe*, Phipps' own boat (R. 1368-9). One may act as agent for many persons separately within the span of a day, or an hour.

In contending that the officers were subject to respondent's orders and therefore not independent petitioners lose sight of a vital distinction. When these men acted for a member of the family in a personal matter they acted for the individual, but when they acted for a corporation they were its servants, not its stockholders.' In the final analysis the stockholders control but the exercise of control by the stockholders is not a violation of the corporate concept but an incident of it. In *Eichelberger* v. *Arlington Building Inc.*, 280 Fed. 997, the Court said:

"It is true that the stockholders control it, but that surely does not render it invalid" (p. 1000).

Only improper, over-bearing interference by a stockholder, out of character as stockholder and for purposes other than proper corporate purposes, will justify a disregard of the corporation. Petitioners have proved no such improper interference here.

That it was a family corporation is of no moment. Consanguinity of stockholders does not destroy the corporate being. *The E. S. Atwood*, 289 Fed. 737, 740 (C. C. A. 2).

The fact that Hawkins and Riley each had a mental limit to the amount he would spend on the *Seminole* without consultation with the stockholders is no proof of undue domination. Hawkins felt he should not spend more than $500 without approval; Riley $200 to $300. *It is undisputed, however, that Phipps had imposed no such limit and was not aware of it.* Hawkins' and Riley's feelings in this matter are fully accounted for by the financial position of the corporation. Moreover, as the books of account show, it was a rare occasion indeed when these self-imposed limits were effective because it was seldom that there was any occasion to spend as much as $300. Only one item of expense in 1935, prior to the fire, exceeded that amount (Exh. 5-G-3, offered R. 2178; Exh. 5-1-3, offered R. 2181). This was the Prigg boat referred to *supra*, p. 22. There is nothing here that indicates domination by respondent for whenever one stockholder was consulted *both* were consulted (R. 1334, 1380, 1462, 1484, 1492-3, 1505-6, 1912-14, 1940-2).

When the stockholders were consulted the expense approved was charged to the corporation, not to the stockholders individually, which establishes that they were consulted as stockholders, not in their personal capacities. It is not correct to say (Petitioners' Brief, p. 24) that the officers "dared not incur any major expense for repairs of the *Seminole* without obtaining the approval of the Phipps family". Respondent had imposed no limit whatever (R. 1912-13). When Riley consulted both stockholders in 1933 about overhauling the motors the bills were charged to the Seminole Boat Company, not the stockholders personally

(Exhs. 3-T-2 and 3-T-4, offered R. 1501). Compare the meager activities of the stockholders here with the activities of the officers of the allegedly dominating corporation in *Pennsylvania Railroad Company* v. *Jones*, 155 U. S. 333, where this Court sustained the corporate entity.

The stockholders' use of the *Seminole*

After the President decided to lay up the *Seminole* in 1931 she was used by one or the other of the stockholders on four occasions only. In March-April, 1932 she was used by both stockholders, not respondent alone (R. 1507-8). There is no proof that the use in August, 1932, was by respondent. Riley used a grocery list for that trip only to refresh his recollection as to when he and respondent first visited Pilkington together three or four months before the trip. Phipps remembered no trip in 1932 (R. 1643, 1916-17). There is no proof that the *Seminole* was put in commission in March-April, 1934, for respondent's use. Hawkins' letter of March 20, 1934 (Exh. 46, R. Vol. VI, p. 10) was signed with respondent's typewritten signature by mistake and without authority (R. 1407-8, 1893). In 1935 the *Seminole* was not put in commission for any trip but, as the Court found (R. 3584), Hawkins put her in commission "upon his own initiative" to offer her for charter or for sale. The 1935 cruise was originally planned in another boat and the *Seminole* was used only after all hope of chartering her during the then current season had vanished, and after Mrs. Guest had bought H. C. Phipps' stock. The cruise lasted ten days only (1282-3, 1373, 1824; 1887-8).

Respondent considered himself a charterer when he used her (R. 1917). In *The Virginia*, 264 Fed. 986, aff'd 278 Fed. 877 (C. C. A. 4), cert. denied 257 U. S. 659, the Director General of Railroads was held to be a charterer although

he took possession of the vessel without contract with the owner and fixed his own terms of hire.

In the summer of 1929, before the contract with Baker was made and before the corporation embarked upon the business of chartering, Phipps sent her north for the use of his father who was 89 years old and in failing health. While the other stockholder, respondent's brother, was apparently not consulted his assent may be assumed under the circumstances (R. 1898-9). Upon the conclusion of that trip the corporation made its contract with Baker whereby he was to serve as master in the chartering business. Phipps had no part in the making of that contract which was negotiated by one of the officers of the company (R. 1278-9, 1364-5).

The pennants of the Phipps brothers were of the same design but alternate colors. There is some doubt which was flown (six years before the fire), but there is no proof that respondent authorized the flying of his pennant (R. 347, 395-6). However, the flying of a flag cannot establish domination of a corporation. Every user of a yacht is entitled to fly his flag whatever his relation to the owner.

It is of importance to remember that petitioners' losses were not in any sense incurred as a result of the stockholders' use of the *Séminole*. She had been in dead storage for upwards of two months when the fire occurred. In *National Labor Relations Board v. Timken Silent Automatic Co.*, 114 F. (2d) 449 (C. C. A. 2), the Court said:

"Although the original respondent was its wholly owned subsidiary there is no showing here made which gives sufficient ground for disregarding the separate corporate existence of the two. *No control by the parent may be said to have wronged or defrauded anyone with whom these proceedings are concerned and without proof of that sort of dominance the parent stockholder is not to be treated as one with the subsidiary corporation*" (p. 450, italics ours).

Relations with Pilkington

The District Court found that the storage contract was implied and that the parties to it were Pilkington and Seminole Boat Company (R. 3586). There is no evidence to connect respondent with the contract for the storage of the *Seminole*. Pilkington testified that about April 2, 1929, Phipps told him that Riley had been appointed to take charge of the boat and said "you need not bother taking any business up with me whatever" (R. 429). Pilkington testified that Phipps discussed the *Seminole* with him "only when he came down there this time when he introduced me to Mr. Riley." (R. 430).

Pilkington never billed Phipps for storage charges of the *Seminole* (Exh. 75, offered R. 1536) and on Pilkington's books Phipps does not appear as the person liable for the storage charges (Exhs. 82-7, offered R. 664-673). Some of the storage bills were paid by Seminole Boat Company's own checks (Exh. H-1-8, offered R. 491-8).

Pilkington testified to nothing that connects Phipps with the ordinary operation of the boat or her maintenance. In all his correspondence concerning the *Seminole* he never addressed a letter to Phipps nor did he receive one from Phipps.* Simmon, not Phipps, introduced Huff, who had charge of the *Seminole* briefly (Exh. 38, R. Vol. VI, p. 1). Huff himself, not Phipps, announced his withdrawal (Exh. 39, R. Vol. VI, p. 1). Riley, not Phipps, agreed to the continuance of the $75 monthly storage rate in January, 1932 (Exh. 55, R. Vol. VI, p. 4). Riley, not Phipps, made inquiry as to the labor charge in the bill for storage in April, 1932 (Exh. 41, R. Vol. VI, p. 4). Riley, not Phipps,

* We have not overlooked Exhibit 45 (R. Vol. VI, p. 10). Phipps did not write this letter and his typewritten signature was an oversight (R. 1407-8, 1893).

acknowledged the $5 per month reduction in March, 1933 (Exh. 56, R. Vol. VI, p. 7). Riley, not Phipps, acknowledged the reduction to $50 per month in May, 1933 (Exh. 57, R. Vol. VI, p. 9). Hawkins, not Phipps, signed the letter of March 20, 1934, directing Pilkington to deliver the *Seminole* to Captain Baker (Exh. 46, R. Vol. VI, p. 10). Riley, not Phipps, authorized Pilkington to allow "the bearer" to board the *Seminole* and to complete her lay-up in May, 1934 (Exh. 47, R. Vol. VI, p. 10). Riley, not Phipps, authorized Pilkington to allow Able access to the *Seminole* for repair work in September, 1934 (Exh. 48, R. Vol. VI, p. 11). Hawkins, under the signature of Seminole Boat Company, not Phipps, authorized Pilkington to deliver the *Seminole* to Baker in February, 1935 (Exh. F, R. Vol. VI, p. 12). Riley, not Phipps, authorized Pilkington to allow Randell to board the *Seminole* and remove certain bedding in July, 1935 (Exh. 54, R. Vol. VI, p. 12). Hawkins, under the signature of Seminole Boat Company, not Phipps, authorized Pilkington to allow "the bearer" to board the *Seminole* and remove certain linen and silver in April, 1935 (Exh. 52, R. Vol. VI, p. 13). Webber, under the typewritten signature of Seminole Boat Company, not Phipps, sent Pilkington the keys to the *Seminole* in April, 1935 (Exh. 54, R. Vol. VI, p. 13). Riley, not Phipps, authorized Pilkington to allow Abel to remove some equipment from the *Seminole* in June, 1935 (Exh. 60, R. Vol. VI, p. 14). Finally, Riley, not Phipps, authorized Pilkington to allow Baker to remove the wreck of the *Seminole* from Pilkington's custody in September, 1935 (Exh. 62, R. Vol. VI, p. 16).

Phipps made only three visits to Pilkington's, two with Riley and one with Mrs. Phipps. On the visit with Mrs. Phipps there was no discussion with Pilkington concern-

ing the *Seminole* (R. 430, 1897). On the first visit with Riley, Phipps had no conversation concerning the *Seminole*. He inspected the *Seminole* casually and made only one suggestion, viz., that the radio be repaired. Phipps' second visit with Riley was in 1934. He went to see the *Iolanthe* which he owned. Riley talked with Pilkington concerning storage rates on the *Seminole*. As that talk was being concluded Phipps came up and told Pilkington that "we" could not afford to pay high rates for storage and that if the rates were raised Riley planned to remove the boats and store them elsewhere (R. 1507-9, 1597-1600, 1643-4, 1897-8, 1927-8).

Phipps interested himself in the storage rates on only one other occasion. On the bill for storage charges for the *Iolanthe* dated August 31, 1932, he wrote a note to Riley asking him to see if he could get a reduction of the rate for both the *Iolanthe* and the *Seminole*. The bill has no reference to the *Seminole* but Phipps felt that "they had overcharged *me* on the *Iolanthe*, and I thought he was overcharging *the company* on the *Seminole*" (R. 1567-8, 1608, 1926-7).

Phipps' participation in the daily affairs of the company

It is perfectly clear from the testimony of the officers of the company that they, uncontrolled by Phipps, handled the daily affairs of the company (R. 1277-8, 1281-2, 1351-2, 1471-3, 1479-81, 1484, 1503-5, 1885).

Phipps never approved or paid a bill for storage of the *Seminole* (Exh. 75, offered R. 1536). Hawkins, not Phipps, decided to pay the Florida property tax on the *Seminole* in February, 1935, and did so. Hawkins, not Phipps, decided to put the *Seminole* in commission in March, 1935,

and bring her to Miami and attempt to charter her. The Court so found (R. 3584). Hawkins, not Phipps, hired Baker, fixed the rate of his pay, and wrote Pilkington authorizing him to deliver the *Seminole* to Baker—he signed this letter "Seminole Boat Company by Roy H. Hawkins". Hawkins, not Phipps, approved the bill for the wages and expenses of the men to put her in commission (R. 1282-3, 1322-8, 1373; Exh. F, R. Vol. VI, p. 12; Exhs. GG, HH and II, offered R. 1324-8).

Upon the *Seminole's* arrival at Miami Hawkins, not Phipps, decided to berth her at the Royal Palm Dock. Hawkins, not Phipps, arranged to put a "For charter" sign on her, consulted with the brokers, decided to have her surveyed, selected Bernard from among the surveyors available, decided to insure her and made the necessary arrangements, agreed upon the prices for these services, and approved the bills for payment (R. 1282-96, 1330-2, 1336-8, 1372; Exh. NN, offered R. 1332, Exhs. UU, VV, WW, offered R. 1337-8).

Hawkins, not Phipps, approved the purchase of previsions for the crew in March, decided that the radio should be repaired and approved the bill for the work, approved for payment the bill for gasoline and kerosene, approved a bill for engine parts purchased for the *Seminole* and a further bill for crew's wages and expenses (R. 1327-31; Exhs. JJ, KK, LL and MM, offered R. 1328-31).

Hawkins, not Phipps, decided to send the *Seminole* to a boat yard to be hauled out for bottom cleaning and painting, decided to have certain chromium plating done and approved the bill for the work, decided to have certain cushions and mattresses repaired and approved the bill for the work, decided upon the purchase of certain screens and

decided to make certain repairs to the ventilator stack (R. 1286-7, 1332-40; Exhs. OO, QQ, RR, SS, TT and YY, offered R. 1332-40).

Hawkins, not Phipps, decided upon the purchase of various items of hardware, pipe fixtures, paint, fishing gear, etc., decided to install a condenser on the radio to eliminate static, and decided to have two Delco armatures repaired. Hawkins, not Phipps, decided to purchase gasoline from the Bay Supply Company rather than from another supplier, and approved for payment the bills for all the foregoing items (R. 1338-44, 1388; Exhs. XX, ZZ, 3-A, 3-B, 3-C, 3-D, 3-E, 3-F, offered R. 1339-44).

After the April cruise Hawkins, not Phipps, decided to return the *Seminole* to storage at Pilkington's and he, not Phipps, issued appropriate instructions to Captain Baker (R. 1304-5, 1890, 1974-5).

After the *Seminole* was stored at Pilkington's Riley, not Phipps, sent a man to remove the bedding. Hawkins, not Phipps, sent men to remove the silver—his letter authorizing Pilkington to allow them to do so was signed in the name of Seminole Boat Company. Webber, not Phipps, sent Pilkington the keys—his letter was signed in the name of Seminole Boat Company. Riley, not Phipps, approved and paid the storage bills for April and May and had the negotiations concerning the rate. Finally Riley, not Phipps, sent Abel to inspect the *Seminole* on the day of the fire (R. 680-1, 1109-12, 1305, 1537-9, 1557-8, 1636; Exh. 52, R. Vol. VI, p. 13; Exh. 53, R. Vol. VI, p. 12; Exh. 54, R. Vol. VI, p. 13; Exh. 55, R. Vol. VI, p. 4, offered R. 1536).

The master and engineer, Baker and Schlappi respectively, were not hired by Phipps and received no instructions from Phipps (R. 1759, 1973-5).

Authorities

The Circuit Court of Appeals held that "the basic dispute turns upon the ultimate facts" (R. 3648). We have shown, *supra*, pp. 6-8, that the Courts below concurrently found that none of the reasons justifying the disregard of the corporate form are present here. We have reviewed the evidence, *supra* pp. 10-32, to satisfy this Court that there is ample basis for those concurrent findings.

We do not deny that a stockholder may so dominate a corporation that it becomes his instrument for whose torts he is liable. Under the authorities, to justify that result the stockholder's domination must be out of character as stockholder, for some purpose of his own as distinguished from a proper corporate purpose, and must cause the wrong complained of.

In two recent cases this Court has referred to the instrumentality rule. In *Taylor* v. *Standard Gas & Electric Co.*, 306 U. S. 307, this Court spoke of it as

"but a convenient way of designating the application in particular circumstances of the broader equitable principle that the doctrine of corporate entity, recognized generally and for most purposes, will not be regarded when so to do would work fraud or injustice" (p. 322).

In *Pepper* v. *Litton*, 308 U. S. 295, flagrant fraud was involved. This Court said that "a sufficient consideration [for the disregard of the corporate entity] may be simply the violation of rules of fair play and good conscience by the" dominating person (p. 310), and held that the power of stockholders

"is at all times subject to the equitable limitation that it may not be exercised for the aggrandizement, preference, or advantage of the fiduciary to the exclusion or detriment of

the *cestuis*. Where there is a violation of those principles, equity will undo the wrong or intervene to prevent its consummation" (p. 311).

In *United States* v. *Reading Company*, 253 U. S. 26, this Court said that the real issue is whether or not ownership of the subsidiary

"is resorted to, not for the purpose of participating in the affairs of the corporation in which it is held in a manner normal and usual with stockholders, but for the purpose of making it a mere agent, or instrumentality or department of another company" (pp. 62-3).

Compare Powell on *Parent and Subsidiary Corporations*, pages 1-2, 40-2; Ballantine on *Parent and Subsidiary Corporations*, 14 California Law Review, 12-21; Wormser on *The Disregard of the Corporate Fiction and Allied Corporate Problems*, pages 54-9, 84, and see *Pullman Car Co.* v. *Missouri Pacific Co.*, 115 U. S. 587; *Peterson* v. *Chicago Rock Island & Pacific Ry. Co.*, 205 U. S. 364; *Cannon Mfg. Co.* v. *Cudahy Packing Co.*, 267 U. S. 333; *Greenbaum* v. *Lehrenkrauss Corporation*, 73 F. (2d) 285 (C. C. A. 2); *Stone* v. *Cleveland C. C. & St. L. Ry. Co.*, 202 N. Y. 352; *Berkey* v. *Third Avenue Railway Co.*, 244 N. Y. 84; *Lowendahl* v. *Baltimore & O. R. Co.*, 247 A. D. 144, aff'd 272 N. Y. 360; *American Cyanamid Co.* v. *Wilson & Toomer Fertilizer Co.*, 51 F. (2d) 665 (C. C. A. 5); *In re Watertown Paper Co.*, 169 Fed. 252 (C. C. A. 2); *Werner* v. *Hearst*, 177 N. Y. 63; *Flenkrieg* v. *Siebrecht*, 238 N. Y. 254.

See also *McLean* v. *Goodyear Tire & Rubber Co., Inc.*, 85 F. (2d) 150 (C. C. A. 5), cert. denied 299 U. S. 600; *Atchison etc. Ry. Co.* v. *Cochran*, 43 Kans. 225, and *Bethlehem Steel Co.* v. *Raymond Concrete Pile Co.*, 141 Md. 67. These were tort cases and the attempt was made to hold the parent for the subsidiaries' torts but the Courts refused.

In *Insulation from Liability through Subsidiary Corporations*, 39 Yale Law Journal, 193, Douglas and Shanks analyzed many of the cases and demonstrated their inapplicability here. The authors say "the statement that the insulation will be broken down when the subsidiary is an 'agent', 'adjunct', 'instrumentality', 'alter ego', 'tool', 'corporate double', or 'dummy' of the parent is not helpful" (p. 195).

They enumerated four standards to be broken down before the corporate entity will be disregarded (pp. 196-7). None of them has broken down here.

Seminole Boat Company was sufficiently financed to meet normal strains. Petitioners' claims do not arise out of any normal strain. The financial backers of such an enterprise as this cannot fairly be required to finance it so largely that it could pay the tremendous losses resulting from this catastrophic fire upon pain of the disregard of the corporate entity. Any such requirement would emasculate one of the legitimate and fundamental purposes of incorporation.

The day to day business of the Seminole Boat Company was handled by the officers, *as officers of the corporation*, not by respondent.

Phipps did not pass over the threshold of the "formal barriers" and made no attempt to do so.

There was no misrepresentation. Pilkington attempted to deny that he knew of the existence of the Seminole Boat Company but was shown to have received Seminole Boat Company checks in payment of his charges, to have corresponded with the Seminole Boat Company and to have delivered up the vessel and allowed persons to go aboard her upon the authority of letters signed by the Seminole Boat Company, *supra*, pp. 28-30. There is no suggestion

in the record that petitioners were in any way misled as to the true ownership or control of the *Seminole*.

There is no substantial dispute between petitioners and respondent as to the law. The propositions petitioners seek to establish are these:

"In tort cases the test is, was the corporation in fact an entity? Was it sufficiently independent of its shareholders and sufficiently free of their dominance and control to be regarded as more than a mere agent of the shareholders?

* * * * * *

"That the corporate form does not effectively protect shareholders from tort liability when the corporation has no real independence, and the corporation is a mere name, is well established. * * *" (Petitioners' Brief, p. 28).

We have no quarrel with these propositions or with the decisions cited to support them. The cases where the corporate entity has been disregarded are, however, so far afield on the facts as to bear no resemblance to the problem presented here. The railroad cases are one illustration. Petitioners cite *Davis* v. *Alexander*, 269 U. S. 114, a case "where one railroad company actually controls another *and operates both as a single system*" (p. 117; italics ours); *Chicago, Milwaukee & St. Paul Ry. Co.* v. *Minneapolis Civic Ass'n*, 247 U. S. 490, a case where two railroad companies took over and operated a third as a "completely controlled agency" of certain terminal delivery tracks as an adjunct of their own businesses; *The Willem Van Driel, Sr.*, 252 Fed. 35 (C. C. A. 4), where the railroad company acquired a 999-year lease of the property and franchises of the corporation owning the grain elevators which the Court held "were constructed and operated merely as a facility to the business of the railroad company" (p. 39).

In *Consolidated Rock Co.* v. *DuBois*, 312 U. S. 510, *The Willem Van Driel, Sr.* and other cases relied upon by petitioners are cited only for this proposition:

"It is well settled that where a holding company directly intervenes in the management of its subsidiaries so as to treat them as mere departments of its own enterprise, it is responsible for the obligations of those subsidiaries incurred or arising during this management" (p. 524).

We do not dispute this proposition and petitioners' authorities establish nothing more. This proposition is not applicable here because the *Seminole* was no department of any business of Phipps and he did not intervene in her management.

Southern Pacific Co. v. *Lowe*, 247 U. S. 330; *Lehigh Valley R. R. Co.* v. *Delachesa*, 145 Fed. 617 (C. C. A. 2); *Lehigh Valley R. R. Co.* v. *DuPont*, 128 Fed. 840 (C. C. A. 2); *Ross* v. *Pennsylvania R. Co.*, 148 Atl. 741, and *Specht* v. *Missouri Pacific R. R. Co.*, 154 Minn. 314, are all railroad cases.

The distinction between these several cases and the case at bar must be obvious. In all of them the parent was engaged in the railroad business and saw fit to operate a subordinate part of its own business through a subsidiary. The business of the subsidiary was but a fraction of the homogeneous whole which was the parent's business. Here, however, Phipps was not in any business, least of all in the business of operating boats for hire, which was the business of the Seminole Boat Company. Moreover, the persons who performed the daily work of operating and maintaining the *Seminole* did not do so as agents of, or in connection with, a larger or similar enterprise of Phipps of which the operation of the *Seminole* was a part because there was no such similar or larger enterprise operated for Phipps.

Joseph R. Foard Co. v. *Maryland*, 219 Fed. 827 (C. C. A. 4), is distinguishable on the same ground. The parent attempted to escape liability by incorporating separately a subsidiary which the Court held "was in reality but a department of the business" (p. 829).

Luckenbach SS. Co. v. *W. R. Grace & Co. Inc.*, 267 Fed. 676 (C. C. A. 4), and *The J. B. Austin, Jr.*, 1 F. (2d) 451, applied to the shipping industry the doctrine applicable to the railroad industry. In the *Luckenbach* case the parent wholly owned the subsidiary and operated the subsidiary's vessel as a unit of its larger fleet. There was no question of tort liability. In the *Austin* case five barges were operated as units of the parent's business, although title was in two subsidiaries. The Court merely held that the relationship between the parent and the barges was such that a dealer who supplied coal to the barges upon the order of the parent acquired a maritime lien.

The Centaurus, 291 Fed. 751 (C. C. A. 4), merely holds that a corporation which purports to be the agent of a ship owner, but which "was in fact the owner itself" (p. 753), may not acquire a lien against its own vessel and so obtain priority over *bona fide* third party claims.

Gulf Oil Corporation v. *Lewellyn*, 248 U. S. 71, involved a parent and subsidiary which the Court held "constituted a single enterprise" (p. 72) and applied the doctrine of the railroad cases to the oil industry.

Petitioners cite six cases where the dominating parent was held for its corporation's tort, but in each of these the domination was so out of character as stockholder, so foreign to proper parental influence, and so directly affected the tort involved, that the decisions furnish no guide in the state of facts in the instant case.

In *Costan* v. *Manila Electric Company*, 24 F. (2d) 383 (C. C. A. 2), the parent, disregarding its subsidiary's corporate existence, appointed its own management of the property of the subsidiary, authorized its manager to "hire operating employees on its behalf, to fix their salaries, and to discharge them, and to purchase labor, materials and supplies, in its name and on its behalf" (p. 384).

In *Mangan* v. *Terminal Trans. System Inc.*, 157 Misc. 627, aff'd 247 A. D. 853, the parent, by contract, undertook to provide taxicab service at various terminals. As the Court said "that was its business" (p. 630). It conducted "its business" through subsidiaries, one of whose cabs was negligent. The Court held the parent on the familiar agency doctrine that the principal is liable for the torts of its agents committed while employed on the principal's business.

In *Oriental Investing Co.* v. *Barclay*, 25 Tex. Civ. App. 543, the parent holding corporation organized a subsidiary to operate a hotel which it continued to own. Before doing so the parent itself hired as its employees the persons who were injured by a falling elevator. Those persons never knew of the formation of the subsidiary. The basis of the decision is that the employer remained liable for the injuries of *its* employees sustained on *its* property.

In *Dixie Coal Min. & Mfg. Co.* v. *Williams*, 128 So. (Ala.) 799, the corporation was disregarded because it had never had any assets and had but one stockholder who operated the corporate business personally "just as he would his private business" (p. 799).

In *Auglaize Box Board Co.* v. *Hinton*, 100 Ohio St. 505, the subsidiary became insolvent and the parent took over the factory which was "being operated solely by the Strawboard Company" (the parent) when plaintiff sustained her

injuries (p. 509). At that time "The Bloomer Brothers Company (the subsidiary) had in fact ceased to exist" (p. 510). As Douglas and Shanks say in *Insulation From Liability Through Subsidiary Corporations* (Vol. 39, Yale Law Journal, 193, 201) "few cases present such a clear case of complete domination".

In *Erickson* v. *Minnesota & Ontario Power Co.*, 134 Minn. 209, the parent owned the land on which its wholly owned subsidiary erected a dam under contract with the parent. The terms of the contract made the subsidiary the parent's agent and the Court held nothing more.

In several of the cases cited there was no question of disregard of the corporate entity. *Wooford* v. *Wooford*, 176 So. 499, was a dispute between stockholders who owned all the outstanding shares. They disagreed as to the management of the corporate property and the proceeding was brought for an accounting and a division; substantially a proceeding for the dissolution of the corporation. No third party rights were involved and there was no claim against the corporation.

In *Callas* v. *Independent Taxi Ass'n*, 66 F. (2d) 192 (C. C. A. D. C.), cert. denied 290 U. S. 669, there was no question of parent and subsidiary, or domination.

In re Great Lakes Transit Corporation, 81 F. (2d) 441 (C. C. A. 6), involved no disregard of corporate entity. Playfair, not the corporation, was held to be in fact the owner of the vessel (p. 442).

In *The Silver Palm*, 94 F. (2d) 776 (C. C. A. 9), the petitioner for limitation of liability pleaded in its petition that it was "owner and operator" of the vessel. However, after liability had been imposed, it sought to establish that another corporation was the operator. One Thompson was

the manager both of petitioner and the corporation which the petitioner belatedly claimed was the operator. The Court held only that his knowledge, whether gained as manager of one company or the other, constituted privity of the owner under the limitation statute. No corporate entity was disregarded.

The cases concerning corporations formed for the purpose of evading the law have no bearing here. It is not denied that Seminole Boat Company was formed for the legitimate purpose of putting the *Seminole* in the public chartering business. *United States* v. *Reading Company*, 253 U. S. 26; *United States* v. *Lehigh Valley R. R. Co.*, 220 U. S. 257; *McCaskill* v. *United States*, 216 U. S. 504; *Linn Timber Co.* v. *United States*, 236 U. S. 574; *Gregory* v. *Helvering*, 293 U. S. 465; *Corker* v. *Soper*, 53 F. (2d) 190 (C. C. A. 5), cert. denied 285 U. S. 540; *Harris Inv. Co.* v. *Hood*, 167 So. 25.

The cases where corporate assets have been transferred in fraud of creditors, or for the personal advantage of stockholders to the detriment of the corporation, are of no assistance here because there is neither claim nor proof of any such transaction. *Biscayne Realty & Ins. Co.* v. *Ostend Realty Company*, 109 Fla. 1; 8; *Miakka Estates, Inc.* v. *B. L. E. Realty Corp.*, 132 Fla. 307; *Hirsch* v. *Lincoln Securities Co.*, 118 Fla. 164; *Mayer* v. *Eastwood-Smith Co.*, 122 Fla. 34; *Fickling Properties, Inc.* v. *Smith*, 123 Fla. 556; *Bellaire Securities Corp.* v. *Brown*, 124 Fla. 47.

Weisser v. *Mursam Shoe Corp.*, 127 F. (2d) 344 (C. C. A. 2), is distinguishable on similar grounds. The stockholders represented to their corporation's lessor that the corporation's liabilities were in fact their obligations (p. 349).

Third Avenue Company v. *Keely*, 111 Fla. 46, is cited for the apparent purpose of leading the Court to infer that the Phipps family customarily employ the corporate form to perpetrate fraud. There is no justification for this insinuation. The Court dealt with the allegations of a bill and not with evidence. The case was never tried and the allegations never proved. The Court said "whether the allegations of the bill can be proved by complainant is another matter, • • •" (p. 51).

II. Respondent, if liable, is entitled to limitation of liability.

Only if Seminole Boat Company is disregarded does the limitation question arise. If it be disregarded, Phipps must be considered as one of two individual co-owners of the *Seminole*. In *Flink* v. *Paladini*, 279 U. S. 59, this Court held that a stockholder of a corporate vessel owner, who was liable under the California statute for the corporation's tort, is entitled to limitation of liability as an owner within the meaning of the limitation statutes.

This Court has often said that the limitation statutes should be construed liberally. In *Larson* v. *Northland Transportation Co.*, 292 U. S. 20, this Court said:

"Statutory provisions for limitation of liability should be construed liberally in order to effectuate their beneficent purposes. Providence & N. Y. S.S. Co. v. Hill Mfg. Co., 109 U. S. 578, 588; Butler v. Boston & Savannah S.S. Co., 130 U. S. 527, 549, 550; LaBourgogne, 210 U. S. 95, 121; Capitol Transportation Co. v. Cambria Steel Co., 249 U. S. 334; Evansville & B. G. Packet Co. v. Chero Cola Bottling Co., 271 U. S. 19, 21; Hartford Accident & Ind. Co. v. Southern Pacific Co., 273 U. S. 207, 214; Flink v. Paladini, 279 U. S. 59" (p. 24).

The statute* conditions the grant of limited liability upon the absence of privity or knowledge of the cause of the loss. Whether one has privity or knowledge is a question of fact. Both Courts below found that respondent Phipps had neither privity nor knowledge (this brief, p. 9). That they are right we shall show under the next heading.

Petitioners' losses were occasioned without the privity or knowledge of respondent Phipps

Petitioners do not claim that Phipps had knowledge of the cause of petitioners' losses. The cause of the losses, according to petitioners, was a defective gasoline tank or tanks, resulting in the leakage of gasoline. However, in March, 1935, the *Seminole* had been surveyed and passed by a competent surveyor, and she had operated on the cruise during that year without any sign of leak (*supra*, p. 4). Respondent Phipps left the *Seminole* on the cruise ten weeks before the fire and never saw her again. Thereafter she was in the possession of a bailee (Pilkington) hired to store, inspect and care for her. Pilkington inspected her almost every other day. He examined her five days before the fire and found no defect (R. 462, 520).

Notwithstanding petitioners' contention, there is no direct evidence that the tanks leaked. The Courts below inferred that there was gasoline in the engine room from the fact of the explosion. This inference led them to infer that the tanks must have leaked. There is no justification for this second inference because the tank valves were found open after the fire, although they had been left shut tight

*The statutes in effect at the time of the fire are set forth in Appendix A.

when the *Seminole* was delivered to Pilkington, as found by the lower Courts (R. 3586, 3647). These open valves account for the presence of any gasoline that was in the engine room, and, therefore, the inferred presence of gasoline does not justify an inference that the tanks leaked. The cause of the loss, therefore, was the act of some unidentified person in opening the valves and leaving them open during the time the *Seminole* was in Pilkington's possession. The question presented, therefore, is whether or not respondent Phipps had privity or knowledge of the open valves. The answer to this question must be in the negative—Phipps left the vessel at Lower Matecumbe ten weeks before, and the vessel proceeded to Pilkington's under her own power. She was thereafter prepared for storage by her crew, and Phipps was not present and had nothing whatever to do with preparing her for storage or closing the valves. The Circuit Court of Appeals found that when the crew left her with Pilkington the valves were closed (R. 3647). That the valves were opened after the *Seminole* was delivered into the custody of Pilkington, bailee, is clear. Pilkington admitted that he had tried to run the generator, which necessarily involved opening the valves to obtain gasoline to run the generator motor (R. 1100-1, 1113-14, 1310-11, 1545-7, Finding 10, R. 3586). Accordingly Pilkington, bailee in possession, should have been held liable because the valves were opened while the vessel was in his custody. *Pan American Petroleum Transport. Co.* v. *Robins Dry Dock & Repair Co.*, 281 Fed. 97 (C. C. A. 2); cert. denied, 259 U. S. 586.

Assuming, however, that the tanks were defective and leaked, respondent had no privity or knowledge of this. Petitioners do not even claim that he had knowledge of

any defective condition, but claim that he might have known if proper inspections were made. The Circuit Court of Appeals found that proper inspections were made, saying:

"It is undisputed that the vessel had been examined and pronounced fit by an experienced ship surveyor in February, 1935; that she developed no flaws during the cruise or prior to reaching Pilkington's; that the crew left her gasoline valves closed, her electric switches open, her gas tanks registering empty, and her bilges clean and free of gasoline or gasoline vapor; and she was repeatedly examined by competent men between April 15 and June 24, 1935, who discovered nothing wrong with her" (R. 3647).*

The evidence supporting the above finding will be discussed under the next heading.

It is well settled that an owner may not be charged with privity or knowledge and may limit his liability when he has delegated the duty of inspection to a competent subordinate and is ignorant of any negligent neglect of duty by that subordinate. See authorities, *infra*, pages 52-60.

The inspections of the *Seminole* were proper and timely and did not disclose any defect

Petitioners complain because the tanks could not be visually examined without tearing out a bulkhead. However, it was not necessary to examine the tanks visually. It was a simple matter to test them hydrostatically (R. 2288, 2593-5).

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* The District Court came to the same conclusion, saying:

"Respondent Phipps was without privity or knowledge of the events that led up to and brought about the explosion and fire, and if corporate liability be disregarded, which in my opinion should not be, Phipps would be entitled to limit his liability to the value of his interest in the wreck of the *Seminole* after the fire under the limitation of liability statutes" (R. 3582).

There were two systems of inspection, both of which petitioners ignore. Captain Baker inspected the *Seminole* and matters of upkeep and repairs were in his charge. He had thirty-five years' experience and his ownership and operation of his own charter boat establish his competence as fully set forth in the record (R. 1968, 1983, 2023-4, 2044-7). Although Captain Baker was not continuously employed on the *Seminole*, during the lay-up periods he, as her master, visited her and made frequent inspections. He testified:

"I was master of the *Seminole*. * * * I would go up and look around. * * * That was my business, you know. * * * I would go over the boat and clean it out, and would go over and look the boat over; that was the nature of my ordinary duties. * * * As far as the working parts of the boat was concerned, I was in charge. * * *" (R. 2045).

Such a system of inspection by the master is sufficient. See *California Yacht Club* v. *Johnson*, 65 F. (2d) 245 (C. C. A. 9).

In addition to inspections by Captain Baker, while the *Seminole* was in storage at Pilkington's she was inspected by Pilkington, bailee in possession, who had long experience as custodian of laid-up vessels. He admitted that he inspected the *Seminole* five days before the fire and everything was in good shape. As he* testified, he "had gone on the boat, all through it, on Wednesday (five days) before the fire and I didn't smell nothing and everything was in good shape" (R. 462, 520).

It was Pilkington's duty as bailee in possession to inspect the *Seminole*. The Court below so found (R. 3588). Pilkington admitted that his contract of storage with all the boat owners was the same and that he inspected all

* Pilkington was petitioners' witness (R. 419).

the boats in storage (R. 516-17). Petitioners' testimony confirmed this—the president of one of the petitioners testified that Pilkington contracted to inspect the boats (R. 746-7), and one of the boat captains (petitioners' witness) testified that Pilkington undertook to inspect the boats (R. 319).

Bernard, a marine surveyor of wide experience, also inspected the *Seminole* in March, 1935 (R. 2205). He was on board the *Seminole* parts of two days and possibly a third to examine the *Seminole* "as to her fitness" (R. 2211). He made a "close internal examination of the hull and the parts", went through the bilges and "found them clean and free from gas and any element that might indicate there was any weakness or gases that might be detrimental in the use of the boat" (R. 2213). He looked for gas leaks that might exist and found none (R. 2215). He found the tanks heavily constructed, well bedded and secured to place and "there were no leaks" (R. 2216-17); all Government requirements had been fully complied with (R. 2218). He made a search for odor or leak of gasoline from the tanks (R. 2230) and testified

"what I did, to prove those tanks were not leaking, was to see there was no evidence of gasoline odor or a drip or drain in the bilge; that's why I followed the bilge",

and there was "no leak, no; the tanks were tight" (R. 2249).

Elliott Bryant, one of petitioners' witnesses, testified that he accompanied Bernard "through all of the bilges" and that the bilges were "the cleanest bilges I found on any boat" (R. 414, 418).

Bernard could not examine the entire surface of the four tanks because they were in a separate compartment. The District Court held that this was proper construction (R.

3587). The tanks rested in pans which would catch any leak, and whether they were leaking could be determined by looking into the pans (R. 634), which could be seen through the holes in the bulkhead through which the tank valves protruded. These holes are shown on photographs, Exhibits 3, 4 and 5 (offered R. 141-2).

Petitioners argue that Bernard did not make a complete survey. He did not make what is called a "condition" survey, i.e., such as underwriters require to admit vessels to classification.* It is clear, however, as he testified, that he made a "thorough examination" (R. 2256-7). The report of his survey, Exhibit DD, is printed in full, R. Vol. VI, pp. 22-6. Petitioners comment that Bernard was paid only $17.50. Bernard wanted to explain the amount of his charge but petitioners' counsel would not permit him to do so (R. 2238).

Petitioners blandly assume that inspection prior to the fire would have shown that the tanks leaked. As we have pointed out, *supra*, pp. 43-4, the conclusion that the tanks leaked is based upon inference upon inference. Pressure tests *after the fire* disclosed no leaks where the tanks had not been burned by fire. The seams of the tanks had been soldered. On the upper parts of the tanks the solder melted off during the fire, but at the lower ends the tanks were buried in debris before the fire reached them and the solder remained. Exhibit 139, a photograph, shows solder remaining on one of the side seams of one of the tanks, and Exhibits 5-X, 5-Y, 5-Z and 6-A, segments of the bottom sections of each of the four tanks, show the solder still remaining there. After the fire the tanks were filled with

* The *Seminole* was not classed and no "condition" survey was required (R. 2236-8).

water and subjected to a pressure of five pounds per square inch, more pressure than existed within the tanks when they were full of gasoline. They did not show any leak at the lower ends, where the solder had not been burned away (R. 890, 3172-7, 3431-2). As a witness called by petitioners testified:

"Q. Did you notice any leaks around the bottom seams of any of those tanks? A. No, I didn't notice any leaks around the bottom at all" (R. 3175).

"Q. Did you observe any leaks where there was solder up the side seams? A. No" (R. 3176).

It is unreasonable even to attempt to charge respondent with knowledge which petitioners say might have been gained by tests *before* the fire when the tests *after* the fire showed no leaks except where the solder had been burned away by the fire.

The District Court, having held that Pilkington was obliged to inspect, continued:

"he may be criticized for not having detected and avoided the gaseous fumes on the *Seminole*, but I do not find that his dereliction in that regard was sufficient on which to base liability" (R. 3588).

If an inspection by Pilkington five days before the fire failed to disclose the gaseous vapor, and Pilkington's inspection was made with ordinary care so that he was not liable, how can respondent be held for failing to make an inspection since an inspection made with due care would have disclosed no dangerous condition? See *Restatement of the Law of Torts*, Vol. 2, §300, p. 807.

The authorities cited by petitioners deal with fact situations so different from those in the instant case that they have no bearing here. Petitioners seek to apply to a vessel

laid up in dead storage, in the possession of a competent bailee charged with the duty of inspecting and caring for the vessel, the rules of law applicable to an owner in possession of a vessel in active operation.

The Malcolm Baxter, Jr., 20 F. (2d) 304 (C. C. A. 2), aff'd 277 U. S. 323, involved a schooner purchased by new owners after she had commenced loading for the voyage in question. No officer of the owner inspected her before the voyage, nor was she drydocked, nor subjected to an extensive survey. Liability was decreed and limitation denied because the vessel was structurally unseaworthy due to a "hog" in her keel, which could have been discovered by the exercise of due diligence, i. e., the shipowner did not bring itself within the provisions of the Harter Act, 277 U. S. at p. 331. That decision has no application here. It involved a vessel in actual commercial operation. The vessel's seaworthiness was warranted by the shipowner and there was a breach of that warranty.

The Friendship II, 113 F. (2d) 105, reversed *sub nomine Just* v. *Chambers*, 312 U. S. 383, involved actual knowledge. Petitioner's own sons had been overcome by carbon monoxide gas in the same stateroom where petitioner put his guests.

Chesapeake Lighterage and Towing Co., Inc. v. *Baltimore Copper, Smelting and Rolling Co.*, 40 F. (2d) 394 (C. C. A. 4); *In re P. Sanford Ross*, 204 Fed. 248 (C. C. A. 2), and *The Republic*, 61 Fed. 109 (C. C. A. 2), are all cases where the vessels were in active service.

The Loyal, 204 Fed. 930 (C. C. A. 2); *Dexter-Carpenter Coal Co.* v. *New York, O. & W. Ry. Co.*, 50 F. (2d) 270, and *The Miami*, 43 F. (2d) 562, do not hold that an owner must inspect, periodically or otherwise, a vessel laid up out of

commission. Each of these cases involved unseaworthiness as to hull, i. e., inability to keep out the water as a result of which the vessels sank with loss of cargo.

Sabine Towing Co. v. *Brennan*, 72 F. (2d) 490 (C. C. A. 5), did not turn upon inspections or the lack of them. There, the tug owner sent its unstable tug to sea in violation of restrictions as to her draft with the knowledge of a managerial officer. The tug sank and became a total loss with her crew.

In re Jacobsen, 52 F. (2d) 179, is similar. There, the owner bought an abandoned vessel and ordered her to sea without making adequate arrangements for her reconstruction or her seaworthiness with full knowledge of the existence of a severe storm.

In *In re Jeremiah Smith & Sons, Inc.*, 193 Fed. 395 (C. C. A. 2), limitation was denied because a managerial officer of the corporate petitioner himself committed the negligent act which caused the explosion. There was no question of inspections or lack of them.

Gunnarson v. *Robert Jacob Inc.*, 94 F. (2d) 170 (C. C. A. 2), involved protane gas and did not deal with an owner's duty to inspect. Liability was decreed without limitation because the owner, with personal knowledge, placed the protane tank next to the galley stove and failed to instruct the decedent in the use of the dangerous gas.

New York & Cuba Mail S.S. Co. v. *Continental Ins. Co.*, 117 F. (2d) 404 (C. C. A. 2), cert. denied 313 U. S. 580, dealt with a fire on a vessel at sea. The sailors were not divided into equal watches as required by statute. The shipowner sought to limit its liability although its marine superintendent, a person of managerial status, failed to take any steps to ascertain whether the law was being complied with despite ready means of doing so.

In *The Argent*, 1940 A. M. C. 508, the *Argent* maintained an unlawful light for "about a year and a half" which eventually resulted in damage for which her owner was held. Limitation was denied because the owner had taken no steps whatever for that long period to ascertain whether or not lights were being exhibited in compliance with the law.

Asiatic Petroleum Co., Ltd. v. *Lennard's Carrying Co., Ltd.* (1914), 1 K. B. 419, arose under the English statute. While in a violent gale a boiler tube burst, depriving the vessel of steam, and she stranded, following which her benzine cargo leaked, resulting in a fire and her destruction. The ship was held unseaworthy as to her boilers and limitation was denied because the shipowner knew that the boilers were old, that they had been passed by surveyors only for a reduced pressure, and in June, 1911, "the boilers were then found to have various defects" (p. 438). The owners ordered new boilers for delivery in November but sent the vessel on the fatal voyage before the new boilers arrived.

Petitioners stop too soon in their quotation from *Benedict on Admiralty*, 5th Ed., § 498. Following the passage quoted (Petitioners' Brief, p. 36), the author says:

> "But if a proper person has been selected to perform such duties and has neglected them, *an individual owner unaware of the neglect and of the defective condition arising therefrom may limit his liability.* It is not, however, necessary that a shipowner, in order to limit his liability, should acquire expert knowledge concerning his vessel, her equipment and machinery, or should place between himself and the master an intermediary possessed of such knowledge" (p. 598; italics ours).

See also the author's remarks in the 6th Ed., 1940, Vol. III, at pp. 384-5.

Petitioners attack only a straw man in arguing that Scott, Hawkins, Alley and Riley were not competent to inspect the *Seminole*. These men were managers of the business of the Seminole Boat Company and were not intended, and did not attempt, to be the inspectors of the vessel from a practical standpoint. As we have pointed out above, Captain Baker was in charge of matters of maintenance, upkeep and repairs, and the *Seminole* was laid up in the possession of an experienced and competent yacht storage man (Pilkington). Pilkington had complete possession of the *Seminole* and his was the duty to inspect. Petitioners cite no authority for their contention that a bailor has a duty to inspect his property although not in his possession, laid up out of commission and in possession of a competent bailee who inspects.

Privity or knowledge must be actual and not merely constructive

Petitioners contend that privity must be imputed to Phipps because the officers of Seminole Boat Company might have discovered the allegedly defective condition of the tanks if they had made adequate inspections. This contention is based upon the argument that these men were Phipps' *alter ego*. On the contrary, an individual boat owner is liable only for his personal privity or knowledge. It is well settled that the knowledge of his agents cannot be imputed to him.

In *Richardson* v. *Harmon*, 222 U. S. 96, this Court said:

"In view of the manifest policy of Congress to further encourage the shipowning industry and the very broad terms employed in this last legislation; we can but infer that the policy of the Government was to confine the risk of an owner *not personally at fault* to his interest in the ship" (p. 104; italics ours).

In *The Republic*, 61 Fed. 109 (C. C. A. 2), the Court said:

"It was the intention of congress *to relieve shipowners from the consequences of all imputable culpability* by reason of the acts of their agents or servants, or of third persons, but not to curtail their responsibility for *their own* willful or negligent acts" (p. 112,; italics ours).

In *The 84-H*, 296 Fed. 427 (C. C. A. 2), cert. denied 264 U. S. 596, the Court said:

"This brings us to consider the meaning of the words 'privity and knowledge' as they are found in the act under consideration. The statute withholds the right to limit liability if the shipowner had 'privity or knowledge' of the fault which occasioned the damages to be recovered. The *privity or knowledge must be actual and not merely constructive. It involves a personal participation* of the owner in some fault or act of negligence causing or contributing to the injury suffered" (p. 431; italics ours).

In *The Princess Sophia*, 278 Fed. 180, aff'd 61 F. (2d) 339 (C. C. A. 9), cert. denied 288 U. S. 604, the Court said:

"Privity or knowledge, as used in the statute, imports *actual* knowledge causing or contributing to the loss or knowledge, or means of knowledge of a condition of things likely to produce or contribute to the loss without adopting proper means to prevent it" (p. 188; italics ours).

"It appears to be well settled that, where the owner in good faith appoints a competent agent to equip, man, or maintain a vessel or her machinery, any acts of omission or commission of the agents, *not participated in personally by the owner*, do not constitute privity or knowledge" (p. 189; italics ours).

In *Warnken* v. *Moody*, 22 F. (2d) 960 (C. C. A. 5), the Court said:

"It is plain that W. L. Moody, Jr. did not *personally* participate in that negligent conduct of his employee, and had no knowledge or information thereof until after the

deceased's death. It follows that the negligence or misconduct of the employee, Anderson, was 'without privity or knowledge' of the owner, W. L. Moody, Jr., within the meaning of the statute providing for the limitation of liability of owners of vessels" (p. 962; italics ours).

It is well settled that negligence alone is not privity or knowledge. In *LaBourgogne*, 210 U. S. 95, this Court said:

"Without seeking presently to define the exact scope of the words privity and knowledge, it is apparent from what has been said that it has been long since settled by this court that mere negligence, pure and simple, in and of itself does not necessarily establish the existence on the part of the owner of a vessel of privity and knowledge within the meaning of the statute" (p. 122).

Petitioners' argument (Point III) fails to distinguish between the privity rule as applied to individuals and corporations. As shown by the cases above, it is well settled that privity or knowledge of a shipowner must be personal and may not be imputed. In the case of an individual the question is whether he personally had privity or knowledge of the cause of the loss in question. On the other hand, inasmuch as a corporation has no physical being and necessarily acts through natural persons, who are its agents, the privity or knowledge of certain of these persons must be held to be the knowledge of the corporation. Otherwise a corporation would never have privity or knowledge and could always limit its liability. Numerous cases stemming from *Craig* v. *Continental Insurance Co.*, 141 U. S. 638, hold that where the owner is a corporation the privity or knowledge of an officer or agent having managerial status is the privity or knowledge of the corporation. See *Spencer Kellogg Co.* v. *Hicks*, 285 U. S. 502, where the "works manager" was held to be a person of managerial status, whose privity was held to be that of the corporate owner.

In a long line of cases involving individual as distinguished from corporate shipowners limitation has been granted although persons* entrusted by such individual owners with the management of the vessel had knowledge of, or were privy to, the negligent act causing the loss, the crux of the decisions being that privity or knowledge is not imputable. *The Yungay*, 58 F. (2d) 352, 355-6; *The Chehaw*, 54 F. (2d) 645; *Warnken* v. *Moody*, 22 F. (2d) 960 (C. C. A. 5); *Christopher* v. *Grueby*, 40 F. (2d) 8 (C. C. A. 1); *Successors De Esmoris & Co.* v. *Whitney & Bodden Slipping Co., Inc.*, 39 F. (2d) 191; *Petition of Liebler*, 19 F. Supp. 829; *The City of Camden*, 292 Fed. 93 (C. C. A. 3); *James McWilliams Towing Lines* v. *Shaw*, 288 Fed. 74; *Flynn* v. *Christenson*, 273 Fed. 385 (C. C. A. 9); *The Tommy*, 151 Fed. 570 (C. C. A. 2); *Quinlan* v. *Pew*, 56 Fed. 111, 118 (C. C. A. 1); *In re Leonard*, 14 Fed. 53.

In *The Silver Palm*, 94 F. (2d) 776 (C. C. A. 9) (Petitioners' Brief, p. 43), petitioner (owner) was a corporation and the agent referred to, charged with the managerial functions, was also a corporation. As the Court said:

"Against its allegation that it was the 'operator' of the vessel, petitioner attempted to establish that it had delegated its operation to another corporation, * * *" (p. 780).

The Court found that Silver Line, Ltd., owner and petitioner, was the operator of the vessel, and held that the petitioner did know of the reversing characteristics of the vessel's engine, which was the proximate cause of the collision. Petitioner had considered the installation of a brake device and had rejected it. With this knowledge

* Petitioners would call them alter egos.

before it, petitioner did not acquaint the master of the vessel with the reversing characteristics of the engine and at the time of the collision the master had no knowledge thereof. The case has nothing in common with the instant case.

The same Court discussed privity and knowledge in *The South Coast*, 71 F. (2d) 891. In that case it was claimed that a vessel was lost by reason of an explosion and that she was unseaworthy. The Court said:

"Even if unseaworthiness had been shown or could be presumed as the cause of the disaster, appellee would still be entitled to limit its liability, if such unseaworthiness was without privity or knowledge on its part. California Yacht Club v. Johnson (C. C. A. 9), 65 F. (2d) 245; The Princess Sophia (C. C. A. 9), 61 F. (2d) 339."

After discussing privity and knowledge, the Court said as to imputation of privity or knowledge as follows:

"We are unable to perceive how there can be imputation of privity or knowledge to a corporation of defects in one of its vessel's boilers, unless the defects were apparent, and of such a character as to be detected by the inspection of an unskilled person. The record fails to show that the defects were of this character. The testimony fairly sustains the finding of the court that the defects in the boiler were not patent, and that they could have been discovered only by applying the proper test after the repairs of June, 1893. The test was not applied, and in that omission is one of the elements of the negligence of the petitioners, as found by the court. When we consider the purpose of the law which is under consideration, and the construction that has been given to it by the courts, it is obvious that the managers of a corporation whose business is the navigation of vessels are not required to have the skill and knowledge which are demanded of the inspector of a boiler. It is sufficient if the corporation employ, in good faith, a competent person to make such inspection. When it has employed such a person in good faith, and has delegated to him that branch of its duty, its liability beyond the value of the vessel and freight ceases, so far as concern injuries

from defects of which it has no knowledge, and which are not apparent to the ordinary observer, but which require for their detection the skill of an expert" (pp. 894-5).

Compare also *The Princess Sophia*, 278 Fed. 180, aff'd 61 F. (2d) 339 (C. C. A. 9), *supra*, p. 54.

In re Great Lakes Transit Corporation, 81 F. (2d) 441 (C. C. A. 6) (Petitioners' Brief, p. 44), involved petitions by a corporation and an individual. The Court found that the individual, not the corporation, actually owned the vessel. Limitation of liability was denied because the vessel owner had personally contracted to supply a seaworthy vessel, a contractual obligation against which an owner may not limit his liability entirely apart from all considerations of privity or knowledge. See *Pendleton* v. *Benner Line*, 246 U. S. 353. The Court found also that

"The primary cause of the loss, the negligent failure properly to drain the sea cock, was also known to Playfair", the owner (p. 444).

In the *Great Lakes Transit Corporation* case the Court by way of dictum said that the knowledge need not be actual but may be imputed if someone in charge for the owner had general authority to act for him and by the exercise of ordinary care could have discovered the fault, overlooking the distinction in the application of the rule as between corporate and individual owners. The cases cited by the Court to support this dictum are all corporate owner cases (p. 444). The same Court cited this decision in *Interlake Iron Corporation* v. *Gartland S.S. Co.*, 121 F. (2d) 267 (C. C. A. 6) only for the proposition that

"* * * where the contract is personal there is a warranty of seaworthiness and lack of the owner's privity or knowledge will not permit of limitation. *In re Great Lakes Transit Corp.*, 6 Cir., 81 F. (2d) 441, and cases therein cited" (p. 270).

Also in *In re New York Dock Co.*, 61 F. (2d) 777 (C. C. A. 2), the Court overlooked the fact that the owner was an individual and applied the corporate rule, denying limitation of liability because of the negligence of the owner's superintendent. Only cases involving corporate owners were cited by the Court, and the distinction between individual and corporate owners was not considered (p. 779).

Where the question was later squarely raised in the Second Circuit the Court held unequivocally that privity or knowledge must be personal even where lack of adequate inspection is involved. In *Flat-Top Fuel Co. Inc.* v. *Martin*, 85 F. (2d) 39 (C. C. A. 2), cert. denied 299 U. S. 585, the vessel sank because inadequately inspected. The Court granted limitation to the individual owner, saying:

"Nevertheless, the respondent [individual vessel owner] is entitled to limitation of liability, which is equivalent to exoneration since the barge was a total loss and there was no pending freight. *The lack of due diligence which forfeits limitation must be personal to the owner.* The Galileo, 54 F. (2d) 913, 914 (C. C. A. 2), affirmed Earle & Stoddart v. Ellerman's Wilson Line, 287 U. S. 420, 425. The evidence negatives any negligence on the part of Martin himself. He did not undertake, himself, to determine the condition of the barge, but employed a competent master to look after her and to inform him of any needed repairs; and he was ready and able to make any repairs required" (p. 42; italics ours).

This case was again referred to in the same Circuit—see *The Ariel*, 33 F. Supp. 573, affirmed 119 F. (2d) 866 (C. C. A. 2), where the Court granted limitation despite alleged structural defects, saying:

"Certainly the unseaworthiness of the vessel, alleged to stem from the condition of the pilot house or bulkhead door, was not so obvious as to meet the eye of Wilkisson on his occasional visits to the vessel at the dock. Therefore *In re New York Dock Co.*, 61 F. (2d) 777, *Christopher* v.

Grueby, 40 F. (2d) 8, and *In re Great Lakes Transit Corp.*, 81 F. (2d) 441, relied upon by the claimants are not applicable" (p. 576).

Under another section of the limitation statute this Court, in a leading case, held that imputed negligence will not serve to deny to a vessel owner the benefits of the statute. *Earle & Stoddart, Inc.* v. *Ellerman's Wilson Line, Ltd.*, 287 U. S. 420, involved the fire statute, Act of March 3, 1851, c. 43, § 1, 9 Stat. 635; R. S. § 4282; Title 46, U. S. Code, § 181. That section provides that a shipowner shall not be liable for the loss of merchandise by fire unless caused by "the design or neglect" of such owner. A fire occurred on the *Galileo* because new bunker coal was placed on top of old which was known to be overheated, as a result of which the vessel was unseaworthy when the voyage began. The owners of the lost cargo contended that the fire statute was intended to exonerate the shipowner except for his "personal negligence * * * or, in case of a corporate owner, negligence of its managing officers or agents" (pp. 424-5), but contended* that the statute did not confer immunity where the fire resulted from unseaworthiness discoverable by the exercise of ordinary care. This contention is substantially identical with that of petitioners here. This Court declined to accept that contention and held that the "design or neglect" of the shipowner must be personal to deprive him of the benefits of the statute, saying:

"The Courts have been careful not to thwart the purpose of the fire statute by interpreting as 'neglect' of the owners the breach of what in other connections is held to be a non-delegable duty. Nothing contained in the opinion of this Court in *The Malcolm Baxter, Jr.*, 277 U. S. 323, is to be taken as indicating a different view" (pp. 427-8).

* Counsel who represented cargo in that case represent the petitioners here and make the same argument.

The fire statute and the limitation statute were §§ 1 and 3, respectively, of the Act of March 3, 1851. There is no reason to suppose that Congress intended that the "design or neglect" of the fire statute must be personal, but that the "privity or knowledge" of the limitation statute need not be personal but may be imputed. If the distinction between an individual and a corporate shipowner is understood there is no difficulty in applying the decisions. In all instances the "design or neglect" and the "privity or knowledge" must be personal to deprive the shipowner of the statutory benefits. In the case of an individual shipowner the "design or neglect" or the "privity or knowledge" must actually be personal to the individual shipowner. In the case of corporate shipowners, since a corporation has no physical being, the "design or neglect" or the "privity or knowledge" must be personal to those natural persons who are in law the corporation, i. e., persons having managerial status as declared in *Craig* v. *Continental Ins. Co.*, 141 U. S. 638, *supra*.

If petitioners' *alter ego* theory were sound it would destroy the limitation statutes as fully as if Congress repealed them. On petitioners' theory an individual can never limit his liability. If he does not entrust the vessel to another to manage for him, any privity or knowledge will necessarily be his own and he cannot limit. If he does place the vessel in the hands of another to operate for him, no matter how competent such person may be, the owner cannot limit because the privity or knowledge of such person will be his through his *alter ego*.

There are thousands of individually owned gasoline power boats in the United States, and a large industry which has proved of great value to the war effort in the construction of small fighting craft has grown up, fostered

by the settled law that an individual vessel owner can limit liability unless he has personal privity or knowledge. If the wisdom of the law were open to question, such considerations would be for the Congress.

Even if petitioners' *alter ego* theory were sound respondent is entitled to limit liability because his *alter egos* had no privity or knowledge. His *alter egos*, as petitioners claim, were Scott, Hawkins and Riley (Petitioners' Brief, pp. 46-9). It is clear from the record that these men never made or undertook to make any inspection of the *Seminole* personally and that none of them was aboard the *Seminole* following her delivery to Pilkington in April, 1935. Patently they had no actual knowledge of any defective condition and inasmuch as they had instituted two independent and adequate systems of inspection by competent persons (Baker and Pilkington, this brief, pp. 46-7) neither they nor Phipps can be charged with what proper inspections would have revealed even if the Courts below had found either that the inspections were not proper or that proper inspections would have revealed the allegedly defective condition. In fact, it was found below that the inspections were proper and were made by competent men (R. 3647) and that inspections by Pilkington which did not reveal the alleged defect were nevertheless adequate (R. 3588).

Petitioners complain because the District Court held that if an owner's negligence consists of non-feasance he may nevertheless limit his liability. The District Court's primary interest in non-feasance was in connection with liability as distinguished from limitation. The Court said:

"Furthermore, the character of the negligence which this record discloses is the failure to do or perform a duty, or

non-feasance. Such failure of duty does not give rise to an application of the alter ego or agency doctrine" (R. 3587).

This is good law. A corporate stockholder or officer is not individually liable to a third party injured by the corporation's tort for non-feasance, but only for his own participation therein. See *Leonard* v. *St. Joseph Lead Co.*, 75 F. (2d) 390 (C. C. A. 8); *Sterns Lumber Co.* v. *John H. Rice Co. et al.*, 260 Fed. 434; *The U. S. 219*, 21 F. Supp. 466; *Haefeli* v. *Woodrich Engineering Co., Inc.*, 255 N. Y. 442; *Greenauer* v. *Sheridan-Brennan Realty Co.*, 224 App. Div. 199; *Tibbets* v. *Wentworth*, 248 Mass. 468; *Aubrey's Adm.* v. *Stimson*, 160 S. W. 991 (Ky.); *Wolfersberger* v. *Miller*, 327 Mo. 1150; *Darling & Co.* v. *Fry*, 24 S. W. (2d) 722; *Ellingson et al.* v. *World Amusement Service Ass'n*, 222 N. W. 335 (Minn.); *Messenger* v. *Frye*, 28 P. (2d) 1023 (Wash.); *Federal Trade Commission* v. *Standard Education Soc.*, 86 F. (2d) 692 (C. C. A. 2).

III. The decree of the Circuit Court of Appeals should be affirmed, with costs.

Respectfully submitted,

CHAUNCEY I. CLARK,
EUGENE UNDERWOOD,
Counsel for Respondent.

Dated, New York, N. Y., December 7, 1942.

Appendix A

The statutes in effect at the time* of the fire were as follows:

"The liability of the owner of any vessel, for any embezzlement, loss, or destruction, by any person, of any property, goods, or merchandise, shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred without the privity or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel, and her freight then pending" (Act of March 3, 1851, c. 43, § 3, 9 Stat. 635; R. S. § 4283; Title 46, U. S. Code, § 183).

"Whenever any such embezzlement, loss, or destruction is suffered by several freighters or owners of goods, wares, merchandise, or any property whatever, on the same voyage, and the whole value of the vessel, and her freight for the voyage, is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the vessel in proportion to their respective losses; and for that purpose the freighters and owners of the property, and owner of the vessel, or any of them, may take the appropriate proceedings in any court, for the purpose of apportioning the sum for which the owner of the vessel may be liable among the parties entitled thereto" (Act of February 27, 1877, c. 69, § 1, 19 Stat. 251; R. S. §4284; Title 46, U. S. Code, § 184).

In *Providence and New York SS. Company* v. *Hill Mfg. Company*, 109 U. S. 578, this Court said:

"The rule of limited liability prescribed by the Act of 1851 is nothing more than the old maritime rule administered in courts of admiralty in all countries except England, from time immemorial; * * *" (p. 593).

*The limitation statutes as amended subsequent to the time of petitioners' losses are set forth in Appendix A to petitioners' brief, pp. 51-6. It is not suggested by petitioners, however, that these subsequent amendments affect this case.

0.3

SUPREME COURT OF THE UNITED STATES.

No. 246.—October Term, 1942.

Charles Coryell, et al., Petitioners, *vs.* John S. Phipps and George J. Pilkington.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[January 4, 1943.]

Mr. Justice Douglas delivered the opinion of the Court.

Petitioners instituted a suit in Admiralty in the federal District Court to recover damages for the destruction of vessels owned by them as a result of a fire which occurred in June, 1935, while the vessels were afloat at Pilkington's storage basin at Fort Lauderdale, Florida. The fire was caused by an explosion of gasoline fumes in the engine room of the yacht Seminole, registered in the name of Seminole Boat Co. and owned by it. Prior to 1929 the Seminole was owned by respondent Phipps and his brother. At that time they transferred the yacht to the Seminole Boat Co., a Delaware corporation, all of the stock of which was issued to the two brothers. At the time of the fire respondent Phipps still owned half of the shares of stock, the other half having been acquired by his sister. Neither she nor Phipps was an officer or director of the company.

Respondent Phipps was sued on the theory that he was the owner of the yacht and operated and controlled her and that the Seminole Boat Co. was a dummy corporation. In his answer Phipps set up, *inter alia*, the defense of limitation of liability contained in R. S. § 4283, 46 U. S. C. § 183.[1] The District Court found negligence on the part of the Seminole Boat Co. It held that the corporation was not a sham or a fraud but adequate to insulate Phipps as a stockholder from liability for this tort. It went on to hold that even if the corporation be disregarded Phipps

[1] That section as it read at the time of the fire provided: "The liability of the owner of any vessel, for any embezzlement, loss, or destruction, by any person, of any property, goods, or merchandise, shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity, or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel, and her freight then pending."

was without "privity or knowledge" of the events which caused the fire and hence could limit his liability to the value of his interest in the yacht. 39 F. Supp. 142. The Circuit Court of Appeals affirmed. 128 F. 2d 702. The case is here on a petition for a writ of certiorari which we granted because of an asserted conflict on the point of limitation of liability under § 4283 between the decision below and *In re New York Dock Co.*, 61 F. 2d 777 and *In re Great Lakes Transit Corp.*, 81 F. 2d 441.

The sole questions raised by the petition relate to the liability of Phipps. Petitioners renew here their contention that the corporate existence of the Seminole Boat Co. should be disregarded and that it should be treated as a mere dummy or sham. We need not recite the facts on which that argument rests nor express an opinion on it. For even if we assume, without deciding, that the contention is a valid one and that Phipps should be treated as owner of the yacht for the purposes of this litigation, we nevertheless conclude that the courts below were correct in allowing the limitation of liability under § 4283.

That section, as it read at the time of the fire,[2] provided as we have stated, that the "liability of the owner" might be limited to the "amount or value of the interest of such owner" in the vessel, where the loss was occasioned or incurred without his "privity or knowledge". The District Court found that the proximate cause of the fire was the presence of gasoline fumes in the engine room caused by a leak in some part of the machinery or equipment. That leak, it concluded, occurred not from faulty original installation of the gasoline tanks but with the passage of time. The Circuit Court of Appeals sustained those findings. It was not found by either of the courts below, nor is it claimed, that Phipps had knowledge of that condition. It is urged, however, that the agents of Phipps and the Seminole Boat Co. selected to manage and inspect the yacht were incompetent and negligent, that their negligence is attributable to Phipps, and that in any event he could not establish his claim for limitation of liability without showing that he had appointed competent persons to make the inspection. See *M'Gill* v. *Michigan S. S. Co.*, 144 Fed. 788; *In re Reichert Towing Line*, 251 Fed. 214; *The Silver Palm*, 94 F. 2d 776. The Circuit Court of Appeals found that the vessel had been examined and pronounced fit by an experienced ship surveyor in February, 1935, that she developed no faults

[2] No question has been raised here as respects the amendments to the section made by the Act of August 29, 1935, 49 Stat. 960 or by the Act of June 5, 1936, 49 Stat. 1479.

in a cruise between February and April of that year when she was turned over to Pilkington for storage, that "the crew left her gasoline valves closed, her electric switches open, her gas tanks registering empty, and her bilges clean and free of gasoline or gasoline vapor," and that "she was repeatedly examined by competent men between April 15 and June 24, 1935, who discovered nothing wrong with her." There is evidence to support those findings and we will not disturb them. Thus respondent has satisfied the burden of proof, which is on those who seek the benefit of § 4283, of establishing the lack of privity or knowledge (*M'Gill* v. *Michigan S. S. Co., supra; In re Reichert Towing Line, supra; The Silver Palm, supra*) and is entitled to limit his liability, unless any neglect of those to whom duties were delegated may be attributed to him for purposes of § 4283.

Petitioners press several lines of cases on us. We are not concerned here, however, with the question of limitation of liability where the loss was occasioned by the unseaworthiness of the vessel. The limitations acts have long been held not to apply where the liability of the owner rests on his personal contract. *Pendleton v. Benner Line*, 246 U. S. 353; *Luckenbach* v. *McCahan Sugar Co.*, 248 U. S. 139; *Capitol Transportation Co.* v. *Cambria Steel Co.*, 249 U. S. 334. As stated by Chief Justice Hughes in *American Car & Foundry Co.* v. *Brassert*, 289 U. S. 261, 264, "For his own fault, neglect and contracts the owner remains liable." And that exception extends to an implied as well as to an express warranty of seaworthiness. *Cullen Fuel Co., Inc.* v. *Hedger Co.*, 290 U. S. 82. But whatever limit there may be to that exception (*id.*, p. 89; cf. *Earle & Stoddart, Inc.* v. *Ellerman's Wilson Line, Ltd.*, 287 U. S. 420, arising under the fire statute), those cases are no authority for imputing to the individual owner the neglect of another so as to establish on his part privity within the meaning of the statute.

Petitioners also rely on cases involving corporate shipowners. In those cases it is held that liability may not be limited under the statute where the negligence is that of an executive officer, manager or superintendent whose scope of authority includes supervision over the phase of the business out of which the loss or injury occurred. *Spencer Kellogg & Sons, Inc.* v. *Hicks*, 285 U. S. 502, and cases cited; 3 Benedict, Admiralty (6th ed.) § 490. But those cases are no authority for holding that the negligence of a subordinate may be imputed to an individual owner so as to place him in privity within the meaning of the statute. A corporation necessarily acts through human beings. The privity

of some of those persons must be the privity of the corporation else it could always limit its liability. Hence the search in those cases to see where in the managerial hierarchy the fault lay.

In the case of individual owners it has been commonly held or declared that privity as used in the statute means some personal participation of the owner in the fault or negligence which caused or contributed to the loss or injury. *The 84-H*, 296 Fed. 427; *Warnken* v. *Moody*, 22 F. 2d 960; *Flat-Top Fuel Co.* v. *Martin*, 85 F. 2d 39; and see *La Bourgogne*, 210 U. S. 95, 122; *Richardson* v. *Harmon*, 222 U. S. 96, 103; 3 Benedict, Admiralty (6th ed.) § 489. That construction stems from the well settled policy to administer the statute not "with a tight and grudging hand" (Mr. Justice Bradley in *Providence & New York S. S. Co.* v. *Hill Mfg. Co.*, 109 U. S. 578, 589) but "broadly and liberally" so as "to achieve its purpose to encourage investments in shipbuilding and to afford an opportunity for the determination of claims against the vessel and its owner." *Just* v. *Chambers*, 312 U. S. 383, 385. And see *Larson* v. *Northland Transportation Co.*, 292 U. S. 20, 24; *Flink* v. *Paladini*, 279 U. S. 59, 62; *Richardson* v. *Harmon*, *supra*, p. 103. Some cases, however, have barred the individual owner from the benefits of the statute even though the element of personal participation in the fault or negligence was not present. Thus it has been thought that the scope of authority delegated by an individual owner to a subordinate may be so broad as to justify imputing privity (*In re New York Dock Co.*, *supra*, p. 779) as well as knowledge. *In re Great Lakes Transit Corp.*, *supra*, p. 444. We need not reach those questions in this case. Privity like knowledge turns on the facts of particular cases. Here two courts have found the absence of both. We accept concurrent findings upon such matters. *Just* v. *Chambers*, *supra*, p. 385. And even were we to assume without deciding that for the purposes of § 4283 privity as well as knowledge of an individual owner may be constructive rather than actual, it does not follow that Phipps should be barred from limiting his liability. One who selects competent men to store and inspect a vessel and who is not on notice as to the existence of any defect in it cannot be denied the benefit of the limitation as respects a loss incurred by an explosion during the period of storage, unless "privity" or "knowledge" are to become empty words. If § 4283 does not give protection to the individual owner in these circumstances, it is difficult to imagine when it would.

Affirmed.